EVEBRIEF

Legal & Parliamentary

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A BRIDGE TOO FAR?

Gemma Dow
Editor

In this autumnal issue we visit a wide variety of different areas including a fairground case where the High Court rejected a rather unusual claim to a tenancy involving a profitable fairground ride.

At Item 14 we report the Court of Appeal's decision in the case of Edwards v Sutton London Borough Council. This concerned a dispute where Mr Edwards was seriously injured after falling from a small ornamental bridge in Beddington Park, Sutton onto rocks in the water below. Mr Edwards contended that the Council should have provided higher sided protection barriers or warned visitors to the park of the dangers posed by the bridge.

The dispute here was about the allocation of damages; the Court ruled that, whilst the accident was within the scope of foreseeable risk, there was no obligation to modify existing premises built in accordance with prevailing standards at the time of construction, although the judge held that a warning sign should have been in place.

The Council's appeal was allowed owing to the fact, amongst others, that this was a bridge with low parapets and that persons not exercising due care might fall off. Whilst there may be dangers so as to give rise to a duty of common care that did not mean that, in order to discharge the duty, no such bridges should be left open to visitors or that they should not be left open without guard rails or express warnings. In this case a warning sign would have done little to alert the user that he would not have deduced from his own observation.

This appears to be a decision based on common sense in finding that we have a duty of care to ourselves for our own safety. What happened was clearly a tragic accident and any alterations to the bridge would have altered the material character of the bridge significantly out of proportion to a remote risk which had never materialised in its known history.

LANDLORD & TENANT

01 High Court

Claimant asserting tenancy over sites occupied at annual street fair organised by defendant city council – whether claimant had an annual periodic tenancy for period of fair – claim for damages for breach of covenant for quiet enjoyment

*HOLLAND V OXFORD CITY COUNCIL
[2016] PLSCS 274 – Decision given 17.10.16

Facts: The claimant, H, was from a showman family and a member of the Showman's Guild, a trading association for the travelling fairground community. For a number of years she had operated a profitable fairground ride known as the Cyclone from two sites at the September St Giles Fair which was run by OCC. In 2013, 2014 and 2015 she was denied full use of those sites which meant that she could not operate her ride. She claimed that she had an annual periodic tenancy from OCC over the sites and also claimed damages for loss of profit and for breach of covenant for quiet enjoyment.

Point of dispute: Whether to allow H's claims.

Held: The claims were dismissed.

i. On the evidence, the process by which H came to occupy the sites was designed to transfer to H the Guild rights over the sites held previously by her predecessors and to procure the consent of OCC to the transfer and her registration with them as the person entitled to those rights. It was Guild rights and not any rights in land which were the subject of the relevant transfers.

ii. On the assumption that H's predecessors were tenants, when the Guild rights in each of the two sites were transferred to her and she took up occupation the tenancies held by her predecessors came to an end by surrender by operation of law.

iii. OCC were entitled to require H to prove the tenancy that she contended to have; she had to prove that it was at a market rent and did not take effect at will only.

iv. The arrangements between H and OCC did not amount to a grant of exclusive possession.

v. In all the circumstances the occupancies took effect by way of licence. Such occupancies could be periodic in nature and entitle H to return to the same site, but that was not the case here. Each year she had applied for and been granted a new permission to occupy.

vi. The true source of H's so-called "permanency" as occupant each year of the two sites lay in her Guild rights which bound other showmen, but not OCC, and in OCC's acknowledged policy of allocating sites having regard to those rights. H had no continuing legal rights as against OCC and her status on the sites had never been any more than that of a licensee, occupying under a licence granted to her each year.

vii. H's monetary claims failed. As a licensee she did not have the benefit of the implied covenant for quiet enjoyment upon which her monetary claims were said to be based. As a matter of law she could have no claim arising from the fact that her attraction could not be contained within the sites allocated to her.

02 Upper Tribunal: Lands Chamber

Service charges – recovery of costs

*87 ST GEORGE'S SQUARE MANAGEMENT LTD V WHITESIDE
[2016] PLSCS 275 – Decision given 10.10.16

Facts: The respondent, W, was the long leaseholder of one of six flats in a converted Grade II listed property in Pimlico, London SW1. The lease contained a contractual indemnity clause requiring W to pay the appellant landlord's "reasonable costs charges and expenses of proceedings or in contemplation of proceedings in connection with the enforcement of the Lessee covenants". A dispute arose between the parties regarding the cost of major works that the landlord proposed to carry out to the building and for which it was charging leaseholders in the service charge for 2014. The FTT made determinations in favour of the appellant and ordered W to pay 20% of the landlord's costs of the proceedings under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The landlord decided to ignore that order and instead sought to recover the entirety of its costs, over £40,000, pursuant to the indemnity clause in the lease.

Point of dispute: Whether to allow the landlord's appeal against the FTT's ruling that the order under Rule 13 had exhausted its entitlement to claim its costs of the earlier proceedings.

Held: The appeal was allowed.

i. The landlord had two legal routes to the recovery of its costs: as a party to the lease it had a contractual indemnity clause entitling it to recover its reasonable costs of enforcement action to the extent that those costs were reasonably and properly incurred; and as a party to proceedings before the FTT it could also seek an award of costs under Rule 13(1)(b) if it could satisfy the FTT that the respondent had conducted the proceedings unreasonably. Where a party had two legal routes to recovery of the same sum, it would not be entitled to recover that sum twice, but there was no reason why it should be required to elect between the two routes unless they were inconsistent.

ii. Accordingly, it was not "inappropriate" for the landlord to pursue its contractual right after the FTT had already made a decision in its favour awarding only 20% of the total costs under Rule 13. Such a course was not an abuse of process and was not barred by any procedural estoppel. W was not misled or inconvenienced by the landlord taking this course of action and he would receive an unjustified windfall if the landlord were prevented from relying on its contractual right.

iii. However, the case had to be remitted to the FTT for a further assessment of the extent to which the costs were "reasonably and properly incurred" in connection with the enforcement of W's obligations, as required by the indemnity clause, and whether the amount of the charge was reasonable.

03 Upper Tribunal Lands Chamber

Determination of service charge – whether FTT failing to determine fundamental issue when actual amounts payable not calculated

*JAROWICKI V FREEHOLD MANAGERS (NOMINEES) LTD; RE PROKHOROVA'S APPEAL
[2016] PLSCS 276 – Decision given 12.10.16

Facts: This case concerned two joined appeals regarding decisions of the First-tier Tribunal (FTT) made under s27A of the Landlord and Tenant Act 1985 in disputes over the amounts of service charges payable by long leaseholders. In the first case the FTT found that the leaseholder was liable under the lease to "pay a proportion" of the service costs but did not determine the actual amount payable. In the second case the FTT considered various heads of expenditure that were disputed by the leaseholder; it determined the disputed issues "in principle" but, not having been provided with the necessary figures, it did not determine the actual amount payable but instead required the landlord to determine the relevant sum.

Point of dispute: Whether to allow the leaseholder's appeal against the FTT's determination in each case on the grounds that the FTT had failed to determine the fundamental issue as to the actual amount of the service charge payable.

Held: The appeals were allowed.

i. Where an application was made to the FTT under s27A of the 1985 Act for a determination of the amount of service charge payable the FTT had not fully determined the application until it had quantified the service charge. It could not delegate its duty by directing one of the parties to determine the financial consequences of its decision. In a case where the necessary information was not available at the hearing the appropriate course would be for the FTT to direct the landlord or management company to recalculate the service charge in the light of the tribunal's decision and then to submit it to the leaseholder for agreement, giving both parties the right to apply to the tribunal if agreement could not be reached. The final responsibility for determining the sum payable lay with the FTT.

ii. In the second case the FTT's decision was not an adequate determination of the issue submitted to it. In circumstances where the invoices provided by the landlord gave rise to potential for confusion and uncertainty it was incumbent on the FTT to determine the amounts payable as service charges in absolute figures rather than as percentages or proportions of unspecified sums which it left the parties to interpret. The omission of the FTT to state the amount of the service charges payable was not a matter that could be corrected under the slip rule contained in Rule 50 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013. The FTT's decision was set aside with the application to be redetermined.

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

PLANNING

04 Court of Appeal

Adoption of local plan – s113 Planning and Compulsory Purchase Act 2004 – whether court exceeding its jurisdiction – whether impermissibly substituting own planning judgment for that of inspector

**WOODFIELD V JJ GALLAGHER LTD
[2016] PLSCS 269 – Decision given 12.10.16

Facts: The respondent G had an interest in a site near Bicester town centre. In July 2015 the site was allocated for development with 300 dwellings in the adopted local plan. An examination into the local plan had been conducted by an inspector appointed by the Sec of State who recommended that relevant policy which dealt with G's site, policy Bicester 13, should be modified to provide that part of the site which fell within a conservation target area (CTA) "should be kept free from built development". W appeared as an objector at the examination. G brought proceedings under s113 of the Planning and Compulsory Purchase Act 2004 to challenge policy Bicester 13 as adopted.

Point of dispute: Whether to allow W's appeal against the judge's order that policy Bicester 13 be treated as not adopted and that it be remitted to the Sec of State for the appointment of a planning inspector to recommend adoption of the policy, but with the words precluding built development in CTA removed. The judge noted that in his report the inspector had rejected the argument that the developable area should be reduced to avoid any development in the CTA; accordingly she concluded that the inspector's recommendation to adopt the policy including a term restricting development was irrational. W contended that the judge's order went beyond the scope of the remedies available under s113 of the 2004 Act since, in ordering the revision of the policy wording without remitting the matter for re-examination, the judge had exercised a planning judgment which could only be properly exercised by the relevant decision-maker.

Held: The appeal was dismissed.

i. Where the court quashed a "relevant document" and remitted it under s113 of the 2004 Act, it could give directions ordering a wide range of different actions to be taken in relation to the whole or any part of the document.

ii. The court's power to give directions extended to giving such directions as the judge had given in the particular circumstances of this case.

iii. However, s113 did not permit the court to substitute its own view as to the issues of substance in a plan-making process. The power to give directions could be used to require the "person or body" in question to correct an obvious mistake or omission made in the course of the plan-making process, without requiring all its earlier stages to be gone through again.

iv. There would be cases where the court could give directions requiring an inspector to recommend a modification in a particular form to reflect the conclusions in his report, and also cases where the court could properly give a direction requiring an lpa to adopt a local plan with a particular modification or modifications.

v. In the present case the judge had been entitled to give the directions she had without exceeding the court's jurisdiction under s113. She had not engaged in an exercise of planning judgment. The relevant reasoning in the inspector's report was clear and pointed to the conclusion that the sentence in policy Bicester 13 precluding "built development" in the CTA should be removed.

vi. The inspector's report contained no support for the argument that on reconsideration he might now have recommended the alteration of policy Bicester 13 by reducing the number of dwellings in the allocation, or that he might recommend its adoption with a provision precluding "built development" but not other forms of development in the CTA. The inspector had firmly endorsed the allocation of 300 dwellings on the site.

vii. The judge's order did not undermine the provisions for public participation in development plan-making under domestic, European Union and international law.

05 Court of Appeal

Housing need – whether inspector entitled to conclude that appellant council not demonstrating five-year supply of housing land for purposes of paras 47 and 49 of NPPF

*OADBY AND WIGSTON BOROUGH COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2016] PLSCS 289 – Decision given 27.10.16

Facts: OWBC refused planning permission for a proposed residential development of up to 150 dwellings on a site in Oadby, Leics. A planning inspector, who was appointed by the Sec of State to determine the appeal against the refusal of permission, identified that one of the main issues was whether there was a five-year supply of housing land in the area within the meaning of para 47 of the NPPF. He considered that this had not been demonstrated, with the result that, on an application of para 49 of the NPPF, relevant development plan policies for the housing supply in OWBC's core strategy should not be considered up-to-date. In reaching that conclusion the inspector rejected the figures contained in a strategic housing market assessment (SHMA), dated June 2014, which had been prepared for several different administrative areas, including OWBC, and on which OWBC had relied for reaching their assessment that there was no shortfall of allocated housing land. The inspector made his own determination of the housing need for the area, which he placed at approximately 147 dwellings per year, and granted permission for the development.

Point of dispute: Whether to allow OWBC's appeal against the decision of the judge in the court below who refused to quash the inspector's decision. OWBC contended that the inspector had misapplied the provisions of the NPPF in reaching his decision on housing need

Held: The appeal was dismissed.

- Paragraph 49 of the NPPF did not prescribe a particular method for comparing five-year housing requirement and housing supply in the making of a decision on a planning application or appeal, when considering whether relevant planning policies should be considered not to be up-to-date by reason of a failure to demonstrate a five-year supply of housing land.
- In a case like this where the relevant housing market area extended beyond the council's administrative area, it was permissible for the inspector to identify the relevant housing requirements on the basis of the identifiable, objectively assessed needs for market and affordable housing within OWBC's administrative area having regard to all the material before him, including the SHMA.
- A decision-maker in a case such as this was not obliged to accept an apportionment, or distribution, of housing need "ascribed" in an SHMA between different administrative areas in the housing market area.
- The inspector had recognised that OWBC's core strategy had not been prepared in accordance with the requirements of NPPF policy and was not a reliable basis for decision-making. Therefore it was up to him to evaluate for himself the full, unconstrained requirement for housing against which to test the council's ability to demonstrate a five-year supply of deliverable housing sites under the policy in para 49 of the NPPF. The way in which he had done this had been perfectly legal.
- Faced with making his own assessment of the appropriate level of housing need, to inform the conclusion that he had to draw under para 49 of the NPPF, and doing the best he could in the light of the evidence and submissions that he had heard, the inspector had been entitled to adopt an approximate and "indicative" annual figure of 147 dwellings.

06 Administrative Court

Judicial review of decision of defendant city council to allow neighbourhood plan to proceed to local referendum

*R (ON THE APPLICATION OF KEBBELL DEVELOPMENTS LTD V LEEDS CITY COUNCIL [2016] PLSCS 288 – Decision given 28.10.16

Facts: The claimant developer (KD) wished to develop a site called the Ridge near Wetherby which in 2006 had been earmarked for possible housing development by the defendant city council (LCC). The parish council for the area opposed the development and hoped that the site may be returned to the green belt. The Linton Neighbourhood Plan (LNP) was prepared by the parish council and accepted by LCC with modifications. LCC allowed the LNP to proceed to a local referendum, applying provisions added to the TCPA 1990 by the Localism Act 2011.

Point of dispute: Whether to allow KD's claim that the decision of LCC to allow the LNP to proceed to a local referendum was unlawful and that the LNP should be quashed. KD argued that the LNP contained text prepared by the parish council stating that the Ridge should not be developed, although this was an issue that only LCC could decide. The main question to be decided was whether LCC was bound to submit the LNP to a referendum, which turned on whether they were entitled to be "satisfied" that it was "appropriate" to adopt the LNP, having regard to the policies stated in the NPPF and the PPG, and that the making of the LNP was in "general conformity" with the Leeds Local Plan.

Held: The application was dismissed.

i. If LCC were satisfied that the draft plan met the basic conditions they were bound to submit it to a referendum. There had to be "general conformity" between the local plan and the structure plan, but there might be room for manoeuvre to allow flexibility to accommodate various changes that could arise. The question of whether one plan was in general conformity with another was a matter of planning judgment.

ii. When considering the policies in a local plan the focus had to be on the policies themselves, not the supporting interpretative text.

iii. Paragraph 8(2)(e)of Schedule 4B to the 1990 Act required the draft neighbourhood plan as a whole be in general conformity with the strategic policies of the adopted development plan as a whole. If the basic conditions were met, the plan then had to be submitted to a referendum.

iv. The challenge in this case was LCC's decision to adopt the LNP subject to modifications, not all of which had been recommended by the examiner. It was open to LCC to make the modifications they had made and to profess themselves satisfied that the basic conditions were met. Having reached that conclusion they were bound to accept the LNP and submit it to a referendum. Accordingly the referendum result and the LNP had to stand.

07 Planning Court

Material consideration – possible reversion of building to Class B1 office use

*CARROLL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2016] PLSCS 268 – Decision given 12.10.16

Facts: The third defendant, who owned a three-storey terraced building in Kensington, sought planning permission to demolish it, construct a replacement dwelling and for change of use from Class B8 storage to Class C3 residential. The lpa refused permission, but that decision was overturned on appeal by the Sec of State following an inquiry and a site visit by an inspector. The claimant, C, lived in an adjoining property and objected to the application because he opposed the loss of commercial uses in the area and was concerned about the impact of the proposed development on his family and property.

Point of dispute: Whether to allow C's application to quash the inspector's decision. C contended that the inspector had failed to have proper regard to the material consideration of a possible reversion to Class B1 office use, and had also failed to give any adequate or intelligible reasons as to his conclusions on that issue.

Held: The application was granted.

- Consideration of a future potential use could be a material consideration in an appropriate case.
- It was common ground that the inspector decided that the loss of a potential reversion to Class B1 ought to be treated as a material consideration. He was entitled to conclude that the grant of planning permission for residential use would result in "planning harm", namely the permanent loss of the potential reversion to Class B1 use as permitted development.
- However, the inspector had misdirected himself in law in his consideration of the possible future reversion to Class B1 use as a material consideration. When considering the weight to be accorded to this consideration he should have considered from an objective standpoint what the likely future actions of the owner of the property would be and he had not done this.
- There was substantial evidence at the inquiry that a reversion to Class B1 use from Class B8 use was likely if planning permission for residential use was refused. The inspector did not refer to that evidence, nor did he give any reasons for rejecting it.
- They had given minimal weight to the third defendant's fallback position that, if her application for change of use was refused, she would be able to change to residential Class C3 use under Class P of the GPDO 2105 after a four-year qualifying period.
- The inspector's erroneous approach to the material consideration of potential reversion to Class B1 use might have affected the outcome of the appeals; accordingly it would be inappropriate for the court to exercise its discretion not to quash the decision.

08 CLG Bulletin

Notes on neighbourhood planning: edition 18

This bulletin, which was prepared by CLG's neighbourhood planning team, provides an update on the latest news and policy developments, how the team can help communities and how communities' varied work on the ground fits in with the national picture.

https://www.gov.uk/government/publications/notes-on-neighbourhood-planning-edition-18

09 CLG Policy Documents

Neighbourhood Planning Bill: overarching documents

These documents which relate to the Neighbourhood Planning Bill are:

- European Convention on Human Rights Memorandum;
- Delegated Powers Memorandum;
- Compulsory Purchase letter: important information for property investors in land suitable for regeneration and redevelopment; and
- Summary of impacts on compulsory purchase reform.

https://www.gov.uk/government/publications/neighbourhood-planning-bill-overarching-documents

10 CLG Factsheets

Neighbourhood Planning Bill: policy factsheets

These factsheets provide further background information on measures in the Neighbourhood Planning Bill.

- Factsheet 1: neighbourhood planning.
- Factsheet 2: planning conditions.
- Factsheet 3: planning register.
- Factsheet 4: compulsory purchase.

https://www.gov.uk/government/publications/neighbourhood-planning-bill-policy-factsheets

11 British Property Federation Report

Annual Planning Survey 2016: A blueprint for the future of planning in England, October 2016

The annual planning survey was initiated in 2012 by BPF and GL Hearn. It aims to capture the feelings of local planning authorities, applicants and their advisors to new and emerging planning policies such as the NPPF and CIL whilst appreciating the challenges faced by the planning system. The survey examines application approval volume and rate of determination, examines current attitudes to planning policies, considers how the housing crisis is being tackled and ideas for creating a more efficient system.

http://www.bpf.org.uk/sites/default/files/resources/BPF-GL-Hearn-Annual-Planning-Survey-2016-final.pdf

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

HOUSING

12 CLG Consultation

Houses in Multiple Occupation and residential property licensing reforms: A consultation paper Deadline for Comments: 13.12.16

This consultation seeks views on the government's proposed details for:

- the mandatory licensing of houses in multiple occupation;
- the assumptions made in its associated impact assessment;
- national room sizes;
- the fit and proper person test;
- refuse disposal facilities; and
- purpose-built student accommodation.

https://www.gov.uk/government/consultations/houses-in-multiple-occupation-and-residential-property-licensing-reforms

13 CLG Consultation Outcome

Extending mandatory licensing of houses in multiple occupation and related reforms

This is the government's response to its technical discussion paper on extending the mandatory licensing of houses in multiple occupation. It summarises the responses to the key questions raised in the technical discussion paper (published on 06.11.15) on:

- extending the mandatory licensing of houses in multiple occupation;
- raising standards in the HMO sector; and
- simplifying the licensing application process.

https://www.gov.uk/government/consultations/extending-mandatory-licensing-of-houses-in-multiple-occupation-and-related-reforms

REAL PROPERTY

14 Court of Appeal

Occupiers' Liability Act 1957 – respondent injured when falling from small ornamental bridge in a public park

*EDWARDS V SUTTON LONDON BOROUGH COUNCIL
[2016] PLSCS 266 – Decision given 12.10.16

Facts: E was very badly injured and rendered paraplegic when he fell from a small ornamental bridge onto rocks in the water below in Beddington Park, Sutton. The sides of the bridge were protected by a low parapet wall of about 30cm in height. E had been pushing his bicycle over the bridge when he overbalanced and fell. He brought a claim for damages against SLBC, which owned the park, for breach of the common duty of care arising under the Occupiers Liability Act 1957. E contended that SLBC should have provided higher side protection barriers to the bridge or warned visitors to the park of the dangers posed by the bridge and submitted that SLBC had failed to carry out any, or any adequate, risk assessments in respect of the bridge. SLBC argued that the bridge was a pleasing ornamental feature and that there was no history of any previous accidents having occurred on it. They submitted that there was no obligation to construct side barriers and no obligation to warn about a structure the state and construction of which would be obvious to any user.

Point of dispute: Whether to allow SLBC's appeal against the ruling of the judge in the court below that they were liable and should pay 60% of damages to be assessed, with E being held contributorily negligent as to the other 40%. The judge found that the accident was within the scope of foreseeable risk, but that there was no obligation to install side railings since occupiers were not obliged to modify existing premises built in accordance with prevailing standards at the time of construction. However, he found that SLBC should have warned users of the dangerously low parapet on the bridge.

Held: The appeal was allowed.

i. Section 1 of the 1957 Act regulated the duties imposed on an occupier in relation to visitors and others in respect of dangers due to the state of the premises or things done or omitted to be done on them. It was necessary to identify what dangers there were before it was possible to see to what, if anything, the occupier's duty attached in each case. E's activity of walking a bicycle over the bridge could not be said to constitute a danger from things "done or omitted". As to the state of the premises, an unfenced bridge with low parapet walls would present more danger of a fall than a fenced bridge. While objectively there might be a danger arising from the state of the premises so as to give rise to the common duty of care, that did not mean that, in order to discharge the duty, no such bridges should be left open to visitors or that they should not be left open without guard rails or express warnings.

ii. The above conclusion flowed from the proper treatment in law of the concept of risk as well as from the principle that occupiers of land were not under a duty to protect or even to warn against obvious dangers. The potential seriousness of injury and the likelihood of it occurring had to be taken into account and it was also necessary to balance the factors of risk, gravity of injury, cost and social value. In this case a warning would not have alerted the user of the bridge to anything that he did not know from his own observation. The past absence of accidents was an important factor; the probability of an accident was sufficiently remote that the risk could be regarded as minimal.

iii. On the facts it was hard to see what a risk assessment would have achieved in this case as it would just have been a statement of the obvious – this was a bridge with low parapets and that persons not exercising due care might fall off. The judge had set the standard too high in this case and should have found that SLBC were not liable for E's accident.

iv. In this case there was no requirement for SLBC to install the guard rails on the bridge as advocated by E. These would alter its character significantly and to an extent that was out of proportion to a remote risk that had never materialised before in its history.

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

ENERGY

15 CLG Statistics

Energy Performance of Buildings Certificates in England and Wales: Q1 2008 to Q3 2016

This statistical release presents experimental official statistics drawn from the data which has been lodged on the Energy Performance of Buildings Registers for England Wales. They have been produced from EPCs issued for domestic and non-domestic buildings and Display Energy Certificates issued for larger buildings occupied by public authorities. They do not cover the entire building stock across England and Wales.

https://www.gov.uk/government/statistics/energy-performance-of-buildings-certificates-in-england-and-wales-2008-to-september-2016

LONDON

16 Centre for London Research Report

Another Storey: The Real Potential for Estate Densification

This study examined the potential for increasing the supply of homes through estate densification. The density of London's existing estates, their capacity for densification and the factors affecting the viability of estate densification projects was examined. Large housing estates in four London boroughs, Lewisham, Barking & Dagenham, Waltham Forest and Hounslow were analysed and it was estimated that estate densification could provide an additional 4,000 to 8,000 per year, 20% of London's additional housing target.

http://www.centreforlondon.org/publication/estate-densification/

17 Mayor of London Consultation

A City for All Londoners
Deadline for Comments: 11.12.16

This document, which was published on 27.10.16, sets out the new Mayor's development strategy for London. It will later be expanded upon in detailed strategies, including land use and growth, transport, housing, economic development, the environment, policing and crime, culture and health inequalities, eventually becoming a new London Plan. The consultation is being held in three stages: stakeholder workshops, community group research and discussions with Londoners.

The document highlights higher density development in town centres, especially around stations, and better protection for the city's cultural and night-life economy. Looking further ahead the Mayor also wants to plan housing developments in areas where new transport links are going to open in the future and to identify sufficient land within the capital to build at least 50,000 homes a year between now and 2041 while continuing to protect the green belt.

https://www.london.gov.uk/sites/default/files/cfal_oct_2016_fa_rev1.pdf

18 London Assembly Consultation

Offsite built housing – can it solve London's housing crisis?
Deadline for comments: 30.11.16

The, Deputy Chair of the London Assembly Planning Committee has launched this investigation to assess the potential for offsite-produced housing to bridge the gap between London's housing need and supply. Views are invited from housebuilders, contractors, housing associations, local authorities, the retirement housing sector and investors, as well as residents currently living in modular homes. These are the key questions of the review:

- what is the potential for modular and offsite housing to help solve London's housing crisis;
- what are the factors that have prevented and are still preventing, the adoption of this kind of housing more widely; and
- what role can the Mayor play in removing barriers and accelerating the use of modular housing for London's new homes?

https://www.london.gov.uk/about-us/london-assembly/london-assemblys-current-investigations/offsite-built-housing-can-it-solve?utm_source=update&utm_campaign=dee4eb1bd8-BPF+Update&utm_medium=email&utm_term=0_0134d0d4b0-dee4eb1bd8-246675113&mc_cid=dee4eb1bd8&mc_eid=01069531d7

19 London Society White Paper

Re-Shaping London: Unlocking Sustainable Growth in West London and Beyond

The London Society's latest White Paper sets out a radical agenda for change across England, including proposals for a new 'Green Web' to be introduced to replace the 'Green Belt'. It explores the scope for change in the west of the capital, suggesting that a West London 'Green Web' could alone accommodate 100,000 new homes (equivalent to four new towns) and includes demands for a new Garden City at Northolt Airport, new suburban railway and suburban densification.

http://www.londonsociety.org.uk/white-paper-reshaping-london/

N.B For access to the pdf of this paper, readers will need to sign up to the London Society's mailing list. They will then also be able to access two other interesting papers recently papers published by the Society:

"Building Greater London An end to the Capital's crisis of affordability"
"Green sprawl – Our current affection for a preservation myth?"

ENVIRONMENT

20 Defra Consultation

Implementation of Clean Air Zones in England
Deadline for comments: 09.12.16

This consultation seeks views on the implementation of Clean Air Zones in England through the draft Clean Air Zone Framework. Comments are also invited on draft regulations mandating the implementation of Clean Air Zones in Birmingham, Derby Leeds, Nottingham and Southampton.

https://consult.defra.gov.uk/airquality/implementation-of-cazs/

If you require advice on environment & contamination issues, contact Keith Norman on Tel. +44 (0)20 7333 6346 knorman@geraldeve.com

GENERAL

21 The Living Home Standard

The Living Home Standard has been produced following nine months of research by Ipsos MORI on behalf of British Gas and Shelter. A list of 39 attributes which define the Living Home Standard have been compiled. The five attributes of the Standard are affordability, space, stability, decent conditions and neighbourhood. According to this interactive report four in ten homes in Britain do not meet the standard.

http://www.shelter.org.uk/livinghomestandard?_ga=1.220244881.820430238.1476868639&utm_source=update&utm_campaign=1501f5a933-BPF+Update&utm_medium=email&utm_term=0_0134d0d4b0-1501f5a933-246675113&mc_cid=1501f5a933&mc_eid=01069531d7

22 Property Industry Alliance Publication

Property Data Report 2016

This report sets out key facts about the UK commercial property industry for the year to the end of 2015.

http://www.bpf.org.uk/sites/default/files/resources/PIA-Property-Report-2016-final-for-web.pdf?utm_source=update&utm_campaign=1501f5a933-BPF+Update&utm_medium=email&utm_term=0_0134d0d4b0-1501f5a933-246675113&mc_cid=1501f5a933&mc_eid=01069531d7

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Gerald Eve is a firm of international property consultants based in the UK. We operate a national network of nine offices and an international alliance of independent real estate advisors covering Europe and major US markets.

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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.

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Abbreviations
The following abbreviations are used in evebrief:

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

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

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

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

* Interesting but non–essential reading.

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EVEBRIEF

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SCOTLAND

PLANNING

01 Scottish Government Statistical publication

Planning Performance Statistics, 2016/17, Q1

This report presents the latest summary statistics on planning decision-making and timescales for April to June 2016 as well as historic data going back to the first quarter of 2012/13. It is based on data collected by the Scottish Government from Local and Planning Authorities as part of the Planning Performance Framework (introduced in 2012).

- In Q1 of 2016/17 there were 7,329 decisions made on local developments with an average decision time of 8.9 weeks. This is the fastest average decision time since the start of this data collection in 2012/13.
- The average decision time for major developments was 39.3 weeks, 13 weeks slower than the previous quarter and five weeks slower than the same quarter in 2015/16.

http://www.gov.scot/Publications/2016/10/1886

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GENERAL

02 Statutory Instrument

SSI 2016/336 The First-Tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016

W.ef. 01.12.16 these Regulations make provision for the transfer into the First-Tier Tribunal for Scotland of the functions and members of the Homeowner Housing Panel. The Regulations also make consequential amendments to the Property Factors (Scotland) Act 2011, largely substituting references to the Homeowner Housing Panel with references to the First-Tier Tribunal, with similar substituted references made to the Code of Conduct of Property Factors.

http://www.legislation.gov.uk/ssi/2016/336/contents/made

GERALDEVE

03 Statutory Instrument

SSI 2016/337 The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016

W.e.f. 01.12.16 these Regulations make provision for the transfer to the First-tier Tribunal for Scotland of the functions of the private rented housing committees. The First-tier Tribunal Housing and Property Chamber hears cases previously dealt with by the Private Rented Housing Committees. The Regulations also make consequential amendments to legislation.

http://www.legislation.gov.uk/ssi/2016/337/contents/made

04 Statutory Instrument

SSI 2016/338 The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016

W.e.f. 01.12.16 these Regulations make provision for the transfer to the First-tier Tribunal for Scotland of the functions and members of the Private Rented Housing Panel. The First-tier Tribunal Housing and Property Chamber hears cases previously dealt with by the Private Rented Housing Panel. These Regulations also make consequential amendments to legislation.

http://www.legislation.gov.uk/ssi/2016/338/contents/made

05 Statutory Instrument

SSI 2016/340 The First-tier Tribunal for Scotland Housing and Property Chamber and Upper Tribunal for Scotland (Composition) Regulations 2016

W.e.f. 01.12.16 these Regulations make provision as to the composition of the First-tier Tribunal for Scotland when dealing with a case in the Housing and Property Chamber. They also make provision as to the composition of the Upper Tribunal for Scotland when hearing appeals or referrals from the First-tier Tribunal for Scotland Housing and Property Chamber.

These two Tribunals were established by the Tribunals (Scotland) Act 2014. The First-tier Tribunal is divided into chambers according to the subject matter of the case, with the Housing and Property Chamber dealing with domestic housing and property disputes.

http://www.legislation.gov.uk/ssi/2016/340/contents/made

WALES

PLANNING

06 Statutory Instrument

WSI 2016/971 The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2016

Under s78 of the Town and Country Planning Act 1990 ("the 1990 Act"), a person applying for planning permission, or for any consent, agreement or approval required by a condition or limitation attached to a planning permission, may appeal to the Welsh Ministers if the relevant local planning authority do not determine the application within the prescribed period. This period, which is prescribed in article 22(2) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, is eight weeks, unless an application is amended before the authority make a determination. If an application is amended, the period is either four weeks from the date the amendment is received by the authority, or 12 weeks from the date the original application was received, whichever is the longer.

Regulation 57(2) of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 increased the period of eight weeks in article 22(2)(a) to 16 weeks where an application relates to development which requires an Environmental Impact Assessment ("EIA"). W.e.f. 07.11.16 Regulation 2 of these Regulations substitutes Regulation 57(2) of the 2016 Regulations. The period prescribed in article 22(2) after which an applicant can appeal if an application which requires an EIA is amended but not determined, is now four weeks from the date when the amendment is received by the authority, or 20 weeks from the date when the original application which requires an EIA was received, whichever is the longer.

http://www.legislation.gov.uk/wsi/2016/971/contents/made

07 Welsh Government Research Report

Permitted Development Rights and Non-Domestic Solar PV and Thermal Panels

Arcadis was appointed by the Welsh Government at the end of 2015 to investigate whether permitted development rights, as they currently apply to the installation of non-domestic solar panels (thermal and photovoltaic), are fit for purpose, and to consider alternative approaches to permitted development rights.

http://gov.wales/docs/desh/research/160923-permitted-development-rights-and-solar-pv-report-en.pdf

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GENERAL

08 Welsh Government Consultation

Amendments to council tax legislation to reflect the introduction of premiums on long-term empty homes and second homes
Deadline for Comments: 01.12.16

Comments are invited on amendments to existing council tax legislation to reflect the introduction of council tax premiums on long-term empty homes and second homes from 01.4.17.

https://consultations.gov.wales/consultations/amendments-council-tax-legislation-reflect-introduction-premiums-long-term-empty-homes

09 Welsh Government Consultation

Review of the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007
Deadline for Comments: 05.01.16

The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007 (SI 2007/2933) provide environmental protection from agricultural improvement work carried out on semi-natural and uncultivated land in Wales. This consultation seeks views on proposed changes to the 2007 Regulations to implement the amended European Directive 2011/92/EU on Environmental Impact Assessment.

https://consultations.gov.wales/consultations/review-environmental-impact-assessment-agriculture-wales-regulations-2007

10 Welsh Government consultation

Regulations required by the Historic Environment (Wales) Act 2016 and guidance
Deadline for comments: 13.01.17

As required by the provisions of the Historic Environment (Wales) Act 2016 this consultation seeks views on regulations to establish procedures for the review of decisions to designate historic assets and draft statutory guidance on the compilation and use of historic environment records. Three pieces of best-practice guidance are also presented for consideration; these have been development as part of a wider programme to improve the protection and management of the Welsh historic environment linked to the implementation of the 2016 Act.

https://consultations.gov.wales/consultations/regulations-required-historic-environment-wales-act-2016-and-guidance

11 Welsh Government consultation

National Infrastructure Commission for Wales
Deadline for comments:

The purpose of this consultation is to inform stakeholders of the Welsh Government's intention to establish a National Infrastructure Commission for Wales, to inform and prioritise investment decisions on medium to longer term infrastructure needs, and to provide stakeholders with an opportunity to contribute their views on the way the Commission is set up and run.

https://consultations.gov.wales/consultations/national-infrastructure-commission-wales

12 Welsh Government Study

Housing Land Availability in Wales

Each year local authorities in Wales have to complete housing land availability studies to monitor the supply of housing land in their areas. These provide part of the evidence base for local planning authorities' development plans and for their monitoring and review. In this document access to summary data from the lpa Studies can be obtained and the latest individual Studies for each local planning authority are also available.

http://gov.wales/topics/planning/planningstats/housing-land-availability-in-wales/?lang=en

NORTHERN IRELAND

PLANNING

13 Department for the Environment publication

Strategic Planning Policy Statement for Northern Ireland – Planning for Sustainable Development

Following extensive consultation and engagement with key planning stakeholders this policy statement (SPPS) has now been published in final form. It sets out the Department's regional planning policies for securing orderly and consistent development of land in Northern Ireland under the reformed two-tier planning system. The provisions of the SPPS must be taken into account in the preparation of Local Development Plans and they are also material to all decisions on individual planning applications and appeals.

http://www.planningni.gov.uk/spps

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