Housing planning news

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FEBRUARY 2018

Headline news

Draft NPPF revisions due by end of March

The Government's Chief Planner, Steve Quartermain, has written to all local planning authority chief planners in England to advise that a consultation on draft revisions to the National Planning Policy Framework (NPPF) is expected to be launched just before Easter (i.e. by the end of March).

This had already been stated by Melanie Dawes (Permanent Secretary at the Ministry of Housing, Communities and Local Government [MHCLG]) on 15 January, while giving oral evidence to the House of Commons CLG Committee for the inquiry into the Department's Annual Report and Accounts for the last financial year.

Responding to Committee chair Clive Betts' reference to the 'many other consultations on potential changes around planning' (making mention of: 'the major issue of strengthening the housing delivery test'; the 'idea of trying to get planning permissions built out faster'; 'first time buyer-led developments'; and 'the deallocation of sites from plans') - and how these would be pulled together 'in a coherent and sensible way' - she said:

'Our answer is that we will brigade as much as possible of this in the new NPPF, which we expect to be ready for consultation in the next few months. I hope it will be just before Easter or thereabouts. That will include measures on which we have already consulted as individual measures – you will see them then for the final time – and some measures announced in the Budget that have not yet been consulted on, but we will be brigading all that together. Following that final consultation, we will publish and implement the new framework in one piece.'

Reflecting proposals in last year's Housing White Paper, the Government has also confirmed that the draft revisions to the NPPF will include detailed reference to the 'Agent of Change' principle, meaning that developers will be responsible for 'identifying and solving any sound problems, if granted permission to build, and avoid music venues, community and sports clubs and even churches running into expensive issues as a result of complaints from new neighbours'.

DCMS Secretary Matt Hancock said:

'I am thrilled strengthened planning rules will ensure grassroots music venues are protected when new housing is built. These venues give emerging artists a platform to hone their craft, connect to their audience and get discovered.'

Local plan and neighbourhood planning changes now and in July

The Neighbourhood Planning Act 2017 (Commencement No. 3) Regulations 2018 were made on 15 January 2018.

The Regulations commence certain sections of the Act on different dates, specifically:

- in force from 16 January 2018: s8(1) and s8(3) (content of development plan documents [DPDs]); s9 (power to direct preparation of joint DPDs); and s10 and Schedule 2 (county councils' default powers in relation to DPDs)
- in force from 31 January 2018: s2 (notification of applications to neighbourhood planning bodies); s4 (modification of neighbourhood development order or plan) and Schedule 1; s5 (changes to neighbourhood areas etc.) ▶▶

QUOTE OF THE MONTH

Of course, the bleak industrial backdrop that spawned Howard's garden cities has long gone. But the desire for people to live somewhere they can find work, build families, get about easily, and enjoy green space has not.

Secretary of State for Housing, Communities and Local Government Sajid Javid, speaking at the launch of the All-Party Parliamentary Group on New Towns, 17 January 2018

THE LICHFIELDS PERSPECTIVE

The Government is trying to demonstrate that its cross-department, joined-up thinking will boost house building. But its measures will not be enough, at least according to the latest Treasury Committee report; their recommendation to Government is a simple one - councils and housing associations must also be able to build more houses.

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LICHFIELDS

- in force from 31 July 2018: s6 (assistance in connection with neighbourhood planning); and s13(2) (statements of community involvement)

The secondary legislation setting out the detailed processes for implementing these provisions were reported in Lichfields' England Planning News last month – see here.

New consultation on draft regulations for pre-commencement conditions

A four week consultation regarding the draft Town and Country Planning (Pre-commencement Conditions) Regulations 2018 is in progress and will conclude on 27 February.

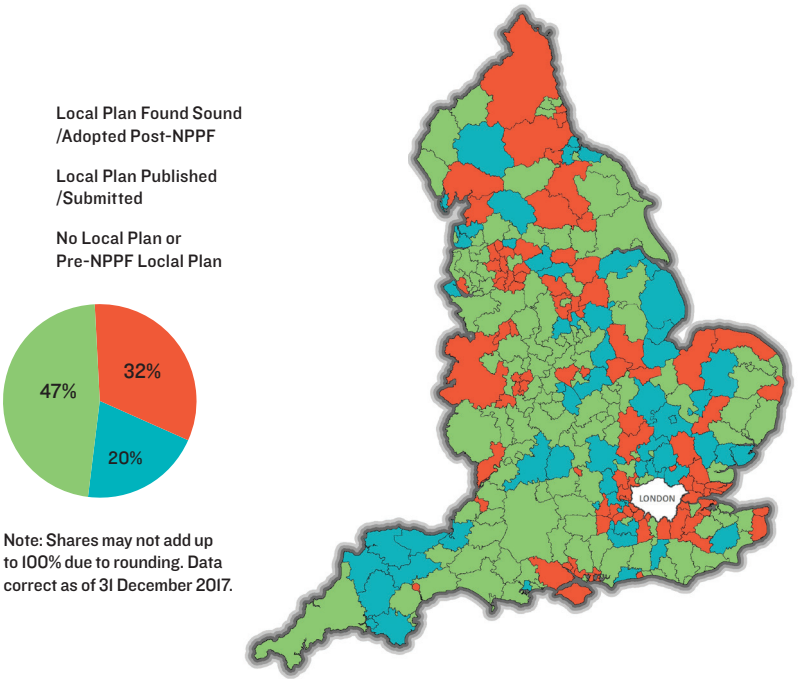
The draft Regulations largely reflect the 'initial draft Regulations' on pre-commencement conditions that were annexed to 'The Neighbourhood Planning Bill: Further information on how the Government intends to exercise the Bill's delegated powers' (published in 2016), and accordingly are broadly as anticipated by the development sector (see our May 2017 blog).

In essence, the draft Regulations mean that the decision-maker will have to give notice of their intention to attach a pre-commencement condition to a planning permission (including a s73 planning permission, an appeal decision, and an appeal against an enforcement notice), and seek the applicant's agreement.

The notice must include the proposed pre-commencement condition, the reason(s) for the condition and reason(s) why it must be a pre-commencement condition. The applicant will have ten days to respond to the notice, after which time a determination may be made and the pre-commencement condition attached if planning permission is granted. A decision may be made earlier, if the applicant responds (agreeing, disagreeing or suggesting amendments to the proposed pre-commencement condition), within the ten day notice period.

The 'initial draft Regulations', which related to the then Neighbourhood Planning Bill's clause 12 proposing restrictions on powers to impose planning conditions in England generally (see the Neighbourhood Planning Act 2017, s14), included draft Regulations regarding limitations on the use of planning conditions (relating to s14 (1-3) as enacted). The new draft Regulations relate only to pre-commencement conditions however, and there is no indication that such limitations on the use of conditions in law, which reflect case law and the 'six tests' national policy (NPPF para 206) in any event, will be subject of the necessary secondary legislation to bring them into force.

Local plan progress – 52% of LPAs do not have a post-NPPF plan



Note: Shares may not add up to 100% due to rounding. Data correct as of 31 December 2017.

Source: Planning Inspectorate, Lichfields analysis

Almost six years have passed since the National Planning Policy Framework's (NPPF) introduction of a "less complex" planning system. However, as of 31 December 2017, **52% of local planning authorities are still without a local plan tested and found sound against national policy**, with the majority of those still to get to the starting blocks of a local plan examination.

An emerging spatial pattern highlights how plan-making is lagging in specific areas, including authorities surrounding Manchester, Birmingham and London, where difficult choices about the Green Belt appear to be halting progress. Each of these – along with a further cluster in Urban South Hampshire (Southampton to Portsmouth) – are having to grapple to how unmet housing needs are addressed.

Planning fees increased by 20% on 17 January, plus new fees added

Also reported by Lichfields last month, planning application fees increased from 17 January, due to the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017 coming into force.

In addition to the general increases, fees have been introduced for:

- planning applications where they are only required because permitted development rights (PDRs) have been removed by an Article 4 Direction or a planning condition;
- pre-application advice from Mayoral and Urban Development Corporations;
- prior approval applications relating to the PDRs introduced in April 2015 and April 2017; and
- permission in principle (PIP) applications (which can be submitted from 1 June this year), and non- material amendments to PIPs.

Written Ministerial Statement on neighbourhood plan weight: challenge by housing developers dismissed in High Court

In Richborough Estates Ltd v Secretary of State for HCLG, heard in the High Court, ▶▶

Mr Justice Dove on 12 January issued an important judgment relevant to housing applications in neighbourhood plan areas. The Written Ministerial Statement (WMS) on neighbourhood planning issued on 12 December 2016 was subject of the claim brought by 25 housing developers for judicial review, together with the resulting amendments to the national Planning Practice Guidance (NPPG) in paragraph 083 of the neighbourhood planning chapter (dated 10 August 2017).

All five grounds of the claim were rejected; it has been reported that the claimants are seeking advice on appealing part of the judgment – in relation to the judge finding that evidence did not establish that there had been an 'unequivocal assurance on the basis of practice that a WMS in relation to national planning policy for housing would not be issued without prior consultation'.

25 Year Plan to improve environment

On 11 January, the Government launched its 25-year environment plan, 'A Green Future: Our 25 Year Plan to Improve the Environment'. The Plan now sits alongside the Government's Industrial Strategy and its Clean Growth Strategy; the intention is that it will be updated at least every five years, although in the first five, it may be updated 'to capitalise on the opportunities of leaving the EU'.

Providing an overview on 17 January, and giving some background, the House of Commons Library has published a briefing paper that looks at the Plan; it summarises both key policy areas and stakeholders' 'mixed' reactions on publication.

In Prime Minister Theresa May's launch speech for the new Plan, she referred to house building and 'protecting and enhancing our natural environment for the next generation', both in the context of 'making good on the promise that each new generation should be able to build a better future' and as 'a fundamental Conservative principle'.

The Plan itself makes reference to how Government will embed an 'environmental net gain' principle for development (including housing and infrastructure); there will be scope for development to 'deliver environmental improvements locally and nationally', to 'enable housing development without increasing overall burdens on developers'. It is not yet at all clear how the principle will work in practice; it may become clearer when 'environmental principles' are consulted on 'early in 2018'.

Specifically on housing and planning, the Plan refers to how 'environmental protections already enshrined in national planning policy will be maintained and strengthened':

- 'new development will happen in the right places [...]
- High environmental standards for all new builds [...]
- Enhancement of the Green Belt to make this land 'breathing space' for our urban populations to enjoy, and our diverse wildlife to flourish, while delivering the homes this country needs.'

One specified Government action is that 'through ongoing MHCLG-led reforms of developer contributions', using tariffs to steer development towards the least environmentally damaging areas and to secure investment in natural capital' will be explored. Another is for promoting sustainable drainage systems (SuDS); the PPG will be amended to clarify requirements and relate them to guidance for biodiversity and water quality. Changing the NPPF to encourage SuDS will only be 'in the longer term'.

Community infrastructure levy amendment regulations provide indexation clarification

The draft Community Infrastructure Levy (Amendment) Regulations 2018 were considered by the House of Commons Legislation Committee on 24 January, a necessary step before they can be made and then come into force. In the Chief Planner's recent letter to local planning authority chief planning officers, he advised that the amendment regulations are 'likely' to be made and come into force this month.

The amendment Regulations relate to Regulation 128A, which provides the transitional arrangements for s73 planning permissions granted where a community infrastructure levy (CIL) charging schedule is in place, but there was no CIL charging schedule in effect when the original planning permission was granted.

As reported last month, the Regulations result from a stayed London Borough (LB) of Wandsworth High Court case relating to Regulation 128A of the amended CIL Regulations 2010, and the application of indexation relating to CIL calculations undertaken using the formula in that Regulation. Housing Minister Dominic Raab said, when addressing the Committee, that the draft Regulations had been 'widely welcomed' (including by LB Wandsworth); they were confirmed by one Committee member as a 'change to bring legislation into line with the original intention of the Government'.

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.'

As for further amendments to the levy, in response to a recent written question relating to CIL, the Housing Minister has said:

'The Government have announced an ambitious package of reforms to CIL and will be consulting on these in due course'. ■