

South West planning news

DECEMBER 2017



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Headline news

Final Inspector report issued for the Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury

The final Inspector's report on the examination into the Joint Core Strategy (JCS) for Gloucester, Cheltenham and Tewkesbury was published on 26 October 2017, together with the final schedule of main modifications. This report completes the examination of the Joint Core Strategy following its submission to the Secretary of State in November 2014.

The next stage is for the Inspector's conclusions, covered in the final report, to be considered by the three Councils at full council meetings. Gloucester City Council's meeting took place on 23 November, and Members voted in favour of the strategy. Tewkesbury Borough Council will meet on 5 December, and finally Cheltenham Borough Council will meet on 11 December. If all three Councils vote in favour the JCS will be formally adopted.

National news

Autumn Budget

On 22 November, the Chancellor of the Exchequer delivered the 2017 Autumn Budget.

Announcements badged as housing include proposals relating to developer contributions, a reaffirmation of the Government's commitment to the Green Belt, and other measures which are potentially of wider interest.

Retail and commercial property continues to be considered an untapped

source of housing land. Policies supporting conversion or redevelopment - and the extension of permitted development rights for commercial buildings to include demolition and rebuild - are to be consulted on, as well as the following:

- 'strengthening policy to be clear that allocated land should be taken out of a plan if there is no prospect of a planning application being made';
- 'a policy expectation that local planning authorities permission land outside their local plan [other than Green Belt land], on the condition that a high proportion of the homes are offered for discounted sale for first-time buyers, or for affordable rent' - a policy which would seem to be at odds with the plan-led approach strongly advocated by Government;
- minimum densities for housing development in city centres and around transport hubs (not defined), with greater support for the use of compulsory purchase powers for site assembly; and
- measures intended to allow earlier starts on-site post-planning permission, to include: strengthening the Housing Delivery Test proposed in the *Housing White Paper*; expecting local authorities to bring forward 20% of their housing supply as small sites; and removing the exemptions from the types of planning condition that benefit from deemed discharge rules.

The following measures were committed to:

- the community infrastructure levy (CIL) will not be replaced by the 'Local Infrastructure Tariff' proposed in the independent CIL review but a Strategic Infrastructure Tariff similar to Mayoral CIL in London will be introduced for use by Combined Authorities and planning joint committees. Details of the proposed amendments to CIL that are to be consulted on are set out in this Lichfields' blog; ►►

QUOTE OF THE MONTH



Some councils – most in fact – are doing very well. [...] But too many still leave much to be desired. [...] 15 authorities have left me with no choice but to start the formal process of [local plan] intervention that we set out in the white paper. [...] To the other authorities who are lagging behind, don't think for one minute that you've got away with it.

Communities Secretary Sajid Javid's speech on the housing market, Bristol, 16 November 2017

THE LICHFIELDS PERSPECTIVE

There has inevitably been a mixed reaction to the planning-related proposals in the Budget. Some of them should help increase housing supply, but further planning reform represents continued uncertainty for the development sector, and allows no time for previously proposed changes to be introduced, let alone be tested and bed down

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- five 'new' garden towns (one or more potentially being in the Oxford – Milton Keynes – Cambridge corridor);
- support for 'more strategic and zonal planning approaches through housing deals in the South East', in addition to the housing deal negotiations elsewhere; and
- use of the Government's purchasing power 'to drive adoption of modern methods of construction', with a 'presumption in favour of off-site construction by 2019 across suitable capital programmes, where it represents best value for money'.

There were also several announcements relating to local growth and devolution in England, including £80 million for transport projects in the West of England, and a reference to the ongoing West of England housing deal.

Lichfields' Economic Outlook provides further Budget analysis, including details of additional monies for various housing, planning, and infrastructure funds.

Correct interpretation of development plan policies

A recent Court of Appeal case emphasises the importance of accurately interpreting development plan policies.

In *Harvey, R (On the Application Of) v Mendip District Council*, an outline planning application was made to Mendip District Council for a site in the hamlet of North Wootton; the outline planning permission subsequently granted was for 'up to 6 affordable homes and 1 open market dwelling house'. The relevant development plan policy criterion (in rural exception sites' Policy DP12) states:

'1. As an exception to normal policy for the provision of housing set out in Core Policies 1 and 2, affordable housing for local people may be permitted in locations adjoining existing rural settlements on small sites where development would not otherwise be permitted where:

'a) the development will provide affordable homes that meet a clearly identified need for affordable housing as identified in the latest Local Housing Needs Assessment specific to that settlement...'

The most up to date Local Housing Needs Assessment for North Wootton identified a need for 5 affordable houses. When the planning application was determined, councillors had concluded that the proposal was in accordance with development plan policy but their decision was challenged by Mr Harvey. The High Court rejected the claim, on the basis that Policy DP12 did not necessitate a rigid approach and that a planning judgment could lead to the conclusion that 'up to 6' affordable homes met the identified need for 5 such houses. Although the Judge refused permission to appeal, Mr Harvey was subsequently granted the necessary permission to appeal.

The Court of Appeal applied *Tesco Stores Ltd v Dundee CC, Hopkins Homes Ltd v Secretary of State and R (Cherkley Campaign Ltd) v Mole Valley DC*, with Lord Justice Sales accepting Mr Whale's submissions, concluding that Policy DP12 only permitted planning permission to be granted for up to 5 affordable homes. Mendip Council's Planning Board had therefore erred in law. Lord Justice McFarlane agreed; the appeal was allowed and planning permission quashed, with costs.

Javid asks 15 councils to explain why no up to date local plan ... and halts progress on another near to adoption

In his wide-ranging house building speech made on 16 November, Communities Secretary Sajid Javid also put 15 authorities on notice that in the continuing absence of an up to date local plan – and no reasonable justification for that absence – he would be left with 'no choice but to start the formal process of intervention that we set out in the White Paper'.

On the same day, a written ministerial statement was made in the House of Commons, confirming this course of action, and the Communities Secretary wrote to each of the 15 councils involved (Basildon, Brentwood, Bolsover, Calderdale, Castle Point, Eastleigh, Liverpool, Mansfield, North East Derbyshire, Northumberland, Runnymede, St Albans, Thanet, Wirral and York), informing them directly of his intentions.

The councils now have an opportunity to respond by 31 January next year, citing any mitigating circumstances; the SoS will then make a final decision.

Other local news

Bristol Council makes viability assessments public

Bristol City Council has started publishing all viability assessments submitted by developers in full. The Council put the new policy into practice for the first time at a meeting of its Development Control Committee on 8 November. It follows similar moves by Greenwich and Southwark councils in London.

Viability assessments accompanying development proposals have come increasingly under the spotlight, particularly in recent weeks after an investigation by housing charity Shelter found that 2,500 affordable homes had been dropped from developments following the tests.

Dorset super-councils proposal wins government endorsement

Plans to merge Dorset's nine councils into two have been endorsed by Communities Secretary Sajid Javid, who has said that he is 'minded' to implement the reorganisation.

The proposal will remove the two-tier system across most of the rural county and replace it with two unitary authorities, one serving Bournemouth, Poole and the Borough of Christchurch, and the other serving the remainder of the County area. Following the passing of legislation through Parliament to change the council structure, the new councils would begin delivering services in April 2019. ■