



NEWS

# Commercial planning news, July 2018

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## Headline news

### **Airport National Policy Statement approved in Commons vote**

On 25 June, the House of Commons approved the Government's Airports National Policy Statement.

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The Airports National Policy Statement (NPS) sets out the Government's policy on the need for extra airport capacity and infrastructure in the South East, and its preferred location and scheme for achieving this, which is a new north-west runway at Heathrow Airport.

The NPS will be used as the primary basis for decision making on development consent applications relating to the new runway at Heathrow, and will also be a material consideration when considering applications for extra runway capacity and infrastructure at other airports in the south east.

If the objectives of the NPS are delivered, Heathrow will see the construction of a runway at least 3,500m long, which will allow for a further 260,000 take-offs and landings each year.

In the build up to the vote, Transport Secretary Chris Grayling urged MPs to consider the positive impact that expansion would have on the UK economy, opening up overseas markets, as well as creating thousands of new jobs within the UK. He also set out five pledges which would govern the future expansion:

- The scheme would be privately financed and come at no cost to taxpayers;
- It would provide significant boost to economy, creating new international routes, more than 100,000 new jobs, doubled freight capacity and benefits of up to £74 billion to passengers and the wider economy;
- It would bring wider benefits for the whole of the UK about 15% of new slots for domestic routes, new rail links, and new global opportunities for regional business;
- Environmental protections would be built in, meeting existing air quality and climate change targets; and
- A legal protection on commitments, Heathrow's pledges to be legally enforceable, with punishment of unlimited fines or grounded planes if broken.

Whilst the Commons voted 415 to 119, resulting in a majority of 296, the decision to expand Heathrow has faced significant opposition on a number of grounds, predominantly over costs, environmental concerns, and worries over the capacity of supporting infrastructure.

On the 7 June, the London Assembly agreed a motion asserting its opposition to the expansion of Heathrow Airport. Following the result of the vote, Chairman of the London Assembly, Tony Arbour AM, stated;

'The London Assembly unanimously opposes the expansion of Heathrow airport on the grounds of air pollution, noise and the health impact it will have on Londoners. Together with the Mayor we shall seek to overturn this calamitous decision, which can only increase the environmental harm that the airport already creates.'

Opponents have a six-week window in which to challenge the decision through judicial review, if the government designates the Airport NPS for the

third runway at Heathrow Airport. The Mayor of London, Sadiq Khan, has already stated that he will join legal action brought by local councils against Heathrow Airport expansion.

[Department for Transport, Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England](#)

[Department for Transport, Five-point pledge on Heathrow ahead of historic vote](#)

[House of Commons Hansard, National Policy Statement: Airports, 25 June 2018](#)

[House of Commons Hansard, Airports National Policy Statement, 5 June 2018](#)

[London Assembly, Assembly reaffirms opposition to Heathrow Airport expansion](#)

[London Assembly, Assembly response to Commons vote on Heathrow expansion](#)

[Mayor of London, Mayor ready to join legal action against third runway at Heathrow](#)

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## Quote of the month



**Consultations are meaningless if the Government has no intention of listening to the feedback it receives.**

Clive Betts, Chair of the House of Commons Housing, Communities and Local Government Committee, writing to Housing Minister Dominic Raab on the draft revised National Planning Policy Framework, 4 June 2018

### **Draft New Towns Act 1981 (Local Authority Oversight) Regulations 2018**

Draft regulations were laid in Parliament on 4 June which, if approved by Parliament and brought into force, will make provision for the local oversight of new town development corporations.

According to a Government press release, once approved the regulations 'will come into force later this year'.

Under the New Towns Act 1981 (Local Authority Oversight) Regulations 2018 (as drafted), the Secretary of State will have the power to appoint one or more local authorities to oversee the development of a selected area as a new town (a 'locally-led new town', as introduced by s16 of the Neighbourhood Planning Act 2017).

According to the explanatory note accompanying the draft Regulations, the functions of the Secretary of State under the Act that are to be exercised by the oversight authority instead of the Secretary of State include:

1. where the oversight authority is the local planning authority for the area,

- development corporation;
2. the appointment of Board members of the new town development corporation;
3. the approval of land acquisitions or disposals by the new town development corporation; and
4. consenting to the development corporation's borrowing.

Only with the consent of the oversight authority will the Secretary of State be able to make an Order to either reduce the size of the area designated for the new town, or dissolve the new town development corporation.

On the same day that the Regulations were laid, the Ministry of Housing, Communities and Local Government (MHCLG) published the Government's response to a previous consultation, launched in December last year, that sought views on draft Regulations made under s16 of the Neighbourhood Planning Act 2017. As a result of that consultation, additional provisions include (inter alia) that the oversight authority must have the aim, in overseeing the development of an area as a new town, of planning from the outset for the 'participation of the community' and 'legacy arrangements following the dissolution of the new town development corporation'. The most significant amendment is that HM Treasury consent for borrowing by the new town development corporation in excess of £100 million is no longer required; borrowing is to be agreed between HM Treasury and the oversight authority.

On 29 June, MHCLG published guidance to accompany the draft Regulations setting out 'how the Government expects the process of setting up a locally-led new town development corporation to work'. As previously announced by the Housing Minister in response to a series of written questions by Priti Patel MP regarding the New Towns, the guidance provides:

The Minister said that the Government will be publishing guidance to accompany the Regulations 'shortly', which will provide:

- further details on the mechanisms for ensuring appropriate local authority oversight of locally-led New Town Development Corporations;
- details on the involvement of private sector representatives in the governance of locally-led new town development corporations, and participation by local communities;
- details of the information and preparatory work the Secretary of State for Housing, Communities and Local Government will expect to see from local authorities wishing to designate a new town and create a locally-led new town development corporation, including arrangements for agreeing peak borrowing requirements; and
- details of the process for designating a new town and establishing a locally-led new town development corporation, as well as information on governance arrangements; stewardship and community engagement; making plans for development and other areas.

In response to Ms Patel's written questions (asked before the guidance launch) regarding private sector involvement in the governance and decision-making functions of the oversight authority the Minister stated:

'We consider the private sector to be a crucial partner in the delivery of new settlements, including any new towns that may be created using the New Towns Act 1981 (Local Authority Oversight) Regulations 2018. As part of process to designate a new town and create a locally-led new town development corporation, applying local authorities will need to provide a sustainable financial strategy to Government, including setting out how they will leverage in private sector investment. This will be considered by the Secretary of State when deciding whether designation of the new town is expedient in the national interest.'

And in response to a question regarding accountability the Minister replied:

'We are clear that a locally-led New Town Development Corporation will only be created where this has the express support of and is requested by all the local authorities, including in two tier areas the county council, covering the area to be designated for the new town. Any body created through these Regulations will be overseen by an oversight authority comprised of one or more local authorities appointed by the Secretary of State to oversee the development of the new town'.

[MHCLG, New powers for councils to deliver homes for local families](#)

[The New Towns Act 1981 \(Local Authority Oversight\) Regulations 2018 \(draft\)](#)

[Parliament, Written questions asked by Priti Patel MP of the Ministry of Housing, Communities and Local Government regarding New Towns, June 2018](#)

[MHCLG, Guidance on the New Towns Act 1981 \(Local Authority Oversight\) Regulations 2018](#)

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## **Planning permission quashed due to failure to have due regard to the public sector equality duty**

The High Court has quashed a planning permission for the demolition of up to 542 dwellings and the provision of up to 700 dwellings at the Foxhill estate, to the south of Bath.

In *R oao Buckley v Bath and North East Somerset Council*, Peter Buckley, a long term resident of the estate and representative of the Residents' Association challenged the decision to grant planning permission on four grounds. Three of the grounds failed, but the first ground, that Bath and North East Somerset Council failed to have due regard to certain matters as required by section 149 of the Equality Act 2010 ('the 2010 Act') which is known as the public sector equality duty (PSED), succeeded. The matters required by the PSED include having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and protected characteristics include age and disability.

The judge, the Honourable Mr Justice Lewis considered:

'[...] the real issue of substance was whether the defendant could demonstrate that it had had due regard to the impact on the elderly or disabled of the loss of their existing home. Disabled persons may well have had an existing home

adapted and can be certain that they can live, and function, in that environment. To lose that environment may give rise to particular considerations as to the impact of such a loss which are different from, and greater than, the impact on other persons.'

Most of the properties on the estate are owned by a registered social housing provider, with others leased from other registered social housing providers, and some privately owned. The development would result in the loss of 204 affordable homes.

The policy that was of primary relevance to the planning application, and which had been subjected to an equalities impact assessment, stated a general presumption to support the redevelopment of social housing where certain criteria were met (policy H8). The Policy H8 criterion relied on in this case was that '[t]here is a site specific socio-economic justification of re-development led regeneration, considered alongside alternative options for re-modelling or refurbishment'.

The Judge concluded:

- duty in section 149 of the 2010 Act applies to the function of granting outline planning permission pursuant to section 70 of the 1990 Act, and to the function of granted reserved matters approvals;
- policy H8 did not involve an assessment of the needs of particular groups or the impact of the demolition of dwellings of persons with protected characteristics, therefore the case did not involve the application of a policy designed to address the kind of equality considerations that might arise in relation to a particular proposed development and compliance with Policy H8 would not automatically involve compliance with the PSED;
- notwithstanding that the application material included demographic composition of the estate, including the proportion of older persons, and disabled persons, living on the estate and explained the steps taken to consult with residents to address the concerns about displacement: '[...] the focus was on the impact of displacement, or moving, of residents. The defendant did not specifically address or have regard to the impact on groups with protected characteristics, in particular the elderly and the disabled, of the loss of their existing home. It may well be that not a great deal would have needed to be said on this matter. It may have been sufficient to draw that matter to the decision-maker's attention and then the decision-maker could have decided whether the contemplated benefits of the proposed development did outweigh any negative impacts. Ultimately, however, I am persuaded there were matters relevant to the discharge of the PSED which the relevant decision-maker needed to have due regard to but which were not drawn to the decision-maker's attention. In the circumstances, there was a failure to discharge the duty imposed by section 149 of the 2010 Act';
- the proposal was controversial, with members voting five to four in favour, so it could not be said that if the PSED breach had not occurred it would have been highly likely that the outline planning permission would have been granted in this particular case.

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## **Changes to Planning Practice Guidance made to reflect recent secondary legislation**

MHCLG published a series of updates to existing Planning Practice Guidance (PPG) on 15 June.

The changes mostly reflect recent secondary legislation that had been made since January 2018, and include updates in relation to pre-commencement conditions, consultation requirements, and permission in principle applications, amongst others.

The updates of particular note are set out below:

- Use of planning conditions - Inclusion of new paragraphs 035-039 on the use of pre-commencement conditions, and requirements relating to the Pre-commencement Conditions Regulations 2018.
- When is permission required? - Clarification on the scope of agricultural to residential permitted development rights, to reflect amendments to the General Permitted Development Order 2015.
- Consultation and pre-decision matters - New paragraph 033 to reflect the Town and Country Planning (Local Authority Consultations etc.) (England) Order 2018, in force from 1 February 2018, and related requirements for the extension of public consultation when public holiday occurs during the consultation period.
- Making an application: Clarification on the meaning of 'sensitive information' and how to address questions about the use of personal data in applications.
- Permission in Principle - Significant amendments to reflect the coming into force of different pieces of secondary legislation, and procedural matters arising from application for Permission in Principle (fees, consultation requirements, etc).

HM Government, Practice Planning Guidance

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## **Slowdown in office to residential PDR applications**

The MHCLG Planning Statistical Release was published last month and showed a decrease of six per cent in the reported total number of permitted development right prior approval applications between January to March 2017 and January to March 2018. Of note, applications for prior approval applications relating to office to residential change of use decreased by 16 per cent.

MHCLG, Planning Statistical Release, 21 June 2018

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# The Lichfields perspective



**With the House of Commons' approval of the revised Airports National Policy Statement, the long-debated expansion at Heathrow Airport moves a step forward. However, strong political voices who oppose the third runway remain, including Cabinet ministers and the Mayor of London.**

Jennie Baker, Associate Director

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