

Thames Valley planning news

SEPTEMBER 2017



© Tejvan Pettinger

Headline news

Local plan progress in the Thames Valley

Local Plan preparation in the Thames Valley has continued over the summer, with the Buckinghamshire district councils of Aylesbury Vale, Wycombe, Chiltern and South Bucks (alongside the Buckinghamshire Thames Valley Local Enterprise Partnership) entering into a revised Memorandum of Understanding (MOU) in July. The agreement provides greater certainty regarding housing distribution figures and unmet need to be apportioned throughout the housing market area (HMA). The housing need figures within the Buckinghamshire HMA remain unchanged, and the councils have agreed objectively assessed housing need figures for their respective plan periods.

In addition, the following has been agreed that over the respective plan periods to 2033: Aylesbury Vale will accommodate 27,400 homes (for the period 2013-33); Chiltern and South Bucks 7,175 homes (2014-2033); and Wycombe 10,925 homes (2014-33). Accordingly, the councils have now agreed that the Vale of Aylesbury Local Plan will accommodate 5,725 of the Chiltern and South Bucks housing requirement and a further 2,275 homes from Wycombe's housing requirement over this period.

It is important to note, however, that the housing distribution figures agreed within the MOU do not take into account Slough BC's option of a proposed northern expansion of Slough into the South Bucks Green Belt, to accommodate some of Slough's housing requirement, to which Chiltern District Council

and South Bucks have raised concerns. The councils must continue to discuss the matter of Slough's unmet housing in order to meet the duty to cooperate. Furthermore, Slough is seeking to agree an MOU with the Royal Borough of Windsor and Maidenhead (RBWM) to address Slough's concerns regarding the submission version of the RBWM local plan (see below) (Slough Council discussed this matter at a meeting in August).

While, the Buckinghamshire MOU marks considerable progress for the Buckinghamshire authorities, the councils also anticipate the publication of an updated Bucks Housing and Economic Development Needs Assessment (HEDNA) in early September.

Extension of Windsor and Maidenhead Local Plan consultation

Following concerns raised by a local residents' group, RBWM has announced that the closing date for consultation on the submission version of its Local Plan ('Regulation 19 consultation') has been extended to 27 September 2017.

RBWM previously announced the commencement of the Regulation 19 consultation on 30 June 2017, with a closing date of 25 August. However, having obtained legal advice, a local residents' group contended that the Borough's approach to the Regulation 19 consultation was unlawful, unduly restrictive and failed to comply with other legal requirements.

National news

Inconsistent and unlawful Secretary of State decision quashed

An outline planning permission granted by the Secretary of State (SoS) for development ►►

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

The Buckinghamshire councils' agreement regarding the distribution of the Bucks HMA's housing requirement is a positive step forward for local plan preparation and housing delivery in the Thames Valley. However, unresolved matters regarding Slough Council's development ambitions for land in South Bucks indicate that this is by no means the end of the story.

Daniel Lampard, Senior Director and Head of Thames Valley Office

CONTACT US

Daniel Lampard
daniel.lampard@lichfields.uk
T: 0118 334 1920

Margaret Baddeley
margaret.baddeley@lichfields.uk
T: 020 7837 4477

Jennie Baker
jennie.baker@lichfields.uk
T: 020 7837 4477

LICHFIELDS

Disclaimer

This publication has been written in general terms and cannot be relied on to cover specific situations. We recommend that you obtain professional advice before acting or refraining from acting on any of the contents of this publication. Lichfields accepts no duty of care or liability for any loss occasioned to any person acting or refraining from acting as a result of any material in this publication. Lichfields is the trading name of Nathaniel Lichfield & Partners Limited. Registered in England, no. 2778116. Registered office: 14 Regent's Wharf, All Saints Street, London N1 9RL © Nathaniel Lichfield & Partners Ltd 2017. All rights reserved.

of up to 50 dwellings and associated development on land at Mitchelswood Farm, Newick, has been quashed by the High Court, following a successful s288 challenge by Baroness Cumberlege of Newick and her husband.

Ground 1 of the challenge related to inconsistency in the SoS' decision-taking: he had considered that policy CT1 in the Lewes District Local Plan - which defines development boundaries - was up-to-date in the September 2016 'Ringmer decision', but out-of-date in the November 2016 Mitchelswood Farm 'Newick decision'.

John Howell QC, sitting as deputy High Court judge, ruled that when determining if a decision may be invalid (because there has been no consideration of a matter capable of being material when the planning application was determined), the test to be applied is whether no reasonable decision-maker in the circumstances would have failed to take that matter into account.

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

With regard to Ground 2 (relating to an alleged error of fact), both the Inspector and the SoS had erroneously considered the appeal site to fall outside the 7km zone of influence of a Special Protection Area and a 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 to this effect. As such, the planning permission was in breach of the requirements of Regulation 68(3) of the Conservation of Habitats and Species Regulations 2010, and for this reason alone had to be quashed.

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.

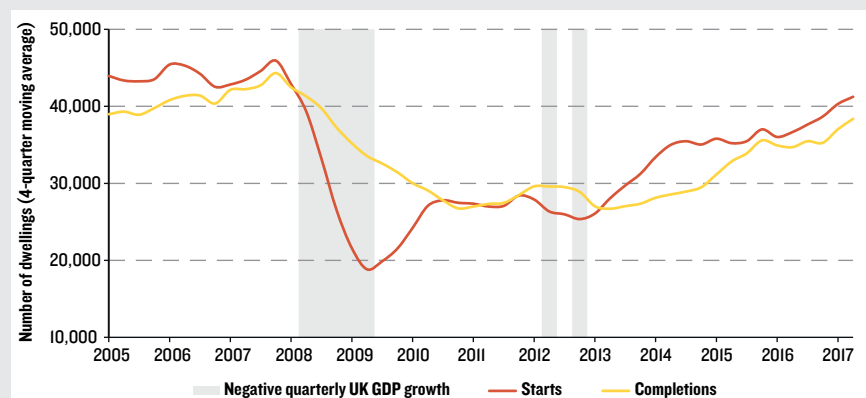
Housing and Planning Minister Alok Sharma highlighted these latest figures on 24 August, while at the same time confirming that the proposals in the

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.'

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.

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 (SoS) 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 Secretary of State's 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.'

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.'

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'. ■