

England planning news

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Headline news

Latest data on housing starts and completions

The latest DCLG housebuilding data shows that in Q2 2017, housing completions in England were at the highest level since 2008; 164,960 new homes were started in the year to June 2017, up 13% on the previous year – see the chart below.

Housing and Planning Minister Alok Sharma highlighted these latest figures on 24 August, while at the same time confirming

that the proposals in the Housing White Paper, 'Fixing our Broken Housing Market' are being taken forward:

'Building more homes is an absolute priority for this government. Today's figures are proof that we are getting Britain building again, with new housing starts reaching record levels since 2009.

It's vital we maintain this momentum to deliver more quality homes in the places that people want to live. Our housing white paper set out an ambitious package of long-term reforms to do just that.'

QUOTE OF THE MONTH



Avoiding apparent and unexplained inconsistencies in the Secretary of State's own decisions on matters that may have ramifications for decision-making in other cases is an important consideration in determining what may [be] required of him if he is not to act unreasonably.

John Howell QC, sitting as deputy judge in *Cumberlege and Anor v Secretary of State for Communities and Local Government and Anor* (August 2017)

THE LICHFIELDS PERSPECTIVE

'Councils' decisions on the information to request for technical details consent ('TDC') may be influenced by telescoped timescales – statutory time limits are 10 weeks for major development and just 5 for minor, compared to 13 and 8 weeks for major and minor planning applications/ reserved TDC matters approvals. Shorter TDC timescales will be in councils' minds when deciding whether to grant a permission in principle.

Jennie Baker, Associate Director commenting on permission in principle ('PIP') via part 2 of a brownfield register and applying for TDC

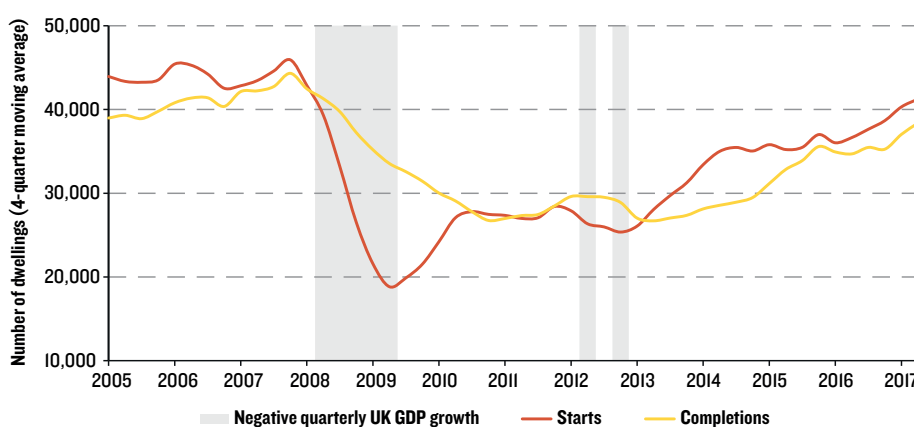
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Figure 1: Housing starts and completions. Q2 completions at highest level since 2008, but still below pre-recession levels



Source: DCLG, Lichfields analysis

Note: The figures are based on building control inspection data, submitted to the department by local authorities, the National House Building Council, and independent inspectors and are subject to revision.

The latest data from DCLG shows that housebuilding in England has performed strongly in the second quarter of 2017, continuing the momentum started in the second half of 2016.

Overall, **40,310 dwellings were completed between April and June 2017**, up from 39,450 between January and March.

However, looking at the 4-quarter moving average (above), **starts and completions are still below pre-recession levels.**

Development will need to increase substantially if the Government's manifesto pledge of delivering 1,500,000 dwellings by the end of 2022. ■

LICHFIELDS

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Law

In the courts

Inconsistent and unlawful Secretary of State decision quashed

Outline planning permission granted by the Secretary of State (SoS) for development of up to 50 dwellings and associated development on land at Mitchelswood Farm, Newick, has been quashed in the High Court, following a successful s288 challenge by Baroness Cumberlege of Newick and her husband.

Ground 1 of the challenge related to inconsistency: the SoS had considered that policy CT1 - which defines development boundaries - of the Lewes District Local Plan was up-to-date in the September 2016 'Ringmer decision', but out-of-date in the November 2016 Mitchelswood Farm 'Newick decision'. In both decisions, the SoS had accepted the recommendations of each Inspector regarding whether or not policy CT1 was out-of-date.

Ground 2 of the challenge related to an error of fact.

Regarding ground 1, the SoS conceded that he had not taken the Ringmer decision into account when determining the Newick proposal, and that the decision should be quashed. However, Counsel for the developer contended that the Ringmer decision was not a material consideration for the Mitchelswood Farm appeal.

John Howell QC, sitting as deputy High Court judge, considered the various legal authorities for the tests to be applied when determining if a decision may be invalid because no regard had been given to a matter that is capable of being material, when the planning application is determined (where consideration of that matter is not required by law). He concluded that the test is whether no reasonable decision-maker in the circumstances would have failed to take that matter into account, rather than the test of matters being 'so obviously material' to a particular decision 'that anything short of direct consideration of them [...] would not be in accordance with the Act'.

The judge also found that there is a public interest in securing reasonable consistency in the exercise of administrative discretions: consequently, not taking into account decisions that might have a bearing on another decision may be unreasonable. It would not be reasonable for the SoS to be aware of every SoS decision ever made, but (he continued):

'[...] the steps the SoS ought reasonably to take to avoid apparently inconsistent decisions matters that may have ramifications for other cases may be greater, and the obligation to explain any reasons for a different approach in such cases (rather than allowing others to infer what they may be) may be more stringent in practice, than the steps and explanation that might be reasonably required of an inspector with respect to decisions of other inspectors.'

According to the judgment, given that one of the functions of the SoS for Communities and Local Government (CLG) in terms of the public interest is to secure some degree of coherence and consistency in development control, no reasonable SoS for CLG would fail to take reasonable steps to ensure that his own decisions on the same class of case are not apparently inconsistent at least in the same district (including decisions made after the close of an inquiry).

It was also found that no reasonable decision-maker could not have taken the Ringmer decision into account when determining Newick, and if the SoS had been aware of the Ringmer decision he 'could not have failed to provide reasons why his conclusion in that decision, that Policy CT1 was up-to-date and that the "tilted balance" should not be applied in that case, should not equally be reached in the Newick decision, if that was his conclusion'.

The developer sought for the planning permission to be considered unlawful rather than quashed, but the transcript states:

'Not to quash an unlawful grant of planning permission when the court is not satisfied that the result would necessarily have been the same would put [...] public interest at risk.'

With regard to Ground 2, both the Inspector and SoS erroneously considered the appeal site to fall outside

the 7km zone of influence of a Special Protection Area and Special Area of Conservation. The Deputy Judge concluded that whilst it would be possible to site the new development outside of the zone of influence, a condition was not attached to the planning permission to control this, and as the planning permission as such was in breach of the requirements of Regulation 68(3) of the Conservation of Habitats and Species Regulations 2010, for this reason alone it must be quashed.

Comment: This lengthy judgment sets out case law relating to the determination of whether or not a consideration is material, the validity of a decision if a consideration capable of being material is not taken into account, and to consistency in decision making.

Judge overturns Secretary of State dismissal of appeal for 180 homes in Winsford, Cheshire

By way of background to this High Court case (Richard James Verdin (t/a the Darnhall Estate) and the Secretary of State for CLG and Cheshire West and Chester Borough Council and Winsford Town Council) and in July 2016, the then Communities Secretary Greg Clark dismissed an appeal for 180 new homes on land off Darnhall School Lane, Winsford, Cheshire. The appeal was dismissed against the Inspector's recommendation for it to be allowed and planning permission granted (following a local inquiry in June 2014, and a reopened inquiry in September 2015).

The SoS' decision was challenged on multiple grounds by the appellant, a local landowner; the focus was on the proposed conditions to be attached to the planning permission that had been almost entirely agreed in advance with the local planning authority.

In the transcript of the case dated 10 August, High Court judge Robin Purchas QC ruled that the Communities Secretary had failed to give 'any rational explanation' as to why he had concluded in his decision that a planning condition intended to promote local training and employment opportunities should not be attached to a planning permission. ►►

The judge concluded:

'Given the absence of evidence of difficulty in enforcement or any objection on the grounds of lack of precision and the apparent inconsistency with the acceptance of similar conditions on other appeals, in my judgment the First Defendant was here under a duty to provide more by way of reasons as to why he had concluded that there was the insufficient precision or the difficulty in enforcement and detection. That would enable the parties and the court to determine whether there was indeed a rational or lawful basis for the decision. That is reinforced by the absence of any rational explanation to support the reasons submitted to this court. In my judgment the inadequacy of the reasons has substantially prejudiced the Claimant and this ground should therefore succeed. I should make clear that in my judgment the condition did potentially go to the weight to be attached to the economic and social dimensions of sustainability and accordingly would have been material in forming part of the overall planning balance.'

Policy

Policy and guidance

Updated: 'You've got the power: a quick and simple guide to community rights'

DCLG's guide to community rights was updated on 17 August; it was first published in September 2013.

The Guide provides a simple step-by-step overview of rights that have been introduced to give people more power over what happens in their neighbourhood. Of particular relevance to planning, it includes guidance on neighbourhood planning and assets of community value.

Draft and proposed policy and guidance

Revised NPPF to include policy for planning for Build to Rent

DCLG published 'Planning and affordable housing for Build to Rent: summary of consultation responses' on 3 August, following on from the consultation paper issued alongside the Housing White Paper, 'Fixing our Broken Housing Market' in February this year.

The summary document states that 'there was a general consensus view in support of many of the key proposals which were floated in the consultation' and:

'There was also clear support for a national approach on build to rent to be set out and consolidated in planning policy.'

DCLG acknowledges that there was however 'no consensus on the definition of build to rent and affordable private rent'. No clear cut position emerged for either. Similarly, there were varied results in respect of the parameters for operating affordable private rent.

With regard to 'next steps', the following is therefore confirmed:

'The Government will now consider how to take forward the policy area in the light of these results. Where any points of uncertainty have emerged, the Government plans to probe the issues over the coming months, including updating our equalities analysis, to better understand concerns and to resolve them. The aim will be to use the results of this process to input into future proposals for revising the National Planning Policy Framework (and associated Guidance).'

Highlighting the Government's support for Build to Rent, it was announced by Housing Minister Alok Sharma on 3 August that a £65 million Government loan had been awarded to a 7,600-unit development at Wembley Park in Brent, west London. More than 6,800 of these homes will be for rent.

The Minister said:

'Whether renting or owning all families should have the security they need to be able to plan for the future. That's why as part of our plan to fix the broken housing market we've been taking action to create a bigger and better private

rental market, supporting new Build to Rent developments so that tenants can have greater choice.'

Sport England consultation on planning policy and guidance

On 9 August, Sport England launched a consultation on its programme of work to update its core planning policy and guidance. To support this initial stage of the work, Sport England is seeking views on two draft documents, namely:

- An updated version of their Aims and Objectives Guide;
- A new Playing Fields Policy and Guidance document (to update the current 'Planning Policy Statement: A Future for the Playing Fields of England').

The consultation period ends on 21 September.

Government reports

Ombudsman publishes league table on planning complaints

On 2 August, the Local Government and Social Care Ombudsman published details of the complaints it had received about all local authorities in England in 2016/17.

2,336 related to planning and development; the greatest proportion related to education and children's services (2,983), followed by adult social care (2,555). According to the figures, the most planning and development-related complaints and enquiries related to Cornwall Council (53), closely followed by Cheshire East (45).

House of Commons Papers

New parliamentary briefing papers cover the following topics:

- affordable housing (explaining its definition, and looking at key trends in the affordability of different tenure types, supply, and the role of housing benefit in accessing and retaining affordable housing)
- the correlation between migrants and housing
- High Speed 2 (HS2) Phase 2a
- High Speed 2 (HS2) Phase 2b and beyond ►►

New housing design (a debate pack outlining design policy and issues, and providing details of some of the media and parliamentary coverage, pending MPs debating new housing design in Westminster Hall on 5 September).

Neighbourhood planning update

Renewal of early neighbourhood forum and area designation: first of many?

The London Borough of Sutton is currently consulting on the re-designation of the Hackbridge and Beddington Corner Neighbourhood Area and Forum.

The neighbourhood planning group was selected in 2011 as one of DCLG's 17 neighbourhood planning frontrunners; its powers are due to expire in September.

Garden towns update

DCLG announces £20 million infrastructure funding to boost new housing

On 10 August, DCLG announced £20m in grant funding for 'critical' infrastructure projects to help the delivery of the following large scale housing developments:

- £6.2m to accelerate the delivery of Didcot's Northern Perimeter Road, to help with the delivery Didcot Garden Town, a 'locally-led development which aims to build over 15,000 homes by 2031';
- £2.6m for the regeneration of Poole Power Station in Dorset;
- £1.25m to fund infrastructure in the Waterside area of Nottingham; and
- £9.6m for the development of Parkhurst Urban Village on the Isle of Wight.

Other news

Grenfell inquiry update

On 10 August, Chair of the Grenfell Tower Inquiry Sir Martin Moore-Bick wrote to Prime Minister Theresa May setting out the inquiry's proposed focus; the Prime Minister has since replied.

His letter spells out why an examination of social housing policy ('and all aspects of the relationship between the residents of the Lancaster West Estate on the one hand and the local authority and the tenant management organisation on the other') is not proposed. First, he states, 'there is an obvious need for my inquiry to complete its work as quickly as possible' and secondly:

'...the inclusion of such broad questions within the scope of the inquiry would raise questions of a social, economic and political nature which in my view are not suitable for a judge-led inquiry.

They are questions which could more appropriately be examined by a different kind of process or body, one which could include persons who have experience of the provision and management of social housing, local government finances and disaster relief planning. It could operate in parallel with the inquiry and would be welcomed by many.'

The Prime Minister's reply of 15 August accepts in full his terms of reference and states with regard to the wider consideration of issues of social housing:

'Government will now consider how best to address the issues of social housing you have raised. What is clear is that there are a number of concerns, which have gone unheard for too long. The Housing Minister, Alok Sharma, will personally meet and hear from as many social housing tenants as possible both in the immediate area around Grenfell Tower, but also across the country, to help build up a comprehensive picture of some of the immediate issues facing tenants, as well as to identify any common concerns that must inform any national approach. There will be a further announcement on this work shortly.'

Communities Secretary Sajid Javid has since written (on 22 August) to 'residents', confirming the above outcome:

'As many of you will have seen, the Grenfell Tower Public Inquiry has now published its term of reference. We understand that many of you were frustrated that the wider subject of social housing more generally was not included in these. Sir Martin Moore-Bick gave his recommendations to the Prime Minister, and provided clear reasons why

he believed that the scope of the inquiry should not consider wider issues, and she accepted this.

Sir Martin wanted to ensure that conclusions could be reached as quickly as possible to ensure that lessons could be learnt, and acted on by the government with immediate effect. If the public inquiry was extended to cover wider social housing, the Chair was not confident that conclusions would be reached quickly [...] This, along with other reasons set out in his letter to the Prime Minister, is why wider questions of social housing have not been included in the Public Inquiry terms of reference. Instead, the Prime Minister has asked Alok to listen to the concerns of social residents across the country and we will then develop proposals to deal with issues identified. We hope this reassures you that this important topic is being taken seriously by government ministers.'

New cross-government partnership for 'Land Release Fund'

On 1 August, the Government launched a £54 million funding package for land remediation and small-scale infrastructure, intended to 'ensure local councils release some of their unused or surplus land for housing'.

The 'Land Release Fund' is providing £45m by way of a partnership arrangement between DCLG and the Cabinet Office; the objective is to attract bids to 'help to meet the ambition to unlock enough council-owned land for at least 160,000 homes by 2020', by making 'smarter use' of government-owned property.

The Local Government Association's 'One Public Estate' is making a further £9m available 'to support more councils to deliver ambitious property-focused programmes'.

Details of HCA land to be sold by June 2018

The Homes and Communities Agency – soon to be relaunched as 'Homes England' – has released (on 1 August) its 'Land Development and Disposal Plan 2017 to 2018 – June 2017 update' (LDDP), an updated list of land to be sold and developed over the coming year. ►►

The LDDP details over 300 hectares of land already on the market, and a further 990 hectares intended to be brought to market. The sites are for a mix of residential and commercial development.

The LDDP is designed to give house builders and developers an overview of the landholdings that the HCA expects to bring forward for development and/or disposal and to 'provide transparency' on the Agency's approach to the disposal of land. It will be updated on a 6 monthly basis.

'Healthy New Towns' winner

The winner of an NHS international competition was announced on 22 August as being Citiesmode, with its vision for Halton Lea, one of the ten 'healthy new towns demonstrator sites' selected in March last year. The aim of the Healthy New Towns Programme is 'is to reduce pressure on the NHS by rethinking our lifestyles and the way health services are delivered'.

The plan for 'Halton Connected' includes:

- 'An urban obstacle course connecting public gym equipment and sprinting tracks marked out on safe pavements.
- A nursery farm for children to learn about where food comes from and pick up healthier eating habits.
- Developers providing house buyers and tenants with free bikes in order to cut car use and promote cycling.
- Universal Wi-Fi so residents can use new technology to health services from home, such as online GP consultations which NHS England is backing to the tune of £45m.
- Converting a car park into a new community square with outdoor cinema, offering more chances to socialise, boost Halton's sense of community and improve mental health.
- Designs for multigenerational living that bring care for the elderly and children under one roof.'

New listings as Historic England celebrates 70 years of protecting England's historic buildings

It was announced on 7 August that five heritage assets had been newly listed, to mark Historic England's 70 years of protecting England's historic buildings; a new blog looks at an interesting listing for each of the 7 decades.

Northern Cultural Regeneration Fund to boost region's tech, creative and cultural industries

It was announced by DCMS on 4 August that towns and cities across Northern England will be able to bid for a share of a new £15 million fund to help build 'a lasting regional legacy' from the Great Exhibition of the North that is to be held in Newcastle and Gateshead next year.

The intention is that the Fund will also help to 'pave the way for future investment in the Northern Powerhouse'.

Bids have to be submitted by 30 November; awards will be announced by the end of March 2018. ■