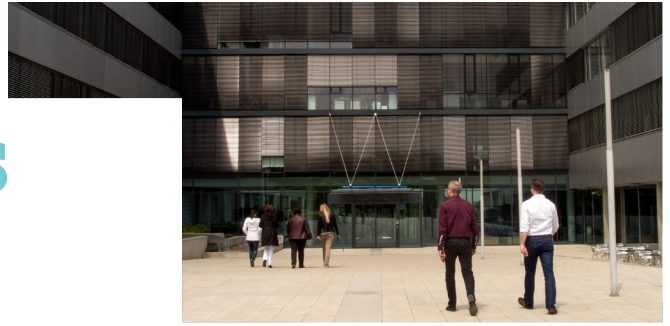


# Commercial planning news

DECEMBER 2017



## Headline news

### Autumn Budget

On 22 November, the Chancellor of the Exchequer delivered the 2017 Autumn Budget. The Chancellor said that the Government had taken a 'balanced approach', which included 'building the homes that will make good on our promise to the next generation'.

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.

- Commercial and retail property continues to be considered an untapped source of housing land. Policies supporting conversion or redevelopment - and the extension of permitted development rights (PDRs) for commercial buildings to include demolition and rebuild - are to be consulted on, as will 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 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 planned approach strongly advocated by the 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 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;
- 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.

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

## QUOTE OF THE MONTH



I do believe in localism above all else, which is why I've been willing to tolerate those who took their time to get the process moving [...]. But [...] 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, 16 November 2017**

## THE LICHFIELDS PERSPECTIVE

The Government's continued focus on seeking to address housing need is of course welcome. But 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.

**James Fennell, Chief Executive**

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## Industrial Strategy White Paper

In planning terms, the Industrial Strategy White Paper that was unveiled on 27 November reiterated many of the planning-related proposals already announced in the Budget and earlier in November.

For example, it refers directly to the Budget's proposals, which in turn references the Housing White Paper and DCLG's recently closed consultation on, 'Planning for the right homes in the right places: consultation proposals' – it mentions:

'...planning reforms to make more land available for housing, and better use of underused land in our cities and towns.'

Further details and analysis are provided in [this blog](#).

## Change of use provides almost a tenth of net additional dwellings

DCLG released new housing supply figures on 16 November, showing that the number of new homes provided in England has risen by 15% in the past year. More than 217,000 homes were added to England's housing stock in 2016/17, including some 17,750 in office-to-residential PDR projects. In total, 9% of total net additions arose from PDRs; more than half of the changes of use were as a result of PDRs (51%).

## Javid asks 15 councils to explain why no up to date local plan

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 (WMS) 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.

Of relevance to this move, the provision in the Neighbourhood Planning Act 2017 (NPA) that will give the Communities Secretary the power to direct preparation of joint development plan documents will be brought fully into force (s9 see Autumn Budget (para 6.2)). Government will 'shortly' lay Regulations under s12 of the NPA, to prescribe that LPAs must review their plans every five years. Lastly, s8 of the NPA, which places a requirement on LPAs to have plans in place that set out policies that address their strategic priorities, based on the National Planning Policy Framework (in para. 156), will be commenced (see 16 November WMS).

## Re-consultation on amended planning application

In *Holborn Studios Ltd. v LB Hackney and GLH (Eagle Wharf) Ltd.*, heard in the Planning Court, Judge John Howell QC sitting as a deputy High Court judge, ruled that Hackney Council had unlawfully granted planning permission to Galliard Homes for a scheme that included the demolition of Holborn Studios, a photographic studios complex at Eagle Wharf, on the south side of the Regents Canal.

The claimant's complaints included the argument that, unfairly and unreasonably, neither they nor the public had been notified of, or consulted on, amendments made to a planning application that was subsequently granted planning permission.

In deciding that both claims for judicial review would succeed, and the planning permission for the development of Eagle Wharf would be quashed, *Bernard Wheatcroft Limited v Secretary of State for the Environment* was cited (the so-called 'Wheatcroft principle' being that the result of imposing a condition must not be a development which in substance is not that which was applied for).

But this latest judgment concludes that Wheatcroft's 'conflation of the substantive and procedural constraints on the powers of the LPA is flawed':

'It is quite possible for a person to be deprived of an opportunity of consultation on a change which would not result in a permission for a development that is in substance not that which was applied for.'

In this particular case, John Howell QC stated that the relevant issue concerned 'the circumstances in which a person is to be regarded as having been deprived of the opportunity of consultation which should have been given if an amendment is to be made'. He added:

'In considering whether it is unfair not to re-consult, in my judgment it is necessary to consider whether not doing so deprives those who were entitled to be consulted on the application of the opportunity to make any representations that, given the nature and extent of the changes proposed, they may have wanted to make on the application as amended.'

This was the question that the LPA had needed to consider when the application was amended, not whether in their view, there was no need to re-consult. ■