EVEBRIEF

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GOVERNMENT RESPONSE TO CHECK, CHALLENGE, APPEAL CONSULTATION

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Editor

With the next rating revaluation coming into force on 1 April, the government has published its response to its consultation on Check, Challenge, Appeal, which we report on at item 17. The draft regulations published with the consultation included proposals under which an appeal against an assessment would fail unless the assessment was outside the bounds of "reasonable professional judgment". The response indicated that those controversial provisions would be replaced. The regulations were laid before parliament last Friday night, unfortunately too late for inclusion in this edition. It will take some while to fully understand them, but they include a provision that on appeal to the Valuation Tribunal, the Tribunal will not require an assessment to be altered if it is "reasonable".

Elsewhere, at item 13, we report on the Supreme Court's decision in SJ & J Monk v Newbigin. This was an appeal against an earlier Court of Appeal decision, the effect of which was that unless the property was incapable of being economically returned to its former state, it would remain at its original rateable value. Given that the premises were not capable of material occupation at the relevant time, the Supreme Court adopted the common sense approach and held that rates should not be payable and that the property should be valued as it existed on the material day. This is good news for developers who will be relieved that their rates liability will be reduced whilst their premises are being developed.

Finally, at item 22, we report on the decision of the Supreme Court in JS Bloor (Wilmslow) Ltd v Homes and Communities Agency, a compulsory purchase case concerned with the planning status of land, the scheme for which it is acquired, and the disregard of increases and decreases in value arising from that scheme. The Supreme Court reversed the Court of Appeal's judgment, and in its decision referred to the amendments currently before Parliament in the form of the Neighbourhood Planning Bill which it, like many practitioners, hopes will simplify the exercise in the future!

SPRING BUDGET 2017

01 Spring budget

Business rates

The business rates revaluation takes effect in England from April 2017. In addition to the £3.6 billion transitional relief announced in November 2016, the government will provide £435 million of further support for businesses facing significant increases in bills from the English business rates system, including:

- support for small businesses losing Small Business Rate Relief to limit increases in their bills to the greater of £600 or the real terms transitional relief cap for small businesses each year; and
- providing English local authorities with funding to support £300 million of discretionary relief, to allow them to provide support to individual hard cases in their local area.

It will also introduce a £1,000 business rate discount for public houses with a rateable value of up to £100,000, subject to state aid limits for businesses with multiple properties, for one year from 1 April 2017.

The government will set out its preferred approach for delivering its aim of delivering more frequent revaluations at Autumn Budget 2017 and will consult ahead of the next revaluation in 2022.

LANDLORD & TENANT

02 Court of Appeal

Service charges – s19 Landlord & Tenant Act 1985 – local authority scheme of major works to 1960s estate – repairs or improvements – financial impact on leaseholders

*WAALER V HOUNSLOW LONDON BOROUGH COUNCIL
[2017] PLSCS – Decision given 02.02.17

Facts: W held a long lease of a flat on a large estate in Hounslow owned by HLBC. The majority of the flats were let to council tenants, but 140 of them were held on long leases created under the right-to-buy scheme. Between 2005 and 2006 HLBC carried out a scheme of major works on the estate including replacing all the flat roofs with pitched ones and replacing wood-framed windows with metal units. The costs of the works were partly financed by government loans, but HLBC sought to recover some of the remaining costs through the service charge provisions in the long leases with the result that the leaseholders received large and unexpected bills, W's being for over £55,000. W disputed his liability to pay the charge contending that some of the works were improvements rather than repairs and that it was unreasonable to charge the whole cost of the works in one year without taking into account the financial impact on leaseholders.

Point of dispute: Whether to allow HLBC's appeal against the Upper Tribunal's ruling, overturning the FTT decision in HLBC's favour, that the service charge was unreasonable within s19 of the Landlord and Tenant Act 1985. The UT found that (i) the works to the windows and cladding were improvements which HLBC only had a discretion to carry out; (ii) in the case of improvements HLBC should have taken into account the interests of the long leaseholders, their views and the financial impact on them; and (iii) the FTT should not have found that the service charge was reasonable.

Held: The appeal was dismissed.

i. The exercise of a discretion given in a contract had to be restricted to what was rational. It incorporated an implied term that the decision-making process should be lawful and rational, made in good faith and the result should not be so outrageous that no reasonable decision maker could have reached it.

ii. The statutory requirements of s19 of the Landlord and Tenant Act 1985 went further than what would be contractually recoverable. The cost of the work must have been reasonably incurred which required the application of an objective standard of reasonableness.

iii. Part of the context in deciding whether costs had been reasonably incurred was the fact that, in principle, the cost of the work was to be borne by the leaseholders. The interests of the tenants had to be taken into account.

iv. There was an important difference between works which a landlord was obliged to carry out and optional improvements, although the same legal test applied to all categories of work falling within the definition of "service charge" in s18 of the 1985 Act.

v. The UT had been entitled to take into account the extent of the leaseholders' interests, their views (which were important in a situation where the landlord was exercising a discretionary power at the leaseholders' expense) and the financial impact of the works was relevant – likely to be considerable where a bill of £50,000 or more was being faced by former council tenants in Isleworth.

vi. In deciding whether the decision was a reasonable one the tribunal had to accord the landlord a "margin of appreciation", but in this case the UT had not made an error of law in deciding that the costs were not all reasonably incurred in this case.

03 High Court

Misrepresentation – presence of asbestos in commercial premises being let to defendant – counterclaim for damages for losses allegedly due to continuing damage by asbestos

*FIRST TOWER TRUSTEES LTD V CDS (SUPERSTORES INTERNATIONAL) LTD
[2016] PLSCS – Decision given 20.02.17

Facts: The claimants, FTT, were trustee companies which leased premises in Barnsley to CDS, the defendant tenant. In Clause 5.8 of the lease CDS acknowledged that the "lease had not been entered into in reliance wholly or partly on any statement or representation made by or on behalf of the landlord". The lease also provided that FTT were contracting only in their capacity as trustees of a specified trust. In replies to precontract enquiries FTT stated that they were unaware of any environmental problems with the property. When CDS commenced remedial works on the property they discovered it had asbestos. Initially, FTT brought a claim for unpaid rent, but this fell away and CDS counterclaimed for damages relating to losses which they alleged to have suffered as a result of the unavailability of the premises due to asbestos damage.

Point of dispute: Whether CDS's counterclaim would be allowed. CDS argued that it had entered into the lease on the basis of FTT's representations that there were no problems with asbestos in the premises; in fact FTT had been aware of the problem by the time that the lease was signed as there had been expert reports which indicated its presence. FTT denied prior knowledge of the asbestos and argued the trustees' liability was limited to the extent of the trust assets.

Held: CDS's counterclaim was allowed.

1. This was not a case where the claimant had done anything, or omitted to do something, after the lease which derogated from its grant or interfered with the defendant's quiet enjoyment of the premises. The claim for breach of covenant for quiet enjoyment and non-derogation from grant would be dismissed.

2. From the evidence FTT had misrepresented to CDS that it had not been notified of any breach of environmental law or other environmental problem when it had known about the presence of asbestos and the need for major remedial works. These were material misrepresentations which had been relied upon by CDS. Clause 5.8 was an attempt to restrict or exclude liability. This meant that s3 of the Misrepresentation Act 1967 was engaged and the burden was on FTT to show that clause 5.8 satisfied the requirement of reasonableness which it could not do. It had withheld its knowledge of a serious problem in precontract replies to enquiries, required the tenant to carry out its own due diligence and then argued that it was protected by contractual estoppel all of which was unreasonable.

3. CDS was entitled to the actual costs of asbestos remedial works and alternative warehouse accommodation while the premises could not be used.

4. The limitation on the extent of the trustees' liability was reasonable and limited the contractual liability of FTT to the extent of its trustee assets, but it did not limit the claim in misrepresentation to the extent of the trust fund.

04 Upper Tribunal: Lands Chamber

Service charges – whether costs of legal proceedings recoverable through service charge under the terms of the lease

*BRETBY HALL MANAGEMENT CO LTD V PRATT
[2017] PLSCS 54 – Decision given 17.02.17

Facts: The appellant, P, was the long leaseholder of an apartment in a converted Grade II listed country house. The respondent, BHM, was the managing company of the estate and funded its running costs through service charges collected from the leaseholders; it had no other source of income. There had been a long-running dispute between the parties over service charges and some items had been referred to the First-Tier Tribunal (FTT) for determination under s27A of the Landlord and Tenant Act 1985. P was not satisfied with the FTT's ruling and appealed to the Upper Tribunal. BHM had incurred legal costs of £11,100 plus VAT in connection with threatened county court proceedings in which P sought to recover fees incurred by a surveyor he had instructed to review the service charge. BHM argued that it was entitled to recover these legal costs through the service charge under a clause which allowed recovery of *"All other expenses (if any) incurred by the Manager in and about the maintenance and proper and convenient management and running of the development including in particular but without prejudice to the generality of the foregoing… any legal or other costs reasonably and properly incurred by the Manager and otherwise not recovered in taking or defending proceedings (including any arbitration) arising out of any lease of any part of the Development".*

Point of dispute: Whether to allow P's claim that the legal costs which BHM sought to recover through the service charge did not fall within the above provisions as the county court proceedings were only threatened and did not proceed. P also argued that the sum claimed was unreasonable and sought an order under s20C of the 1985 Act to prevent BHM's costs being taken into account in determining the service charge he was to pay.

Held: The appeal was allowed in part.

i. The FTT had failed to address the question of whether BHM's legal costs were recoverable through the service charge. They did fall within the generality of the service charge clause in the lease, the first part of which was wide enough to cover the costs of the intended proceedings. It was therefore not necessary for BHM to rely on the reference later in the clause to "taking or defending proceedings". The reasonable costs of managing the development were recoverable under the service charge and, subject to the question of reasonableness, the costs of defending threatened proceedings fell squarely within that definition.

ii. Section 20C had no application to the legal costs incurred by BHM. Since the threatened proceedings relating to the surveyor's fees had not materialised, the jurisdiction of the section did not arise. The costs that BHM had incurred were not in relation to the FTT proceedings, but in connection with a claim for the surveyor's fees, which was a matter for the county court.

iii. This did not prevent P from challenging the reasonableness of BHM's legal costs. That matter would be remitted to the FTT for determination.

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PLANNING

05 Court of Appeal

Proposed residential development in Area of Outstanding Natural Beauty (AONB) and close to Special Area of Conservation (SAC) and Special Protection Area (SPA)

*WEALDEN DISTRICT COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT [2017] PLSCS 23 – Decision given 31.01.17

Facts: The second appellant developer sought planning permission to build a large number of houses on land near Crowborough, East Sussex. The site was within an AONB and close to a SAC and a SPA. The application was refused by the lpa but that decision was overturned on appeal by a planning inspector appointed by the first appellant Sec of State.

Point of dispute: Whether to allow WDC's appeal against the ruling of the court below that the inspector's decision should be quashed. The court accepted WDC's contentions that the inspector had:

i. Erred in law concluding that the proposals would have no significant effect on the SAC and SPA and that therefore there was no need for an "appropriate assessment" under the Habitats Directive and Habitats Regulations;

ii. Wrongly found that the effects of the development would be mitigated by financial contributions to a strategic access management and monitoring strategy (SAMMS), when there was in fact no agreed heathland management scheme in existence and no such scheme could achieve the mitigation; and

iii. Misinterpreted and misapplied the policy in para 116 of the NPPF when considering the availability of alternative sites outside the AONB as the exercise had been confined to Crowborough rather than considering the availability of sites throughout the district.

Held: The appeal was dismissed.

i. The inspector had not erred in his approach to the Habitats Regulations.

ii. There were shortcomings in the inspector's conclusions on heathland management. He had to establish with reasonable certainty that the relevant mitigation, including heathland management would actually be delivered, and he had not done that.

iii. The inspector had failed to comment on WDC's evidence calling into question the effectiveness, deliverability and consequences of heathland management.

iv. It was not clear that, if the inspector had undertaken an appropriate assessment, he would have found there would be no significant effect on the integrity of the SAC.

v. However the judge had been wrong to find that the inspector had erred in his approach to para 116 of the NPPF on alternative sites. The inspector's conclusion that there were "exceptional circumstances" justifying approval of the development in the AONB had been properly informed.

06 Court of Appeal

Local council granting planning permission for football stadium in green belt – decision contrary to recommendation of planning officer – whether council under common law duty to give reasons for decision

*OAKLEY V SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL
[2017] PLSCS 38 – Decision given 15.02.17

Facts: Planning permission was sought for a new football stadium capable of seating 3,000 people on land in the green belt outside Sawston, Cambs. The facility was to be gifted to the local parish council for community use. SCDC's planning officer recommended that permission be refused on the grounds that it was inappropriate development in the green belt and did not meet the requirements of paras 87 and 88 of the NPPF. She also took the view that the proposal did not meet the exception in para 89 for the provision of "appropriate facilities" for outdoor sport and recreation since it did not meet the requirements regarding preserving openness of the green belt. Notwithstanding this recommendation SCDC granted permission for the development.

Point of dispute: Whether to allow the appellant's appeal against the decision of the court below which rejected his challenge to the grant of planning permission for the development on the grounds that SCDC had failed to give reasons for their decision. The appellant argued that there was a statutory duty to give reasons under Regulation 7 of the Openness of Local Government Bodies Regulations 2014; that there was a common law duty to give reasons for planning decisions in all cases; and in the particular circumstances of this case where the planning officer had recommended refusal of permission reasons for granting it must be given.

Held: The appeal was allowed.

i. Under Regulation 7 reasons had to be given for an officer's decision to grant planning permission.

ii. There was no common law duty to give reasons in planning cases, but the position now moving towards the position that they should be given unless there was proper justification for not doing so.

iii. The court was not prepared to hold that there was a general duty to give reasons in all planning cases save where they were not necessary because the common law developed on a case by case basis and there may be circumstances where there was a justification for not imposing a common law duty.

iv. However, in this case reasons were required because the committee had disagreed with the officer's recommendation and had done so in circumstances where their decision was not consistent with the local development plan and involved prima facie inappropriate development in the green belt. Many local people would be affected by the outcome of the application which reinforced the need for reasons to be given.

v. The reasoning of the planning committee was not sufficiently transparent to relieve it of the duty to give reasons.

07 Administrative Court

Planning permission for redevelopment of school on new site – whether lpa erring in law by failing to have regard to option of redeveloping school at alternative existing site as a material consideration

*R ON THE APPLICATION OF LUCAS (ON BEHALF OF SAVE DIGGLE ACTION GROUP) V OLDHAM METROPOLITAN BOROUGH COUNCIL
[2017] PLSCS 58 – Decision given 02.03.17

Facts: OMBC obtained funding from the Education Funding Authority (EFA) to redevelop a school. It was decided that the option of relocating to the site of old unoccupied pallet works would offer the best value for money, as the existing school buildings were in a poor state of repair. Although the EFA confirmed that it would fund redeveloping the school on its existing site, OMBC accepted its planning officer's recommendation to adopt the EFA's preferred option of relocating the school to the pallet works site. Planning permission and listed building consent were granted.

Point of dispute: Whether to allow L's application for judicial review of OMBC's decision. L, who was the chairman of a local resident's action group, objected to the relocation of the school on the grounds that it would have a harmful effect on heritage assets and could be satisfactorily redeveloped on its existing site. L argued the option of redeveloping the school at the alternative existing site was a material consideration to which OMBC was obliged to have regard under s70(2)(c) of the TCPA 1990.

Held: The application was granted.

i. The question of whether something was a material consideration was a matter of law. If a decision-maker wrongly took the view something was irrelevant and had no regard to it, the decision could not stand; it was for the court to decide whether the matter was something to which the decision-maker should have regard.

ii. Under s70 a decision-maker had to have regard to any material consideration. There were three categories of considerations: (a) those that had to be taken into account because statute or national or local policy so required; (b) those that were not intrinsically irrelevant, but did not fall into the first category and the weight they would bear would be a matter of planning judgment; and (c) those that were legally irrelevant.

iii. In this case OMBC had treated the availability of the existing site as an alternative to the pallet site as an irrelevant consideration; at the least it was a consideration falling into category (b) above.

iv. The alternative site was obviously relevant. The EFA's feasibility study was based on non-planning considerations but it had not ruled out the existing site on financial grounds and had not included any consideration of harm to heritage assets. The planning committee should have weighed the educational, financial and construction disadvantages of the existing site against the benefit of avoiding substantial harm to heritage assets at the pallet works site. Additionally, the planning committee had been told to put the existing site out of mind. OMBC had not complied with its obligation under s70 and the resolution to grant planning permission and listed building consent should be quashed.

08 Statutory Instrument

SI 2017/105 – The Infrastructure Planning (Compulsory Acquisition) (Amendment) Regulations 2017

W.e.f. 23.02.17 these Regulations amend the 2010 Regulations and are concerned with the prescribed forms to be used in connection with the giving of a compulsory acquisition notice.

http://www.legislation.gov.uk/uksi/2017/105/contents/made

09 Statutory Instrument

SI 20017/276 The Housing and Planning Act 2016 (Permission in Principle etc) (Miscellaneous Amendments) (England) Regulations 2017

These Regulations, which come into force on 27.03.17, make amendments to primary legislation in relation to permission in principle. Permission in principle provisions apply in relation to England only. The following are the main provisions:

- Regulation 2 amends para 9 of Schedule 12A to the Local Government Act 1972 to provide that a lpa's own application for permission in principle should not be exempt information at a local authority meeting.
- Regulation 3 amends s69 of the Town and Country Planning Act 1990 ("the 1990 Act") to provide further powers in relation to entries in planning registers relating to permission in principle, including that permissions in principle granted must be recorded. Section 75 of the 1990 Act is also amended to provide that a permission in principle enures for the benefit of the land. Section 96A of the 1990 Act is amended to provide that a non-material change may be made in relation to a permission in principle.
- Regulation 4 amends s9(2) of the Planning (Hazardous Substances) Act 1990 to provide that in dealing with an application for hazardous substances consent, the relevant authority must have regard to any permission in principle that has been granted in relation to land in the vicinity.
- Regulation 5 amends Schedule 1A to the Commons Act 2006 to provide trigger and terminating events in relation to land proposed to be entered on Part 2 of the register which lpas must prepare and maintain under s14A of the Planning and Compulsory Purchase Act 2004, and in relation to land already entered on Part 2 of that register.

http://www.legislation.gov.uk/uksi/2017/276/contents/made

10 Government's response to consultation

National Planning Policy: consultation on proposed changes

This is the government's response to the consultation which ran from 07.12.15 to 22.02.16 seeking views on proposed changes to national planning policy. It covered the following areas:

- broadening the definition of affordable housing to expand the range of low cost housing opportunities;
- increasing the density of development around commuter hubs to make more efficient use of land in suitable locations;
- supporting sustainable new settlements, development on brownfield land and small sites and delivery of housing agreed in Local Plans;
- supporting delivery of starter homes; and
- transitional arrangements.

https://www.gov.uk/government/consultations/national-planning-policy-consultation-on-proposed-changes

11 Consultation outcome

Implementation of planning changes: technical consultation

This summarises responses to the technical consultation on implementation of planning changes, consultation on upward extensions and the Rural Planning Review call for evidence. The technical consultation on implementation of planning changes provided detailed proposals to support the implementation of the Housing and Planning Act 2016.

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

12 CLG Response to consultation and new consultation

Rural planning review: call for evidence
Deadline for Comments: 02.05.17

The rural planning review call for evidence sought views on how the planning system was operating in rural areas and invited ideas about how it could be improved to support sustainable rural life and businesses. This publication provides a summary of the responses to the call for evidence and sets out the government response.

It also seeks views on extending the thresholds for agricultural permitted development rights to help farmers, and on a new agricultural to residential permitted development right to help provide housing for rural workers.

https://www.gov.uk/government/consultations/rural-planning-review-call-for-evidence?mc_cid=a7fe185f4e&mc_eid=01069531d7

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

RATING

13 Supreme Court

Refurbishment of non-domestic premises – proposal by ratepayer to reduce RV to £1 during course of works – para 2(1)(b) of Schedule 6 to the Local Government Finance Act 1988 – whether hereditament to be assumed to be in a state of reasonable repair at material date

***SJ & J MONK V NEWBIGIN (VO)
[2016] PLSCS 52 – Decision given 01.03.17

Facts: The ratepayer appellant, M, owned the first floor of an office block in Sunderland which had previously been used as a single office suite. In March 2010 M commenced renovation works which included stripping out and remodelling the interior to make it adaptable for use either as a single office or three separate ones. The hereditament was listed in the 2010 non-domestic rating list as an "office and premises" at RV £102,000, but in Jan 2012 M proposed the RV should be reduced to £1 on the grounds that the refurbishment works were a material change of circumstances affecting the rateable value of the hereditament. That proposal was rejected by both the VO and the VTE. The VTE held that applying the "repair assumption" in para 2(1)(b) of Schedule 6 to the Local Government Finance Act 1988, the hereditament should be assumed to be in a condition of reasonable repair as an office and premises as at the Jan 2012 material date because the repairs needed to put it into repair were not uneconomic. That decision was reversed by the Upper Tribunal (UT) which held the assumption of repair in para 2(1)(b) did not extend to the replacement of systems that had been completely stripped out. Therefore, since the hereditament was incapable of beneficial occupation on the material day the list should be altered to show it as a "building under reconstruction" with RV £1.

Point of dispute: Whether to allow M's appeal against the Court of Appeal's decision, which overturned the UT's ruling and restored the VTE's decision.

Held: The appeal was allowed.

1. It was a long established principle of rating law that a hereditament should be valued as it in fact existed at the material day. This was the "reality principle" which continued to be a fundamental principle of rating. The Court of Appeal's approach had erroneously interpreted Schedule 6 as requiring the hereditament be assumed to be in a reasonable state of repair for the mode of occupation listed in the rating list, as "offices and premises", which was the incorrect approach.
2. Whether premises were being reconstructed as opposed to simply being in a state of disrepair was an objective assessment. If the works were objectively assessed as involving redevelopment, there were no grounds for applying the assumption in para 2(1)(b) to override the reality principle and create a hypothetical tenancy of the previously existing premises in a reasonable state of repair. A building undergoing redevelopment was incapable of beneficial occupation.
3. There was no statutory bar to an application to alter the rating list to reflect the actual state of a hereditament undergoing redevelopment. A proposal to alter the description of the hereditament in the rating list from "offices and premises" to "building undergoing reconstruction" and reduce the listed rateable value to a nominal amount could be implemented if the facts, objectively assessed, supported the alteration.
4. On the facts found by the UT, M's premises were undergoing reconstruction in January 2012 and the tribunal had been entitled to alter the rating list to reflect that reality.

14 Statutory Instrument

SI 2017/102 – The Non-Domestic Rating (Reliefs, Thresholds and Amendment) (England) Order 2017

This Order came into force on 03.03.17 and deals with eligibility and amounts of small business relief from 01.04.17.

- Article 1 provides that articles 2 and 3 of this Order has effect for the purposes of determining eligibility for, and calculating the amount of, small business rate relief in respect of days falling on or after 01.04.17. The Non-Domestic Rating (Small Business Rate Relief) (England) Order 2012 (S.I. 2012/148) (as amended) is revoked by article 6 of this Order but will continue to have effect in relation to chargeable days falling prior to 01.04.17.
- Article 2 provides that, from that date, in order to obtain small business rate relief a hereditament must not have a rateable value of more than £50,999.
- Article 3 prescribes the amount of E under s44(9)(a) of the 1988 Local Government Finance Act, which determines the amount of relief to be given to a particular hereditament under the formula in s43(4A)(a) of the 1988 Act.
- Article 4 amends Regulation 4(g) of the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008 to raise the level of the threshold below which a ratepayer shall not be liable to pay rates in respect of an unoccupied property from RV £2,600 to RV £2,900.
- Article 5 amends article 2 of the Non-Domestic Rating (Stud Farms) (England) Order 2009 to increase the amount of the rateable value deduction for stud farms from £4,200 to £4,700.

http://www.legislation.gov.uk/uksi/2017/102/contents/made

15 Government Response to Consultation

Self-sufficient local government: 100% business rates retention

This document provides a summary of responses and the government response to the consultation on its proposal to allow local government to retain 100% of the business rates that they raise locally.

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

16 CLG Consultation

100% business rates retention: further consultation on the design of the reformed system
Deadline for Comments: 03.05.17

The government is committed to reforming the business rates system to enable local government to retain all locally raised taxes, including100% of locally raised business rates. This consultation seeks views on some of the detailed aspects of the design of the reformed system.

https://www.gov.uk/government/consultations/100-business-rates-retention-further-consultation-on-the-design-of-the-reformed-system

17 Summary of consultation responses and Government response

Check, challenge, appeal
Reforming business rates appeals – consultation on statutory implementation

This document summarises the government's responses to this consultation and sets out decisions it has taken, as a basis for introducing regulations by April 2017. At the time of finalising this edition, however, those regulations have not been published.

https://www.gov.uk/government/consultations/reforming-business-rates-appeals-draft-regulations

18 CLG Consultation

Discretionary business rates relief scheme
Deadline for Comments: 07.04.17

In the Spring Budget the Chancellor announced that the government would make a discretionary fund of £300 million available to support those businesses most affected by the revaluation.
This consultation paper seeks views on the:

- allocation of resources to local authorities;
- arrangements for local authorities' compensation; and
- operation and conditions of the discretionary relief scheme.

https://www.gov.uk/government/consultations/discretionary-business-rates-relief-scheme

19 Business rates information letter

2/2017: Spring Budget – support for business

This letter provides information on:

- supporting small businesses;
- the new discretionary relief scheme; and
- the new business rate relief scheme for pubs.

https://www.gov.uk/government/publications/22017-spring-budget-support-for-business.

20 Business rates information letter

3/2017: confirmation of 2017 to 2018 multipliers

This letter provides information on the notification of the non-domestic rating multipliers for 2017 to 2018.

https://www.gov.uk/government/publications/32017-confirmation-of-2017-to-2018-multipliers

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

LEASEHOLD REFORM

21 Upper Tribunal: Lands Chamber

Lease extension under the Housing and Urban Development Act 1993 – time limits – whether application to FTT to determine disputed terms of acquisition "made" when posted or received

*SALEHABADY V TRUSTEES OF THE EYRE ESTATE
[2017] PLSCS 53 – Decision given 16.02.17

Facts: S, who was a long leaseholder of a flat, gave notice to the freeholders, E, to acquire a new extended lease under s42 of the 1993 Act. E served a counternotice under s45, and subsequently S applied to the FTT under s48 to determine the disputed terms of the acquisition. That application had to be made within six months of the date when the counternotice was given (s48(2)) and though S claimed he had sent his application by first-class post a few days before the time limit expired the only copy received by the FTT was stamped as having been received more than two weeks after the deadline.

Point of dispute: Whether to allow S's appeal against the FTT's ruling that the application was out of time. In the absence of any evidence from S that the application had been posted within the prescribed time limit the FTT held that the application was out of time and it had no jurisdiction to determine it.

Held: The appeal was allowed.

i. Under s48(2) the application had to be "made" within six months of the counternotice. The proceedings could be started either by "sending" or "delivering" a notice of application to the FTT. Nothing in the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 prescribed that recorded delivery or any particular proof of posting had to be used which meant that the action of posting the application to the FTT was sufficient to start the proceedings. The relevant date was the date of posting.

ii. The FTT could not simply reject S's assertion that he had posted the application in time, although it could require him to provide a witness statement and be cross-examined at a hearing.

iii. The FTT's ruling had to be set aside and the matter remitted to it for a determination on jurisdiction. If it accepted that S had posted the application when he said he did then the FTT could proceed with the application on its merits. If not, S would have to be cross-examined at a hearing and the FTT would have to decide whether, on a balance of probabilities, it had been proved that the application notice was posted before the time limit expired.

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

COMPULSORY PURCHASE

22 Supreme Court

Land Compensation Act 1961 – compensation payable for acquisition of land for residential development as part of business park – whether to be assessed on assumption that planning permission for independent residential development of appellant's land would have been granted in no-scheme world

**JS BLOOR (WILMSLOW) LTD V HOMES AND COMMUNITIES AGENCY
[2017] PLSCS 44 – Decision given 22.02.17

Facts: JSB owned 27 acres of poor quality grazing land ("the reference land") compulsorily acquired with other mainly greenfield land for a business park development. The existing use value was estimated by HCA at approximately £2,000 per acre; JSB claimed just under £2.6 million based on the planning permission for the acquiring authority's scheme or alternatively 'hope value' based on the prospect of permission for residential development being granted. Both the long-standing and emerging planning policies supported development of a business park, with a residential element but only as a part of a comprehensive business park development. JSB argued that in the absence of the business park scheme on which the CPO was predicated, the planning policy would be relaxed and permission would be granted for standalone residential development. The Upper Tribunal (Lands Chamber) awarded compensation of £746,000 based on a 50% chance of planning permission being granted for residential development. The Court of Appeal allowed HCA's appeal against that decision, holding that it was necessary to consider the planning potential of the reference land not only without regard to the development scheme but also without regard to the policies which underlay it. (See *Evebrief Volume 37(05) i18*)

Point of dispute: Whether to allow JSB's appeal against the Court of Appeal's decision. Issues arose as to the proper application of: (i) the statutory disregards of actual or prospective development in s6 of, and Schedule 1 to, the1961 Act; (ii) the "planning assumptions" to be made under ss14-16; and (iii) the wider *Pointe Gourde* rule that compensation for compulsory acquisition should be assessed disregarding any increase or decrease in value solely attributable to the underlying scheme of the acquiring authority.

Held: The appeal was allowed.

i. The Court of Appeal had erred by treating the required disregard of the CPO scheme as extending also to all the policies, past and present, which supported development on the land. The UT was entitled to regard the underlying policies, including the allocation in the development plan, as also potentially relevant to the prospect of development apart from the CPO scheme. The UT had properly taken account of the pattern of development, as it saw it on the ground, and the land's long history of identification for substantial development.

ii. The Court of Appeal had correctly rejected the submission that the UT should have treated the planning status of the land as conclusively fixed by reference to the application of ss14-16 of the 1961 Act. Section 14(3) provided that the statutory planning assumptions did not imply any presumption against development which might otherwise have taken place in the absence of the scheme. The right to claim for potential development value was long established and the statutory presumptions worked in the applicant's favour.

iii. It was well established that the application of the *Pointe Gourde* rule itself might result in changes to the assumed planning status of the subject land.

iv. It had long been accepted that the application of the general law might produce a more favourable result for a claimant than the statutory planning assumptions.

v. The UT's application of the difficult provisions of the 1961 Act to the complex facts of this case had been exemplary and disclosed no error of law.

Editor's note: This decision relates primarily to the provisions of the 1961 Act before they were amended by the Localism Act 2011.

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

HOUSING

23 DCLG White Paper

Fixing our broken housing market

This white paper sets out the government's plans to boost the supply of homes in England and Wales. Since the 1970s, on average 160,000 new homes have been built each year, while the number that is needed to keep up with population growth and to tackle many years of under-supply is between 225,000 and 275,000 per year. The government considers that the main problems behind this shortfall are poor planning provision by local authorities, slow pace of development and the structure of the housing market, which is dominated by a small number of large development companies. The paper introduces the following measures to address these problems:

1. Planning for the right homes in the right places. This will require:

a. up to date local plans;
b. simplifying plan making;
c. greater transparency about land ownership;
d. making more land available for housing where it is needed;
e. maintaining strong protections for the Green Belt;
f. involving communities more; and
g. making better use of land for housing by encouraging higher densities.

2. Building homes faster by:

a. speeding up the planning process;
b. providing for necessary infrastructure at the same time;
c. speeding up connections to utilities;
d. supporting developers to build more quickly by tackling unnecessary delays caused by planning conditions; and
e. growing the construction workforce.

3 Diversifying the market by:

a. enabling small and medium sized builders to grow;
b. supporting custom-build homes with greater access to land and finance;
c. bringing in new contractors who can build homes more quickly than traditional builders;
d. supporting housing associations and local authorities to build more homes; and
e. encouraging modern methods of construction in house building.

4. Helping people now by:

a. continuing to support people to buy their own home through Help to Buy and Starter Homes;
b. investment in Affordable Homes Programme;
c. improving neighbourhoods;
d. helping the most vulnerable; and
e. doing more to prevent homelessness.

https://www.gov.uk/government/publications/fixing-our-broken-housing-market

There are a number of supporting documents to the white paper, links to which can be accessed at:

https://www.gov.uk/government/collections/housing-white-paper

24 CLG Consultation

Fixing our broken housing market: consultation
Deadline for Comments: 02.05.17

As part of the housing white paper the government is also consulting on changes to planning policy and legislation in relation to planning for housing, sustainable development and the environment. The consultation, including details of how to respond, can be found in the white paper.

https://www.gov.uk/government/consultations/fixing-our-broken-housing-market-consultation

25 CLG consultation

Planning and affordable housing for Build to Rent
Deadline for Comments: 01.05.17

This consultation seeks views on planning measures to support an increase in Build to Rent schemes across England. This includes changing the NPPF to support and to increase the number of new Build to Rent homes, and the provision of Affordable Private Rent homes as the main form of affordable housing provision on Build to Rent schemes. The consultation also seeks to promote the availability of longer tenancies (three years or more) in Build to Rent accommodation.

https://www.gov.uk/government/consultations/planning-and-affordable-housing-for-build-to-rent

26 Government Response to consultation

Starter homes regulations: government response to the technical consultation

This document summarises the responses to the technical consultation seeking views on the details for the starter homes regulations under the Housing and Planning Act 2016 which ran from March to June 2016.

https://www.gov.uk/government/consultations/starter-homes-regulations-technical-consultation

27 Independent report

Community Infrastructure Levy review

The Community Infrastructure Levy (CIL) came into force in April 2010 to enable local authorities to raise funds from owners or developers of land undertaking new building projects in their area in order to help fund infrastructure. The government commissioned an independent review of CIL in November 2015 to assess the extent to which CIL is providing an effective mechanism for funding infrastructure and to recommend changes that would improve its operation. The independent review group submitted their report to ministers in October 2016. It was informed by both research undertaken by Three Dragons and the University of Reading and a consultation questionnaire. The research examined the amount of revenue CIL is raising, the types of development that are paying CIL, impacts on viability and the operation of the neighbourhood share of CIL.

https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government

28 Government Statistics

House building: new build dwellings, England: October to December 2016

- It is estimated that there were 41,620 new-build dwelling starts in England during the last quarter (seasonally adjusted). This represents a 5% increase compared to the previous 3 months and a 13% increase compared to same period in the previous year.
- In the year to December 2016 there were 153,370 new-build dwelling starts, 5% more than during the year to December 2015. Completions totalled 140,660, 1% less than the previous year.
- The number of new building starts is now 143% higher than the trough in March 2009, but 15% below the March quarter 2007 peak. Completions are 43% above the March quarter 2013 trough and 26% below their March quarter 2007 peak.

https://www.gov.uk/government/statistics/house-building-new-build-dwellings-england-october-to-december-2016

29 Government Statistics

English housing survey 2015 to 2016: headline reports

These are the latest results from the English housing survey on the age, type, condition and energy efficiency of housing stock and the characteristics of households. The report will be followed up by a series of more detailed topic reports which will be published in the summer.

https://www.gov.uk/government/statistics/english-housing-survey-2015-to-2016-headline-report

REAL PROPERTY

30 Court of Appeal

Service of notices – derelict and unoccupied property – whether use of address on proprietorship register validly effected service at "last known address" of respondent

*OLDHAM METROPOLITAN BOROUGH COUNCIL V TANNA
[2017] PLSCS 33 – Decision given 10.02.17

Facts: The respondent, T, was the registered proprietor of an unoccupied and derelict former nursing home in Oldham. OMBC wished to serve a notice on him under s215 of the Town and Country Planning Act 1990 which would enable it to demolish the property and recover the cost of doing so from T. The notice, addressed to "the Owner" of the nursing home property, was served at the address given in the proprietorship register of the registered title at HM Land Registry by placing it through the letterbox at that address. A second notice was affixed to part of the property itself and a third was served at an address which OMBC's credit control department held for T. At the date of service, T had moved away from the address in the proprietorship register; he had never lived at the address held by the credit control department and, although another department at OMBC had a current email address for T, the planning department was not aware of this.

Point of dispute: Whether the s215 notice had been validly served. At first instance the county court judge ruled in favour of T finding that the notices had not been properly served at his "last known address" for the purposes of s233 of the 1990 Act or at his "last known place of abode" within s329(1). He considered that the planning department of OMBC was imputed with constructive knowledge of T's address since they could have found it had they made enquiries of other departments. The judge also held that the notice affixed to the nursing home property was not properly served under s329(1) of the 1990 Act because it should have been addressed to the owner and occupiers of the property, not just the owner as in this case.

Held: OMBC's appeal against the judge's ruling was allowed.

i. OMBC were entitled to rely on the address shown in the proprietorship register, and it was the responsibility of the registered proprietor to keep that up to date. If the person serving the notice had knowledge of a more recent address he should serve it at that address also, but where a local council proposed to serve a s215 notice it was the knowledge of the local planning department that was relevant and it did not matter that another department within the council had another address for T.

ii. The Land Registration Rules 1925 reinforced the above conclusion as they provided that a person's address for service would be the address given in the register unless he directed otherwise.

iii. The s215 notice was also properly served at the nursing home property. When it was known that there were no occupiers of the land in question it would be futile to require the server of a notice to address a notice to "the occupiers". Parliament could not have intended that the omission to include "the occupiers" as addressees of a notice invalidated service on the owner, to whom it was addressed.

31 First-Tier Tribunal: Property Chamber

Adverse possession

*WATERS V EVANS
[2017] PLSCS 21 – Decision given 25.11.16

Facts: The applicant and respondent owned adjoining semi-detached cottages. When the applicant purchased one of these in 2014 it was sold to him with the benefit of a garage which was positioned adjacent to the property on a verge next to an unadopted highway. When contracts were exchanged the vendor, whose father had originally built the garage, applied for first registration of title to the garage land and after completion the applicant made a similar application relying on 12 years adverse possession for the purposes of the Limitation Act 1980. The applicant claimed that the garage had been used by the vendor's father, the vendor, and finally themselves ever since it was first erected.

Point of dispute: Whether to allow the application. The respondent disputed whether the necessary continuous period of occupation had been established as he asserted that the garage land fell within his registered title and that the use of the garage had been with the consent of his predecessor in title and subsequently himself. He also argued that the garage land formed part of the highway and so could not be acquired by adverse possession.

Held: The application was allowed.

i. On the evidence, the garage land was not included in the respondent's registered title. There was sufficient evidence of acts of possession in relation to the garage to establish the applicant's claim, including use of it by the vendor and his father who had locked it with a padlock and kept the key in their house.

ii. This conclusion was not displaced by the vendor applying to be registered with possessory title to the garage land. There was no evidence that he claimed still to be in possession after completion of the transfer to the applicant.

iii. It was not fatal to the applicant's application that there had been no formal conveyance to them of the vendor's possessory title. The vendor had allowed the applicant into possession of the garage by handing the key over to him which meant that there was a single period of possession.

iv. While there was authority that title could not be acquired over a highway which was maintained at the public expense, the position was different in the case of an unadopted highway. The application did not fail on this ground.

32 First-Tier Tribunal: Property Chamber

Easements – prescription – right of way – applicant relying on 20 years use prior to 2002 to establish right based on lost modern grant – whether use with permission of landowner

*WELFORD V GRAHAM
[2017] PLSCS 31 – Decision given 20.05.16

Facts: The applicants claimed a right of way with or without vehicles over a yard belonging to the respondents in favour of their workshop. They asserted that the previous owners of the workshop had acquired the right of way by prescription, but the respondents objected to the application contending that any use of the right of way had been with the permission of their own predecessors in title and thus could not give rise to a prescriptive right. Because the yard was not being used for access to the workshop at the time of the application and use for the purposes of the Prescription Act 1832 had to continue up to the date when an easement was claimed, the applicants relied instead on the doctrine of lost modern grant.

Point of dispute: Whether to allow the application. The applicants claimed that they could establish the necessary 20 years use of the way, openly, without force and without permission, prior to 2002 so that the application did not attract the additional requirements imposed under the Land Registration Act 2002.

Held: The application was dismissed. It failed because the applicants could not show that, at some time before 2002, the owners of the workshop had used the vehicular access across the yard to the doors of the workshop for 20 years openly, without force and without permission. Although the evidence did show that the previous owner of the workshop had driven across the yard from 1978 onwards and for at least 20 years prior to 2002, that was insufficient to establish the claimed easement because the applicants were unable to prove that this use was without permission from the yard owner. It was impossible to prove a negative, but there had to be something to tip the balance of probabilities and show that it was more likely than not that the owner of the workshop did not have permission to use the yard. The applicants had not been able to prove that the requirements for prescriptive use were met for a period of 20 years prior to 2002.

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TORT

33 Court of Appeal

Solicitor's negligence – breach of duty of care – rights relating to ducting work in ventilation shaft – whether solicitor liable for failure to advise of risk that lease conferring no right to use shaft

*BALOGUN V BOYES SUTTON & PERRY
[2017] PLSCS 45 – Decision given 21.02.17

Facts: The appellant, B, instructed the respondent firm of solicitors, BSP, in connection with his acquisition of a 15-year commercial lease of a unit in a building in South East London. BSP was aware that B intended to fit out the premises for use as a restaurant, for which they had planning permission, and that he would need to install ducting within a ventilation shaft in order to extract fumes. A dispute arose after completion between B and the freeholder concerning the proposed works to the shaft and B claimed damages against BSP for professional negligence. He contended that BSP had been under a duty to advise him and secure the necessary rights and consents in relation to the ducting work.

Point of dispute: Whether to allow B's appeal against the decision of the court below which had dismissed his claim. The judge found that B's instructions to BSP were that nothing needed to be done to the shaft to make it fit for use and that in those circumstances BSP were not obliged to take the matter further. He also rejected B's argument that BSP should have made enquiries of the lpa as to whether the necessary approvals were in place. In his appeal B raised further arguments that: (i) the terms of the underlease did not confer on him a right to use the ventilation shaft; or (ii) even if they did so there was a risk that they did not, which BSP should have advised him about. This was because the headlease and the underlease did not match with regard to the lessee's entitlement to use "Service Media".

Held: The appeal was dismissed.

i. The underlease gave B a right to connect to and use the ventilation shaft, which was properly to be regarded as "Service Media" within the meaning of the underlease.

ii. The solicitor should have appreciated that the headlease and the underlease may not properly correspond in relation to access to the ventilation shaft and, given how important it was to his client's project, he should have taken steps to amend the draft underlease. This meant that he was in breach of his duty of care to his client; however, B had not suffered any loss as a result of the breach – neither the freeholder nor the headlessee disputed that B had a right to access and use the ventilation shaft; the dispute related to the extent of the right. B was limited in what he wanted to do by the terms of the headlease which was not connected with BSP's breach of duty.

iii. The solicitor was not under a duty to investigate whether written approval had been given under the planning condition. B himself had taken the view that the approvals required under the planning permission were a matter for the future.

iv. Making enquiries of the lpa would not have told the solicitor whether any work had been done on the flue. The planning condition was tied to operation of the restaurant and until the restaurant started trading there was no requirement to comply with the condition.

ENERGY

34 Government Statistics

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

These statistics contain information about certificates on the energy efficiency of domestic and non-domestic buildings in England and Wales that have been constructed, sold or let since 2008, and of larger public authority buildings since 2008. They do not cover the entire building stock across England and Wales. The figures are drawn from two datasets on the Energy Performance of Buildings Registers:

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

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

LONDON

35 Consultation outcome

Upward extensions in London

This is the government's response to the upwards extensions in London consultation which sought views on proposals to deliver more homes in London by allowing a limited number of additional storeys on existing buildings through a permitted development right, local development orders or development plan policies. The consultation ran from 18.02.16 to 15.04.16.

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

36 HM Treasury, DCLG, Mayor of London, London Councils Agreement

Memorandum of Understanding on further devolution to London

This agreement represents the next stage of devolution to the Greater London Authority (GLA) and London boroughs, building on the government's commitments at Autumn Statement 2016. The government, GLA and London Councils commit to working together to implement this agreement to ensure that London government has the powers it needs to maintain London's status as a successful world-leading city. As well as detailing proposals for further devolution to London, the paper also includes plans for infrastructure financing and greater powers over business rates administration:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/597291/London-Devolution-MoU.pdf?mc_cid=2e0a110ce9&mc_eid=01069531d7

GENERAL

37 Court of Appeal

Estate agents' commission

*SAVILLS (UK) V BLACKER
[2017] PLSCS 39 – Decision given 16.02.17

Facts: B instructed S, a firm of estate agents, in connection with a proposed application to develop an estate, currently laid out as a golf course, into a mansion and parkland with a view to selling it. The original plan was to market the estate once planning permission had been obtained and S produced a marketing report on that basis. The sale price proposed was in the region of £15m and attached to the report was a copy of S's terms of business to act as selling agents, including payment of a commission of 2% of the sale price. B did not sign the report and terms of business but instead decided to sell without planning permission; it also appointed another firm of agents to act jointly with S. B then signed a revised version of the report in the same format as the previous one except that the terms of business were amended to provide for a reduced commission of 1.75% to be payable to S in the event of a sale and reflecting the appointment of a second agent. The estate was subsequently sold for £6.88m to a purchaser who was not introduced to B by either agent and S claimed a commission of £120,000 plus VAT on the sale.

Point of dispute: Whether to allow S's appeal against the decision of the court below that it was not entitled to any commission. The judge accepted B's argument that no commission was payable because the basis of the sale was inconsistent with the terms of the report which provided for a sale with planning permission.

Held: The appeal was allowed. In signing the report B had confirmed his instructions to S to proceed with the sale and marketing of the estate in accordance with the report and attached terms of business. These documents performed different functions although both formed part of the contract. The report was a marketing strategy and the terms of business set out when commission would become payable. The marketing strategy was no more than a recommendation; the judge had failed to recognise the different functions of the two parts of the agreement. The terms of business provided for the payment of commission even if the purchaser was not introduced by S and based on events that had happened commission was payable.

38 High Court

Commons registration – use "as of right" – whether public use of land permissive – whether commercial activity and vehicular use compatible with registration of land as town and village green (TVG)

*TW LOGISTICS LTD V ESSEX COUNTY COUNCIL
[2017] PLSCS 40 – Decision given 08.02.17

Facts: The claimant company owned and operated a port in Essex. Having been alerted to the risk of employees and other persons falling into the water, it fenced off quayside which was previously open. An application was made by a local worker to register the land as a TVG under the Commons Act 2006 on the basis that it had been used for lawful sports and pastimes as of right throughout the 20-year period leading up to the erection of the fence. Following a public inquiry ECC registered the site as a TVG and TWL applied for an order that the site be removed from the register and a declaration that it was not a TVG.

Point of dispute: Whether to allow the claim. TWL contended that:

i. Any recreational user of the site was not "as of right" because various signs erected on the land indicated that the recreational use of the land was contentious or permissive and not "as of right";

ii. Commercial vehicular use of the land was incompatible with it being used for lawful sports and pastimes and registrability as a TVG;

iii. The land had not been used for lawful sports and pastimes but as a highway;

iv. Registration of the land as a TVG was incompatible with the statutory regime under which the port operated; and

v. Recreational use of the land would have involved trespassing on a railway line.

Held: The claim was dismissed.

i. If use of land was contentious that was sufficient to make the use not as of right. Use of an owner's land might be rendered contentious by the presence of a prohibitory notice. In this case TWL had not done anything that was reasonable or proportionate enough to bring it to the attention of users of the land that it objected to such user. The notices referred to the remainder of TWL's land, not the quayside.

ii. Recreational uses of land were not necessarily incompatible with commercial activity.

iii. The continued existence post-registration of TWL's obligations under health and safety legislation did not mean that the recreational use during the qualifying period was other than "as of right".

iv. Recreational walking could support registration of land as a TVG. General walking and wandering over the land by the public represented "lawful sports and pastimes".

v. Liability under s55 of the British Transport Commission Act 1949 only arose where the railway line or siding was being "worked" which meant that it had to be capable of being used as a track for railway carriages or trucks. In this case, the railway line had not been in use for two years before the commencement of the 20-year qualifying period so any prosecution would have failed. This was not a ground for reversing the registration of the site as a TVG.

39 Historic England – Good Practice Guidance

Land Contamination and Archaeology

This guidance aims to raise awareness of the need to consider archaeology during land contamination assessment and management, using case study evidence to show how archaeology can be a receptor, a source of contamination or a pathway for the transfer of contamination to another part of a site. It also recommends steps to make sure that the level of risk is identified at an early stage through a systematic process of assessment, site investigation and stakeholder consultation, so that archaeological remains are considered during remediation design.

https://www.historicengland.org.uk/images-books/publications/land-contamination-and-archaeology/

40 CLG Committee Report

Public Parks

This report on public parks argues that they are in jeopardy with the sector facing many challenges. Council spending cuts have led to parks management budgets being reduced by up to 97% in some places, not enough weight is being given to them in planning policy, and they are having to compete with other services for funding. The Committee calls on councils to publish strategic plans which recognise the value of parks beyond leisure and recreation and to set out how parks can be managed to maximise their contribution to wider local authority agendas such as promoting healthy lifestyles, tackling social exclusion and managing flood risk.

http://www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/news-parliament-2015/public-parks-report-16-17/

41 CLG Statistics

Land use change statistics 2015 to 2016

These statistics show the amounts and location of land changing use in England.
In 2015-16:

- The proportion of new residential addresses created, including conversions to residential use, on previously developed land was 61%, 3% more than in 2014-15;
- The main previous land use categories on which a residential address was created were: 17% “other developed use”; 14% residential land; and 13% agricultural land;
- The average density of residential addresses surrounding a newly created residential address was 32 addresses per hectare. In 2014-15 the density was 31 addresses per hectare;
- 2% of new residential addresses created were within the Green Belt, down from 3% in 2014-15; and
- 9% of new residential addresses were created within areas of high flood risk, 1% higher than in 2014-15.

https://www.gov.uk/government/statistics/land-use-change-statistics-2015-to-2016

GERALD EVE'S UK OFFICE NETWORK

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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

Legal & Parliamentary

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WALES

PLANNING

01 Welsh Government Report

Longitudinal Viability Study of the Planning Process

This report identifies reasons why proposed housing developments that are assessed as deliverable during the Local Development Plan process are becoming stalled due to viability issues at later planning stages. It also makes recommendations covering all stages of the planning process, from site identification during the preparation of a Local Development Plan to the assessment of sites at the development management stage.

http://gov.wales/topics/planning/planningresearch/publishedresearch/longitudinal-viability-study-of-the-planning-process/?lang=en

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

RATING

02 Statutory Instrument

WSI 2017/113 The Non-Domestic Rating (Demand Notices) (Wales) Regulations 2017

These Regulations, which came into force on 13.03.17, provide for the contents of non-domestic rates demand notices served by billing authorities in Wales and for the information that must accompany such notices. They apply to demand notices issued in respect of financial years beginning on or after 01.04.17.

http://www.legislation.gov.uk/wsi/2017/113/contents/made

GERALDEVE

03 Welsh Government Consultation

Amending the Valuation Tribunal for Wales Regulations 2010
Deadline for Comments: 16.04.17

This consultation concerns proposals to reform the structure and organisational procedures provided for in the Valuation Tribunal Regulations 2010 with the aim of:

- removing unnecessary bureaucracy and simplifying administrative procedures to allow the Valuation Tribunal for Wales to work more efficiently;
- strengthening governance arrangements to ensure the independence and accountability of the organisation; and
- providing for future reforms to the business rates appeals process.

https://consultations.gov.wales/consultations/amending-valuation-tribunal-wales-regulations-2010

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

NORTHERN IRELAND

PLANNING

04 Department for Infrastructure – Development Management Practice Note

Development Management Practice Note 21: Section 76 Planning Agreements

This Development Management Practice Note is designed to guide planning officers and relevant users through the legislative requirements relating to the use of planning agreements. It is concerned mainly with procedures but also covers good practice.

http://www.planningni.gov.uk/index/news/dfi_planning_news/news_releases_2015_onwards/news-dmpn21-jan2017.htm

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