



NEWS

Thames Valley planning news, July 2018

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Headline news

Designation of the Airports National Policy Statement: Heathrow and the Thames Valley

On 25 June, the House of Commons voted in favour of the proposals for the expansion of Heathrow Airport set out in the Airports National Policy Statement (NPS) by 415 votes to 119.

The 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 will be a new north-west runway at

Heathrow Airport.

Following this, on 26 June 2018 Transport Secretary Chris Grayling formally designated the NPS, which will be used as the primary basis for decision making on development consent applications relating to the new runway at Heathrow.

According to the National Infrastructure Planning website the submission of a Development Consent Order (DCO) application to the Planning Inspectorate is anticipated in 2019/2020.

It is understood that the next and formal stage of consultation ahead of the DCO application will take place in 2019 at which time further information on possible impacts arising from the proposal will be made available for review. It has been suggested that construction of the runway could commence in 2021, with it being operational in 2026.

When designating the NPS, Chris Grayling noted that '[w]ork can now begin on delivering a scheme which will create jobs, growth and new connections across the UK'.

The Thames Valley has been previously identified as one of the key potential beneficiaries of the economic benefits flowing from the delivery of additional capacity at Heathrow and many key local stakeholders have expressed support for the development provided that the other social and environmental impacts of the scheme are appropriately mitigated. As well as the potential benefits and opportunities to local businesses directly from the airport works, the number of large HQs along the Thames Valley corridor means that the region would also be likely to benefit from the improved connectivity to international markets. In addition, the region would be likely to experience growth opportunities associated with new hotels, related facilities and homes required for workers.

Related to this, Network Rail has now consulted on the latest iterations of the proposed design of the rail link between the Great Western Main Line and London Heathrow Airport. The consultation, which concluded on 22 June, sought views on the two possible routes for the final section of the tunnel, closest to Heathrow.

It is currently proposed that all trains would call at Reading and Slough and alternate trains at Twyford and Maidenhead. Once in operation, it is understood that the journey times are proposed to be 26 minutes from Reading and 6-7 minutes from Slough. National Rail have set a minimum number of four trains every hour (in each direction) between Reading and Heathrow Terminal 5 at the 'highest speed possible'. This will act as either a new direct service or an extension of the proposed Crossrail or existing Heathrow Express services.

Network Rail has stated that it intends to hold a final round of statutory public consultation before submitting a Development Consent Order (DCO) application to the Planning Inspectorate in 2019. Once submitted, the Planning Inspectorate will have 28 days to review the application with the examination for a DCO anticipated to cover a 6 months period. Following this, the Secretary of State for Transport will have three months to deliver a

decision. The overall DCO and construction timescales indicate an operational start in 2024. The proposals would play a pivotal role in strengthening the Thames Valley's connectivity.

Opponents have a six-week window in which to challenge the decision to designate the Airport NPS through judicial review. The Mayor of London, Sadiq Khan, has already stated that he will join legal action brought by local councils against Heathrow Airport expansion.

[HM Government, Heathrow Airport expansion collection](#)

[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](#)

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

[National Infrastructure Planning, Expansion of Heathrow Airport \(Third Runway\)](#)

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Quote of the month



We are concerned that the Government's proposed approach [a standard methodology for assessing housing need], which includes a centrally generated set of figures for local housing need, is contrary to the spirit of localism and would undermine local democratic accountability [...]

The Committee [...] urges the Government to place safeguards into the final NPPF to ensure that local communities continue to have meaningful oversight of housing developments in their area.

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

**Other
national news**

Letwin Review: Draft Analysis of the Independent Review of Build Out Rates published

The Independent Review of Build Out Rates was announced at Budget 2017; its purpose is 'to explain the significant gap between housing completions and the amount of land allocated or permissioned, and make recommendations for closing it'.

The chair of the Review Panel, Sir Oliver Letwin, provided a preliminary update on the Review in March 2018, in the form of a letter to the Chancellor of the Exchequer and the Housing Secretary (see Lichfields Planning News for April 2018).

The Draft Analysis of the Review Panel (DA) was published on 25 June; the final recommendations will be presented to the Chancellor and the Housing Secretary 'at the time of the [Autumn] Budget'.

Essentially the DA has found that the 'homogeneity of the types and tenures' of homes on offer on large sites, and the limits on the rate at which the market will absorb them 'are the fundamental drivers of the slow rate of build out'.

Response regarding 'land banking'

A focus of the Review is 'absorption rates' and, in this respect, the DA concludes that the major housebuilders are 'land banking' in a sense as:

'[...] they proceed on a large site, once that site benefits from an implementable permission, at a rate designed to protect their profits by constructing and selling homes only at a pace that matches the market's capacity to absorb those homes at the prices determined by reference to the local second-hand market. Accordingly, if we can speed up the build out rate of large sites then the amount of land with full planning permission being held by the house builders should reduce'.

The DA finds that major housebuilders could accelerate the rate of build out of current sites without any substantial fear of running down their stock of land supply to levels that would reduce their long-term sustainability. This is provided that the plan-led system continues to require a five-year housing land supply; relaxation would simply bring forward housing rather than increasing supply.

This finding is perhaps of particular interest in the context of the reduced housing land supply period required in certain neighbourhood plan areas.

With regard to 'land banking' in terms of parties holding onto land as an investment, Sir Oliver considers this inconsistent with the business model of the major house builders - but says that based on anecdotal evidence it is a 'serious issue for the planning system'.

Key findings

The Review has found that 'current low build out rates are caused by the restricted market absorption rates of the fairly homogeneous products typically being constructed at present by the major house builders on the

largest sites', and accordingly has explored whether a greater differentiation of products within a site would increase build out rates.

The DA's conclusion indicates that the policy levers that the Review Panel recommends are likely to include seeking market variety within the largest sites:

'[...] if either the major house builders themselves, or others, were to offer much more housing of varying types, designs and tenures (and, indeed, more distinct settings, landscapes and streetscapes) on the large sites and if the resulting variety matched appropriately the desires of the people wanting to live in each particular part of the country, then the overall absorption rates – and hence the overall build out rates – could be substantially accelerated'.

According to the DA, Sir Oliver is mindful that such policy options must avoid certain pitfalls such as 'jamming' the housing market, impairing the capacity of the major house builders to continue large-scale construction or straining local planning authority resources.

Conversely, policies should help to widen opportunities for people seeking homes and those capable of supplying new homes on large sites; and encourage developments that 'are beautiful and ecologically sustainable'.

Other matters potentially affecting build out rates

DA has also looked at matters affecting build out rates beyond absorption rates and considers:

- Resolution of major infrastructure matters and provision of utilities would open-up large sites more quickly (and therefore require Government attention), but would not have affect build out rates once construction has begun;
- Because remediation is usually required prior to commencement of development (i.e. prior to a permission being 'implementable'), there is no contrast between the build out rates of brownfield and greenfield sites;
- There is no evidence of capital constraints, although if SME builders were able to develop elements of large sites they might experience finance constraints that would require attention. A lack of access to large sites is also recognised as the main barrier to entry for Build to Rent;
- Greater assurances regarding the level of building materials required would lead to increased domestic production of the necessary building materials, with gaps in the interim filled by imports, and modular components reducing dependence on some materials in the medium term; and
- Ministers must consider now the need for measures to achieve a rapid expansion in the number of bricklayers.

[Rt Hon Sir Oliver Letwin MP, Independent Review of Build Out Rates, Draft Analysis](#)

[Lichfields Planning News \(April 2018\), Letwin Review - market absorption rates 'fundamental' to slow build out](#)

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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 *Rao 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 '[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 granting 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'; and
- 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.

[R oao Buckley v Bath and North East Somerset Council](#)

[Equality Act 2010, section 149](#)

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Government launches independent review into planning appeal inquiries

The terms of reference for the 'end-to-end review' of the planning appeal process announced by the previous Housing Secretary Sajid Javid, at the launch of the draft revised NPPF in March have been published.

The aim of the review is:

'To review the use and operation of the planning appeal inquiries procedure to make it quicker and better'.

It will focus on rules and processes surrounding inquiries, particularly those for major housing schemes, and will also examine whether specific or general efficiencies in inquiries procedures could have wider benefits for the timing and handling of other appeals processes.

The Review will be chaired by economist Bridget Rosewell and will report to the Housing Secretary by the end of 2018.

This is the second review of the appeal system in six years. In 2012 the Government undertook a 'Technical review of planning appeal procedures consultation' which aimed to:

- a) Make the process faster and more transparent; and
- b) Improve consistency and increase certainty of decision timescales.'

An outcome of that consultation was the requirement to submit a full statement of case when an appeal is submitted.

[MHCLG, Planning appeal inquiries review: terms of reference](#)

[Department for Communities and Local Government, Technical review of planning appeal procedures: Consultation](#)

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The Lichfields perspective



Sir Oliver Letwin's March 2018 letter to the Chancellor regarding the Independent Review of Build Out Rates might have contained the key headline that absorption rates are critical to build out rates, but the Draft Analysis report provides further evidence on this and a suggestion that absorption (and build) rates might be increased through a variation in the housing offer. However, we must wait another 4 months for recommendations on how to address this issue. The report's other big conclusion that land-banking is not consistent with the business model of major house builders is most welcome and should now put this matter to rest.

Simon Coop, Planning Director

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