Commercial planning news

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Headline news

DCLG's Chief Planner sums up recent planning law and policy reforms, and what's due in 2018

To help the development sector at the start of what will be a busy planning year ahead, DCLG has published a planning update newsletter that helpfully summarises the latest on the Government's programme of planning reform. It was sent by Chief Planner Steve Quartermain to local authority (LA) chief planners on 21 December.

The letter starts with the proposed consultation on a revised National Planning Policy Framework (NPPF) 'early this year'; it will be in place 'before the end of the summer'. There is nothing further on its content but Housing Minister Alok Sharma had already said earlier in December in a Parliamentary Written Answer that the 'definition of starter homes is being finalised' as part of revised Framework. In another Answer, the Minister alluded to the design policy content to be expected.

Moving on to other Autumn Budget-announced measures, the letter explains new regulations that effectively will mean 5 yearly or more frequent local plan review, and other new rules that give neighbourhood planning bodies more say on planning applications, more flexibility in plan review and more resources. LAs will have more planning resources from 17 January too, with a 20% increase in planning application fees, plus new fees e.g. for applications for permissions in principle.

Funding features significantly elsewhere in the Chief Planner's letter too; expressions of interest have to be submitted by 11 January for a share of the new £25 million Planning Delivery Fund, to be used for creating additional LA capacity (including increasing design skills), and for innovating in planning services' delivery. As well as being stated in the Prospectus, and according to Housing and Planning Minister Alok Sharma (as announced via a Written Ministerial Statement), the Planning Delivery Fund will support ambitious councils and third sector organisations in areas of high housing need (also as referred to in DCLG's 'Right homes, right places') to plan for new homes and infrastructure.

Infrastructure funding is confirmed as set to change further and in line with Autumn Budget proposals, with a consultation on community infrastructure levy (CIL) reforms to 'be issued in due course' (CIL amendment regulations should in the meantime help deal with a problem regarding s73 permissions and indexing).

The Housing White Paper's housing delivery test is making some, albeit slow progress, with LAs having this month to provide DCLG with an up-to-date record of local plan figures to measure delivery against.

Other updates covered include permitted development right (PDR) changes of use from light industrial to residential, brownfield land registers, compulsory purchase and electricity storage systems.

Planning applications fee increases from 17 January

An increase to planning-related fees of approximately 20% applies to applications etc. being submitted on or after 17 January, when the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017 come into force.

The Regulations follow a Housing White Paper commitment to LPAs to apply this increase to fees, provided that they confirm investment of the additional income in their ▶▶

QUOTE OF THE MONTH

I reiterate that it is vital we have well-resourced, effective and efficient local authority planning departments to provide new homes and deliver economic growth, as the hon. Gentleman set out. We expect local authorities to match the recommended fee increases with an ongoing improvement of service when handling planning applications.

Minister for Housing and Planning Alok Sharma, in a House of Commons debate on draft amendments to planning application fee regulations, 13 December 2017

THE LICHFIELDS PERSPECTIVE

The long-awaited increase to planning-related fees is a welcome start to 2018, provided that it achieves the anticipated – and corresponding – improved resourcing of planning departments and raised levels of staff retention.

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planning departments. According to the Explanatory Memorandum:

'These Regulations increase the fees for planning applications by 20% and increase the fee ceilings by 20% for those local authorities that have committed to invest the additional fee income in their planning departments. This commitment has been made by all local planning authorities in England.'

In addition to the general increases in fees, the following are to be introduced:

- Fees for planning applications where only required because PDRs have been removed by an Article 4 Direction or a planning condition;
- Fees for pre-application advice from Mayoral and Urban Development Corporations;
- Fees for prior approval applications relating to the PDRs introduced in April 2015 and April 2017. As the Chief Planning Officer letter (see above) explains:
  'These include the rights for the installation of solar PV equipment on non-domestic buildings, the erection of click-and-collect facilities within the land area of a shop, the temporary use of buildings or land for film-making purposes and the provision of temporary school buildings on vacant commercial land for state funded schools.'
- Fees for permission in principle (PIP) applications (which may be submitted from 1 June 2018, see below), and non-material amendments to PIPs.

A transitional provision applies to applications or requests made, or site visits taking place, prior to 17 January 2018.

The Government's consultation on a further 20% increase to planning fees being applied to those LPAs 'delivering the homes their communities need', or in other circumstances, closed on 9 November 2017. DCLG is currently reviewing responses.

By virtue of Regulation 19 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, the government was required to publish a review of those Fee Regulations against their objectives before 21 November 2017; we are not aware that this has been published yet.

Local plan reviews required every 5 years or less, from 6 April

The Town and Country Planning (Local Planning) (England)(Amendment) Regulations 2017 have been made and laid before Parliament; they are accompanied by a lengthy Explanatory Memorandum.

From 6 April, local planning authorities (LPAs) must review their local plans and statements of community involvement every five years, starting from the date of adoption.

From 15 January, further to the SoS power in the Neighbourhood Planning Act 2017 to direct two or more LPAs to prepare a joint development plan document (e.g. a local plan), Regulation 8 prescribes the meanings of jointly prepared development plan documents that can be taken forward by one or more LAs, after a SoS direction has been withdrawn or modified. It is of note that the Explanatory Memorandum states how:

'...the Government indicated at the Commons Committee stage of the Neighbourhood Planning Bill 2017, the power related to joint planning is likely to be used only rarely and in reality be deployed after detailed consideration of the individual case, and used where agreement between authorities is remote.'

Neighbourhood planning changes in force from end of January

Coming into force on 31 January, the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2017 amend 2012 Regulations to apply the existing procedure for making a neighbourhood development plan (NDP) to plan modification.

The Regulations implement s4 of the Neighbourhood Planning Act 2017, which inserts Schedule A2 into the Planning and Compulsory Purchase Act 2004, to deal with the modification of NDPs in a similar way to new plans (as in Schedule 4B to the Town and Country Planning Act 1990). Transitional arrangements relating to proposals for NDP modification submitted to an LPA before 31 January mean that existing requirements for modification continue to apply – i.e. the same process has to be followed as for making a new plan. The Explanatory Memorandum accompanying the amendment Regulations explains:

'The main differences between the existing modification procedure and new procedure introduced by this instrument is that under the new procedure the recommendations of the independent examiner of a plan will, in most cases, be binding and there will be no referendum before a modified plan comes into legal force.'

In addition, Regulation 12 amends the Town and Country Planning (Development Management Procedure) (England) Order 2015, as a result of changes to the notification of applications to neighbourhood planning bodies, further to s2 of the Neighbourhood Planning Act 2017. The Explanatory Memorandum accompanying the amendment Regulations explains the change:

'LPAs must automatically notify qualifying bodies of any future planning applications or alterations to those applications in the relevant neighbourhood area where there is an advanced neighbourhood plan and the qualifying body has not confirmed in writing to the LPA that it does not wish to be notified.'

Community infrastructure levy amendment deals with s73 and indexation issue

The draft Community Infrastructure Levy (Amendment) Regulations 2018 have been laid before the House of Commons, for approval by resolution in accordance with s222(2)(b) of the Planning Act 2008. They will come into force on the day after the date on which they are made.

The draft Regulations result from a stayed London Borough of Wandsworth High Court case relating to Regulation 128A (inserted by the 2012 CIL (Amendment) Regulations) of the amended CIL Regulations 2010. This Regulation applies to s73 permissions granted after a levy has come into force, where the original permission was granted beforehand, and to indexation. ▶▶

According to the Explanatory Note, the amendment Regulations provide a 'clarificatory amendment':

'Regulation 128A provides for the case where development is granted planning permission (A) before a CIL comes into force in the area and the conditions of that permission are amended by any later planning permission (B) granted under section 73 of the Town and Country Planning Act 1990 where B is granted after a CIL for the area comes into effect. In these cases regulation 128A provides that the development under B is liable to CIL on any additional liability it introduces to the development such as an increase in floorspace (or change of use) compared to the development under A. The amendment to regulation 128A clarifies that when calculating "Y" (the notional amount of CIL payable for development under A), the index figure (for building cost inflation) to be used is the index figure for B.'

Listing selection guides updated by Historic England

In early December, Historic England updated its listing selection guides that outline the selection criteria used when listing buildings.

Since becoming Historic England in 2015, work has been ongoing to update all English Heritage guidance under the Historic England 'banner'; the changes to the guides are considered to be fairly minor but no 'change log' has been issued. Updated selection guides for scheduled monuments and archaeological sites should follow this year.

Heritage Statement launches Government's new heritage strategy

Heritage Minister John Glen announced in a wide-ranging written parliamentary statement made on 5 December 2017 a new Heritage Statement 2017 that sets out the 'direction and priorities for the heritage sector in the coming years'.

The Statement explains how Government wants to strengthen the heritage sector, through regeneration and place making, skills and environment and how it will contribute to an outward-looking global Britain. It is structured around four 'key themes': 'Our heritage creates great places; Our heritage is for everyone; Our heritage is international; Creating a sustainable and resilient heritage sector'.

Of particular relevance for the development industry and to the owners of historic buildings, proposals in the Statement include 'exploring options to strengthen interim protection measures and reduce the risk of damage or destruction to sites while they are being considered for listing'. ■