

Town Centres and Retail planning news



FEBRUARY 2018

Headline news

Draft NPPF revisions due by end of March

Reflecting proposals in last year's Housing White Paper, the Government has confirmed that draft revisions to the National Planning Policy Framework (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.'

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' -

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.'

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 ►►

QUOTE OF THE MONTH



Most development impacts on or benefits from infrastructure. It is right and fair that those who benefit from the uplift in values created by a new development should share some of that gain with the local community. [...] I also believe that it is right for development permitted before CIL came into force to be treated fairly.

Housing Minister Dominic Raab,
24 January 2018

THE LICHFIELDS PERSPECTIVE

We now know that the Government intends to publish the draft revised NPPF before Easter. We also understand it will not be a complete re-write. The development industry is therefore hoping that the new Framework can assimilate all of the new policy areas it is to cover, and the changes to some of the current policies that are to be made, without becoming a lengthy and complex document.

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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.

2017 London Town Centre Health Check Analysis report published

As part of the evidence base published in support of the new draft London Plan, the 2017 London Town Centre Health Check Analysis report was published on 18 January.

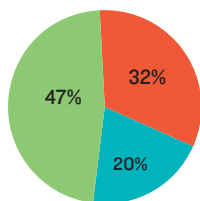
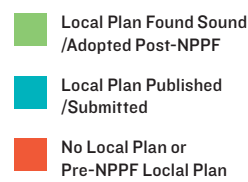
Among the recommended changes to current town centre classifications (as per the current London Plan), Canary Wharf is reclassified as a ‘Metropolitan Town Centre’, while Elephant and Castle and Walworth Road are reclassified as a single ‘Major Town Centre’.

For further details on London’s town centre policies and reclassifications, please see Lichfields’ London Plan Insight.

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

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.

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.’

Healthy high streets: good place making in an urban setting

A Public Health England (PHE) report, ‘healthy High Streets: Good Place Making in an Urban Setting’ - together with a practice resource summary - was published on 17 January.

UCL’s Institute of Health Equity was commissioned by PHE to ‘synthesise the latest and most relevant evidence’ for local decision-makers and others involved in ‘creating the high street’. It aims to provide street design principles that are ‘effective in making high streets more inclusive, safe and healthy and that promote social integration, particularly in areas of high deprivation’. Bespoke recommendations are made to architects, planners and urban designers, and to directors of public health, and local authorities. Particularly for the latter group, recommendations include:

4. Use planning and licensing policies to influence the retail offer on the high street, protecting locally-owned retail stores and tackling over-concentration of certain shops, to conserve retail establishments that stock healthier, locally sourced, products.

5. Ensure plans and strategies for businesses, transport infrastructure and social and community services maximise opportunities for health improvement, particularly for those most vulnerable to health inequalities.’

Question on vibrancy and resilience of the high street

Jake Berry, Parliamentary Under Secretary of State at MHCLG has responded to a written question regarding what assessment MHCLG has made of the effect on the vibrancy and resilience of the high street of the presence of (a) rental purchase retailers, (b) bookmakers, (c) payday lenders and (d) pawnbrokers.

Mr Berry emphasised that determining how to help high streets grow is a local

matter, but also referred to the changes made to planning legislation in recent years, including permitted development rights, and changes to parking requirements. He concluded: ‘The Government is also committed to communities establishing Business Improvement Districts and the positive impact they have on their local areas, including town centres’.

Betting shops explained in House of Commons Library briefing paper

The House of Commons Library has published a briefing paper giving a summary of licensing and planning issues relating to betting shops in Great Britain. It differentiates between premises’ and personal licences, and on planning, it explains the background on how betting and payday loan shops were taken out of the A2 Use Class and are now sui generis. The clustering of betting shops does however apparently remain an issue, in the context of the impact of Fixed Odds Betting Terminals; there are still calls for ‘powers should be given to local authorities to prevent the clustering of betting shops’.

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 development plan documents)
- 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.)
- 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](#).

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

Also reported by Lichfields last month, planning application fees increased and new fees were introduced 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.

Up to date guidance on setting of heritage assets now available

Historic England has updated its guidance on the setting of heritage assets; it replaces ‘The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3 – 1st edition’ (2015) and ‘Seeing the History in the View: A Method for assessing Heritage Significance within Views’ (English Heritage, 2011).

The guidance begins with general advice on understanding setting and how it may contribute to the significance of heritage assets, before providing advice on how views play a part in setting. It then goes on to suggest a staged approach to taking decisions on the level of the contribution which setting and related views make to the significance of heritage assets. ■