

Housing planning news



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Headline news

Updates on DCLG consultation on councils assessing local housing requirements and planning fees increase

In his speech to the Local Government Association's (LGA) annual conference on 4 July, Communities Secretary Sajid Javid spoke on wide-ranging planning matters.

Particularly on the awaited DCLG consultation on local plan-related changes that was due in July, that was 'as we promised in the Housing White Paper', he explained:

'Our aim is simple: to ensure these plans begin life as they should, with an honest, objective assessment of how much housing is required. That means a much more frank, open discussion with local residents and communities. It also requires a new approach. One that is straightforward, so everyone can understand the process. One that is transparent, so decisions are not hidden behind complexity or bureaucracy. And one that is consistent, so every community, from the biggest city to the smallest hamlet, can be confident their council is assessing housing need properly and fairly.'

The latest Planning Update Newsletter from DCLG to Chief Planners (published on 31 July) provides additional details of, and revised timescales for, the consultation and other awaited updates.

The newsletter states that DCLG intends to publish the consultation regarding 'a new way for councils to assess their local housing need' and 'what constitutes a reasonable justification for deviating from the standard methodology' 'when Parliament returns

in September [i.e. 5-14 September]'. The newsletter also states that if a plan is submitted for examination 'on or before 31 March 2018' the local planning authority (LPA) will be able to progress with that plan 'using the existing methodology for calculating local housing need, as set out in current guidance', but where the plan is subsequently withdrawn or found unsound, it is proposed that the new plan would be based on the new standardised method. Also, if an existing up-to-date plan (i.e. less than five years old) is in place then there will be no need to make any changes until the next review or update of the existing plan. Data on each LPA's most recent assessment of need, and where there is an adopted plan in place the number of homes currently being planned for, for every English planning authority, will be published alongside the consultation.

Furthermore, the letter also provides few (awaited) updates regarding the announced planning application fees increase, which was initially due in July. According to the letter, '[a]ll planning authorities have accepted the 20 per cent fee increase', and the Government is bringing forward 'the necessary regulations in the autumn which, subject to Parliamentary scrutiny, will apply the increase'.

Finally, the Chief Planner's letter also covers advice for LPAs in relation to the recladding of a building, as well as PPG updates and Neighbourhood Planning Act's commencement regulations.

Neighbourhood plans have more status

The first Regulations commencing a series of provisions in the Neighbourhood Planning Act 2017 were laid on 18 July: they are already in force.

The Neighbourhood Planning Act 2017 (Commencement No. 1) Regulations ►►

QUOTE OF THE MONTH



Planning decision-making is far from being a mechanical or quasi-mathematical activity. It is essentially a flexible process, not rigid or formulaic.

Lord Justice Lindblom giving judgement in Barwood Strategic Land II LLP v (1) East Staffordshire Borough Council (2) Secretary of State for Communities & Local Government (2017)

THE LICHFIELDS PERSPECTIVE

New measures for addressing the housing crisis remain centre stage in both plan making, and decision taking. But change is not proving easy to progress, in light of Brexit taking up a huge amount of Government resources. The Grenfell Tower disaster is also exerting wider influence – it is leading to a Government focus on the development sector engaging better with communities, as well as providing well-designed, truly affordable homes.

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LICHFIELDS

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2017 mean that the Secretary of State (SoS) can now go ahead and make another set of regulations on what kind of conditions may or may not be imposed on a grant of planning permission. Regulations can be made now too, governing the circumstances when the agreement of an applicant has to be obtained in advance and when it does not, to the terms of a pre-commencement condition.

As indirectly referred to by the Communities Secretary in his 4 July speech, the key plan-making provision now in force is in s12 of the Act; it means that the SoS can go ahead and make the new Regulations that will prescribe the detail of how often a local planning authority (LPA) must review its local development documents (LDDs) – including local plans – and whether or not revision ensues.

Also, s1 of the Act is now in force so that an LPA has to have regard to a ‘post-examination’, unmade neighbourhood plan as a material consideration in the determination of planning applications. With s3 now in force too, it is the case that just prior to a draft neighbourhood plan being made after succeeding at referendum, the Plan forms part of the development plan – a subtle but potentially significant change to application determination.

For further details about the provisions that are now in force, please see Lichfields’ news story (and related blog updates) and/ or the Regulations’ explanatory notes.

Appeal Court upholds ruling on presumption in favour of sustainable development

With reference to an appeal granting planning permission for 150 new homes on a greenfield site adjacent to Burton upon Trent, the Court of Appeal has upheld a High Court ruling (in *Barwood Strategic Land LLP v East Staffordshire Borough Council and Secretary of State for Communities and Local Government*), outlining the scope of the National Planning Policy Framework’s (NPPF) presumption in favour of sustainable development (para. 14) with regard to proposals in conflict with an up-to-date local plan.

The Inspector had allowed the appeal, having decided that although the proposal was not in accordance with the development plan (hence NPPF para. 14 was not engaged), this was outweighed by other material considerations, such as the need for affordable housing and a boost to the employment and the local economy.

The Council had challenged the decision and succeeded in the High Court. The Court of Appeal then once again had to decide if the Inspector had acted unlawfully as a result of misunderstanding the correct application of the NPPF’s presumption in favour. It was held that his decision was erroneous as it was based on a view that the NPPF contained a general ‘presumption in favour of sustainable development’, which could be set against the statutory presumption in favour of the development plan in s38(6) of the Planning and Compulsory Purchase Act 2004. It does not: the presumption in favour of sustainable development in plan-making and decision-taking is only in para. 14, and cannot be a material consideration, if para. 14 is not engaged.

St Albans fails to overturn duty to cooperate verdict

St Albans City and District Council has not succeeded in the High Court, in seeking to overturn an Inspector’s conclusion that the authority had not met its duty to cooperate requirements in preparing its draft local plan.

It was held that the Inspector had been ‘neither irrational nor unlawful in his approach’, in terms of engaging with or taking into account the housing and employment issues which were engaged in the plan making process when addressing the duty to cooperate. He also had not erred in his approach to the relationship between the Dacorum Core Strategy and the St Albans Plan. Nor was the Inspector’s conclusion on soundness either ‘irrational or arrived at by failing to take into account a material consideration’. Lastly, there was nothing in law requiring the Inspector to identify strategic issues, as contended by the Council.

PPG updates: EIA Regulations, brownfield registers and permission in principle

DCLG has updated national Planning Practice Guidance (PPG), to explain the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 that came into force on 16 May this year (see Lichfields’ May 2017 Planning News for details).

The PPG now reflects the 2017 Regulations’ rules on competency: an environmental statement (ES) has to be prepared by competent experts, and ‘accompanied by a statement from the developer outlining the relevant expertise, or qualifications of such experts, sufficient to demonstrate that this is the case’. In addition, the PPG now explains how if a scoping opinion has been obtained, an ES must be ‘based’ on the most recent version, ‘...so far as the proposed development remains materially the same as the proposed development which was subject to the opinion or direction’ – a significant change in law, as reflected in previous PPG guidance.

Many other PPG revisions have also just been published (on 28 July); they principally cover detailed development management procedures and reflect recent changes in planning law, including new planning practice guidance regarding the brownfield register and permission in principle. DCLG also published ‘Brownfield Land Registers Data Standard: Preparing and publishing a register’ on 28 July. ■