Bulletin 155 **March 2013**

Butterworths Planning Law Service

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Filing Instructions: Please file immediately behind the Bulletin Guide card in Binder 1. Binder 1 should now contain bulletins 137–155. This bulletin covers material available until 8 March 2013.

LEGISLATION

Section 106 agreements can be varied without having to wait 5 years – from 28 March 2013

Following a consultation paper in August 2012, the Town and Country Planning (Modification and Discharge of Planning Obligations) (Amendment) (England) Regulations 2013 were laid before Parliament on 31 January 2013 and came into force on 28 February 2013.

The regulations amend the TCP (Modification and Discharge of Planning Obligations) Regulations 1992 so that all obligations in England entered into before 6 April 2010 can be renegotiated from 28 March 2013 (one month after the date the regulations come into force) rather than having to wait 5 years if the LPA does not agree to the renegotiation, as is the current position. The intention is to kick start stalled development by facilitating the renegotiation of s 106 agreements where such agreements have made development unviable.

The London Thames Gateway DC dissolved on 28 February 2013

The London Thames Gateway Development Corporation (Dissolution) Order 2013 (SI 2013/110) came into force on 24 January 2013 and dissolved the LTGDC on 28 February 2013. From that date, the LTGDC ceased to exist except for the purpose of preparing its final accounts and report and winding up its affairs. The Corporation's planning powers were returned to

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the London boroughs of Barking and Dagenham, Hackney, Havering, Newham, Tower Hamlets and Waltham Forest under previous orders.

Draft neighbourhood referendum regulations are published dealing with business referendums

The draft Neighbourhood Planning (Referendums) (Amendment) Regulations 2013 were published on 23 February 2013 and amend the Neighbourhood Planning (Referendums) Regulations 2012 (SI 2012/2031). A referendum must be held on a neighbourhood development plan, neighbourhood development order or a community right to build order before it can come into force (be 'made' by the LPA). This referendum must be held after the plan or order has been independently examined. (See above – 'Upper Eden becomes first neighbourhood plan to reach examination stage').

Where a neighbourhood area is designated as a business area under s 61H TCPA 1990, the relevant council must hold both a referendum and a business referendum. These draft Regulations amend the 2012 Regulations to make provision in relation to the conduct of this additional business referendum.

CASES OF INTEREST

A condition attached to a planning permission was unambiguous and did not prohibit the sale of goods under s 192 of the TCPA or disapply the operation of the UCO 1987

Telford and Wrekin Council v Secretary of State for Communities and Local Government [2013] EWHC 79 (Admin) (29 Janaury 2013) – Beatson LJ

Facts

Condition 19 of a planning permission granted in 2002 for a garden centre granted by Telford and Wrekin Council stated:

> 'prior to the garden centre hereby approved opening, details of the proposed types of products to be sold should be submitted to and agreed in writing by the local planning authority.'

A letter listing the products to be sold at the garden centre was submitted to the council but the council did not respond to the letter. In 2010, the garden centre operators made an application to the council under s 192 TCPA 1990 for a certificate (a CLOPUD) that the proposed use of the land and buildings was lawful for any purpose within Class A1 of the UCO 1987. The council refused the application on the basis that condition 19 restricted the products which could be sold. This decision was overturned by an inspector on a subsequent appeal, who found that giving the words their ordinary and natural meaning meant the condition did not limit retail use to only a garden

centre nor did it require the operator to sell only the products on the submitted list and nothing else. In short, the use approved was a general Class A1 retail use.

The council sought an order quashing the appeal decision on the basis the inspector erred in his application of the law.

Decision

The application was dismissed.

The council principally relied on the CA decision in *Hulme v Secretary of State for Communities and Local Government* [2011] (FB 110) that conditions in planning permission should be read in context and given a sensible and reasonable interpretation.

Counsel for the SoS and the garden centre operators argued that in accordance with the well-established principles on the construction of conditions in planning permissions, for a condition to impose a restriction, it had to clearly, unequivocally and unambiguously restrict the use that can be made of premises and prohibit what goods may be sold from them. Condition 19 failed do this, and the inspector did not fall into error. Reliance was placed in particular on *Sevenoaks DC v First Secretary of State* [2004] *EWHC 771* (*Admin*).

In the light of the authorities, the judge held that the inspector did not fall into error in his conclusion as to the effect of condition 19. Like the condition in the *Sevenoaks* case, condition 19, was unambiguous. The condition expressly required the details of the proposed types of products to be sold to be submitted to the council before the garden centre opened. The condition itself did not contain a prohibition on selling goods other than those in the list submitted. The inspector was correct to hold that the condition only required details of the proposed type of goods to be sold to be submitted for the council's agreement. This was done and the condition was discharged, especially as the council did not respond and 'agree' the details.

The proper approach to planning applications post Localism Act 2011

Tewkesbury Borough Council v Secretary of State for Communities and Local Government & Ors [2013] EWHC 286 (Admin) (20 February 2013)

Facts

Planning permission was granted by the SoS for 1,000 new dwellings on 87.9 hectares of open farmland in Gloucestershire following two planning inquiries. The inspector acknowledged that the applications were contrary to the development plan but as the development plan consisted of a number of outdated documents, he held that little weight should be attached to it and other material considerations outweighed it, including, in particular, the council's failure to demonstrate a five year housing land supply.

The LPA objected to the permission, saying that it undermined the democratic process and that post the Localism Act 2011, LPAs were in the driving seat of spatial planning for their areas, including housing land provision and much greater weight must now be given to the views of the LPA, which the SoS had ignored in this case.

Decision

The challenge was dismissed. The Localism Act has not brought about a fundamental change in the approach to planning applications so as to vitiate the conclusions reached by the SoS in this case. Both the inspector and the SoS were entitled to come to the conclusion that the development plan was outdated and carried little weight and that the need for a five year housing supply was the most material consideration.

At the time of the inspector's report, PPS 3 contained the Government's policy on housing land supply. PPS 3 was replaced by the NPPF in March 2012 at the time of the SoS's decision. However, before and after the issue of the NPPF, the need to ensure a five year supply of housing land was of significant importance. Before the NPPF the absence of such a supply would result in favourable consideration of planning applications, albeit taking account other matters such as the spatial vision for the area concerned. Post NPPF, if such a supply cannot be demonstrated, relevant policies are to be regarded as out of date, and therefore of little weight, and there is a rebuttable presumption in favour of the grant of planning permission. An authority which is not in a position to demonstrate a five year supply of housing land will be aware that on any appeal to the SoS from a refusal of permission there is a real risk that the appeal will succeed and permission granted.

The judge held that the SoS was entitled to conclude that as the LPA was unable to demonstrate such a supply in this case, a presumption in favour of granting permission applied. In addition, the emerging Joint Core Strategy (JCS), which the LPA was proposing with two other local councils, was of little weight because it was at a very early stage and in any event the proposals in the JCS were incapable of meeting the demand for housing during the next five years. The grant of permission would not prejudice the JCS process and there was therefore no basis to refuse permission on the ground of prematurity or otherwise because of the JCS and overall, the balance came down in favour of granting permission.

The Localism Act made significant changes to the planning system, but the effect of those changes is not to eliminate the role of the SoS in determining planning applications opposed by LPAs or to abolish long-standing principles and policies such as the need for a five year housing land supply. The Localism Act paved the way for the abolition of Regional Strategies but there is nothing in the Act to suggest that relevant national policies would no longer apply, or that the SoS would no longer perform his function in determining planning application appeals applying (so far as relevant to this case) the same principles and policies as before. In particular, the policies relating to a five year housing land supply and the principle of prematurity

were expressly reaffirmed in the NPPF. It was not sensible to suggest, therefore, that those policies were intended to be swept away

Permission for 'a travelling showpeoples' site' could not be interpreted as a general permission for a residential caravan site – HC – 1 February 2013

Winchester City Council v Secretary of State for Communities and Local Government & Ors [2013] EWHC 101 (Admin) (01 February 2013) – Philip Mott QC

Facts

In October 2003 planning permission was granted for 'change of use of agricultural land to travelling showpeople's site', in accordance with the plans and particulars submitted with the application, subject to 15 conditions. None of the conditions attached to the planning permission expressly restricted the occupation of the site to travelling showpeople, as they could have done.

Enforcement notices were issued by the LPA on 6 September 2010 because it was thought that the site was being occupied by gypsies and travellers who were not travelling showpeople. The notices alleged that this constituted a material change of use from that permitted by the 2003 planning permission. The notices were appealed on a number of grounds, including that the planning permission should be interpreted as simply 'use as a residential caravan site' and not restricted to travelling showpeople.

The case of *I'm Your Man v Secretary of State for the Environment* (1999) established the principle that when permission is granted for a certain use, any limitation on the way in which that use is exercised must be imposed by condition. On the basis of the law, the inspector therefore allowed the appeals and quashed the enforcement notices.

Separately, a planning appeal arose out of an application dated 7 October 2010 by a Mr Black, for permission for 'use of land as travelling showman's site'. The existing use of the land was described on the application form as 'Travelling Showperson site'. The LPA accepted and processed the application, but after failing to determine the application within the statutory timescale, the applicant appealed to the SoS under s 78 (2) TCPA 1990. The inspector decided that the permitted use was already wider than that applied for, and therefore took no further action on the s 78 appeal.

The LPA appealed under s 289 TCPA 1990 against the quashing of the enforcement notices and under s 288 on the planning appeal. The two matters were heard together by consent.

Decision

The application was allowed in part.

The court concluded that a travelling showpeople's site may be a significant and separate land use in planning terms, and went on to consider whether the 2003 planning permission, on its proper construction, granted permission only for that use. The fundamental question was whether there was a limited grant of permission to use the site as a travelling showpeople's site, or an attempt (which would be ineffective as a result of the *I'm Your Man* principle) to impose a limitation or restriction on a more general grant. The court held that the inspector did not address this question, having come to his decision on the basis that *I'm Your Man* provided an entire answer as a matter of principle, regardless of the details of the particular case. It was found that the 2003 grant of permission was not the grant of permission to use the land as a residential caravan site, with an ineffective attempt to limit that use to travelling showpeople. It was a grant of permission to use the land as a travelling showpeople's site, which is a distinct and narrower use, without any further attempt to limit that use.

The court held that permission should be granted under s 289 and the appeals allowed. As a result the matter would have to go back to the SoS to appoint another inspector to determine the enforcement notice appeals afresh.

The s 288 challenge was dismissed on its merits.

Inconsistent local plan port development policies – CA – 24 January 2013

TW Logistics, R (on the application of) v Tendring District Council [2013] EWCA Civ 9 (24 January 2013) – LJs Mummery, Aikens, Lewison

Facts

TW Logistics Ltd operates a port handling loose materials (granite, stone and aggregates) in Mistley. The port falls within a conservation area and Tendring DC adopted a Conservation Area Management Plan (CAMP) which TW Logistics Ltd (TW) objected to on the grounds that it contained policies which were inconsistent with the adopted Local Plan and therefore unlawful. The Local Plan contains policies supporting the expansion of the port and TW argued that the Local Plan policies provided for the quayside area to be earmarked first and foremost for port related uses and not for mixed use regeneration schemes as advocated by the CAMP. The HC rejected TW's challenge and TW appealed to the CA.

Decision

The CA dismissed the appeal. The CAMP was not inconsistent with the Local Plan.

Lewison LJ made some useful comments on the interpretation of inconsistent Local Plan policies which are often mutually irreconcilable. He advocated against a strained interpretation of the Local Plan in order to produce harmony between the different policies and to be wary of suggesting an

objective interpretation of one part of the Local Plan taking precedence over another. Instead, it was for the LPA to decide which policy should be given greater weight in relation to a particular decision. He also provided guidance on the meaning of 'have regard' to in the context of Local Plan policies stating that when a decision maker is required to 'have regard' to a particular factor, he complies with his legal duty if at some stage in the decision making process, he conscientiously considers that factor, on the clear understanding that it is a factor relevant or potentially relevant to his decision. In other words, he must take that factor into account during the decision making process.

NEWS

Regional Strategy for Yorkshire and Humber revoked on 22 February 2013

As the Secretary of State confirmed in a Written Ministerial Statement and the Strategic environmental assessment of the revocation of the Yorkshire and Humber regional strategy: post-adoption statement, the Regional Strategy for Yorkshire and Humber was revoked on 22 February 2013.

The Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013 (SI 2013/117) revokes the Regional Strategy for Yorkshire and Humber, except for policies which relate to the Green Belt around the City of York.

The Regional Strategy for East of England was revoked on 3 January 2013 by (SI 2012/3046).

Details of phase two of HS2 revealed – 28 January 2013

Phase One of HS2 involves a new line from London Euston to new stations at Birmingham city centre and at the new Birmingham Interchange near Birmingham Airport. The DfT announced the provisional route for Phase Two of HS2 beyond Birmingham to Manchester and Leeds on 28 January 2013 together with the initial preferences for the stations and depots.

The Phase Two Command Paper explains why HS2 will be a 'national asset' (improving connectivity thereby widening competition), sets out more of the background to the HS2 project, the detail of the Government's initial preferred route, station and depot options for Phase Two and the next steps for the project. A public consultation on the options set out will be launched in 2013.

The Government's initial preferences for the route are:

Manchester (Piccadilly): A new station to be built alongside the existing station at Manchester Piccadilly. The HS2 platforms would be parallel to and immediately alongside the existing platforms at Piccadilly.

Manchester Airport: A new interchange station to Manchester Airport which would sit parallel to the M56, approximately half way between Junctions 5 and 6. The M60 Manchester orbital motorway would be around four miles

away and the M6 11 miles away. It would also be possible to extend the Manchester Metrolink network to serve the station directly and to provide a service into the airport.

East Midlands (East Midlands Hub): A new station at Toton located between Nottingham and Derby, 1.2 miles from Junction 25 on the M1 and close to the A52. The site of the proposed station is alongside an existing rail freight yard north of Long Eaton. The Command paper states (at para 5.50) that the East Midlands Hub option

> 'would be the best of all the available station options for serving the East Midlands, generating *additional* benefits of around £500 million over the next best performing option. And by attracting more passengers, it could generate additional fare revenues of around £190 million.'

South Yorkshire (Sheffield Meadowhall): A new station at Sheffield Meadowhall to be situated alongside the M1, serving the wider South Yorkshire area. A new tram stop integrated into the HS2 station would be built so that there is a connection with the Sheffield Supertram, which runs from the existing Meadowhall Interchange into the centre of the city.

Leeds (New Lane): A new station in central Leeds, immediately south of the Victoria Bridge over the River Aire, between Bridgewater Place and the Asda headquarters building. This would be joined to the existing station via a dedicated pedestrian link, making it just a short walk between the two.

In addition to the stations listed above, connections will be provided at various points across the HS2 network onto existing rail lines, enabling high speed trains to continue to nine out of the UK's ten biggest conurbations.

The paper states that each leg of the Y network will require separate infrastructure and rolling stock maintenance depots at key points in order for the railway to operate effectively. HS2 Ltd identified four key factors which needed to be considered when assessing potential site suitability: location, environmental and heritage criteria, site requirements and access to relevant rail routes.

In relation to the **Heathrow spur and station**, it is stated that whilst the Government believes the HS2 network should link to Heathrow and its preferred option is for this to be built as part of Phase Two, the Government has decided to 'pause work' on the spur to Heathrow until after 2015 when the Airports Commission (chaired by Sir Howard Davies) publishes its final report.

As far as cost is concerned, in January 2012, when the Government announced its firm backing for Phase Two, the construction costs were estimated at around £16.4 billion (2011 prices), they are now estimated at around £16.8 billion, without the spur to Heathrow (if the spur is included the costs for Phase Two would rise to around £18.2 billion). The Government states that this increase in costs reflects an increase in scope – particularly the potential inclusion of a station at Manchester Airport and the connection at Crewe but also refinements and mitigation of the route to lessen its impacts

on communities and the natural environment. This cost figure falls within the cost range that HS2 Ltd produced for Phase Two of £15.7 billion to £18.7 billion. An update of the economic case for HS2 will be published alongside the consultation on Phase Two preferred options in 2013.

Alongside this paper, the Government also launched a consultation on an exceptional hardship scheme for Phase Two of the HS2 network which closes on **29 April 2013**.

New PD rights to allow office space to be converted into homes without the need for PP and other changes announced – 24 January 2013

In a written ministerial statement and a guidance letter for chief planning officers published on 24 January 2013, the Secretary of State announced a number of permitted development measures to promote regeneration:

- New PD rights allowing change of use from B1 (a) offices to C3 residential for a period of 3 years. This is subject to a prior approval process covering: significant transport and highway impacts; development in safety hazard zones, areas of high flood risk and land contamination. The PD rights will only cover change of use: any associated physical development which currently requires a planning application will continue to need one. LPAs will however, be able to seek a local exemption if they can demonstrate 'there would be substantial adverse economic consequences' if the change proceeds. The statement makes clear that an exemption will only be granted *'in exceptional circumstances, where local authorities demonstrate clearly that the introduction of these new permitted development rights in a particular local area will lead to* (*a*) *the loss of a nationally significant area of economic activity or* (*b*) *substantial adverse economic consequences at the local authority level which are not offset by the positive benefits the new rights would bring'*. Any requests for a local exemption had to be submitted by 22 February 2013 and DCLG will confirm which areas will be exempt in spring 2013 when the new PD rights come into force;
- agricultural buildings will be able to convert to a range of other uses, but excluding residential dwellings. There will be a size restriction and for conversions above a set size, a prior approval process will be put in place to guard against unacceptable impacts, such as transport and noise;
- increase the thresholds for PD rights for change of use between business/office (B1) and warehouse (B8) classes and from general industry (B2) to B1 and B8 from 235m2 to 500m2;
- allow a range of buildings to convert temporarily to a set of alternative uses including shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices (B1) for up to two years.

The proposal of allowing commercial premises to change to residential under PD rights was the subject of a consultation (Relaxation of planning rules for

change of use from commercial to residential: Consultation) in April 2011. In July 2012, the Government's response to the consultation (Changing land use from commercial to residential consultation: summary of responses and government response) appeared to have abandoned the idea, instead, opting for a policy statement within the NPPF to promote change of use. However, the Secretary of State in a Written Ministerial Statement dated 6 September 2012 indicated that the option was very much on the cards:

> 'We will introduce permitted development rights to enable change of use from commercial to residential purposes, while providing the opportunity for authorities to seek a local exemption where they believe there will be an adverse economic impact.'

The other proposals were the subject of a consultation DCLG: New opportunities for sustainable development and growth through the reuse of existing buildings – A consultation published on 3 July 2012.

Upper Eden becomes the first neighbourhood plan to reach examination stage

The Upper Eden Neighbourhood Development Plan prepared by the Upper Eden Community Plan Group (comprising 17 parish councils) became the first neighbourhood plan to reach examination stage. The Examiner's Report recommended that the plan should proceed to referendum subject to two minor amendments. The Examiner, Mr John Glester, found that the plan was largely in conformity with Eden Council's Core Strategy and the NPPF.

A local referendum on the plan took place on 7 March 2013, asking the following question:

> 'Do you want Eden District Council to use the neighbourhood plan for Upper Eden to help it decide planning applications in the neighbourhood area? '

The plan was approved in the referendum with over 90 per cent of those voting in favour, and it will now be adopted by Eden District Council.

The Upper Eden Area was formally designated a Neighbourhood Area following an application under the Neighbourhood Planning (General) Regulations 2012 dated 16 May 2012 which was approved by Eden District Council on 15 August 2012. The plan has been subject to two consultations: initial consultation with parishes and other stakeholders, followed by a second 6 week consultation on the draft plan. The 7 policies in the plan focus on housing delivery, particularly, rural affordable housing, older peoples housing and housing on farms.

Minister for Planning Nick Boles announced a number of measures on 18 December 2012 to support areas encouraging neighbourhood planning on a larger scale in this year.

The Commons Communities and Local Government Committee starts an inquiry into the Government's review of planning guidance – 9 January 2013

The Communities and Local Government Committee announced on 9 January 2013 that it was seeking short submissions on the Taylor Review and the Government's subsequent consultation proposals for streamlining planning – DCLG: Review of planning practice guidance – a consultation (published on 21 December 2012 and closed on 15 February 2013) by 18 January 2013.

On 30 January 2013, Nick Boles MP, Parliamentary Under Secretary of State, DCLG and Lord Taylor were witnesses before the House of Commons Communities and Local Government Committee during a one-off evidence session on the planning practice guidance and the announcement on permitted development rights made on 24 January 2013. Mr Boles told the Committee that the 'Government is very enthusiastic about the review that Lord Taylor has led and many, if not most, of the recommendations', but the Government would make 'no absolute commitments to anything until [we] have properly considered the consultation responses'. A transcript of the evidence to the Committee can be found on the Parliament website.

The Government's Red Tape Challenge focuses on planning administration – 31 January 2013

The Government's Red Tape Challenge launched in April 2011 shifted its focus to planning administration on 31 January 2013. The two sector champions are Mike Kiely (Senior Vice President of the Planning Officer's Society, chair of POS London) and Roger Hepher (Director of Savills and head of its Planning Division).

The public consultation closed on 7 March 2013 and focuses on approximately 180 planning regulations, under the following four themes:

- **Planning Procedure** – the regulations in this category include the UCO 1987, GPDO 1995, the DMPO 2010 and those covering planning appeals and enforcement;
- **Planning Infrastructure and Major Projects** – the regulations cover the PA 2008 regulations and some very specific ones such as the spent TCP (Ironstone Areas Special Development) Order 1950;
- **Planning Authorities** – the disparate regulations in this category cover a range of matters certain geographical areas, including London and development corporations; and
- **Local Planning** – these regulations cover the procedures for local plan making including the recent neighbourhood planning regulations.

Planning changes proposed allowing empty and underused buildings to convert to free schools for a year – 25 January 2013

The Secretary of State outlined proposed changes to planning rules for free schools in a Written Ministerial Statement to Parliament on 25 January 2013.

As a general principle, he said, 'planning decision makers can and should support' the creation of free schools, 'in a manner consistent with their statutory obligations'. New free schools should be able to 'plan with confidence' to open at the start of the academic year, which meant that planning authorities should work within a suitable time frame to facilitate this. However, this had 'not always been the case'. The planning system needed 'to do more' to support free schools.

He announced his intention to introduce new PD rights for changes of use to a new free school within the GPDO 1995:

- A PD right to allow for a temporary change of use to a new free school, along with minor associated physical development. This would only cover use for the first academic year; planning permission would need to be sought thereafter. This would ensure that a school opening would not be delayed by an outstanding planning application.

- A PD right to allow for a change of use to a new free school from offices, hotels, residential institutions, secure residential institutions, and assembly and leisure. The planning approval process would be streamlined, with only a 'limited assessment that will consider noise and traffic issues' to be carried out by local authorities.

Excluded from the changes would be buildings whose class of use cannot be changed without planning permission (including theatres, hostels, petrol stations, laundrettes, casinos and funfairs).

Similar proposals had been announced in 2010 (Hansard 26 Jul 2010, col 58WS) but were dropped following unfavourable responses to a public consultation. Their reinstatement continues the Government's policy of strongly encouraging planning authorities to look favourably on applications for new free schools. A policy statement issued in 2011, for example, instituted 'a presumption in favour of the development of state-funded schools', with the Secretary of State 'minded to consider a refusal or imposition of conditions to be unreasonable conduct, unless it is supported by clear and cogent evidence' (DCLG, Policy statement – planning for schools development (August 2011).

These changes are in addition to those announced by the Secretary of State on 24 January 2013 in respect of PD rights (see above) and will be introduced as soon as possible.

The Government also launched a new website on 25 January 2013 listing surplus government properties to make it easier for people who want to set up a free school to search for and find sites. It shows more than 600 properties to rent and more than 140 to buy. The list will be updated as more properties become available or are claimed.

The Rookery South Development Consent Order can finally be made as the Joint Committee publishes its special report on 28 February 2013

The Joint Committee on Rookery South was appointed by the House of Commons and the House of Lords to examine petitions relating to the Rookery South (Resource Recovery Facility) Order 2011 in accordance with s 128(2) PA 2008.

The Committee has now concluded its work and published a special report setting out its findings on the 28 February 2013, which can be found on the Parliament website.

The Rookery South (Resource Recovery Facility) Order 2011 was laid before Parliament by the SoS for DECC on 29 November 2011 whereupon a 21-day joint petitioning process in both Houses commenced in accordance with the Statutory Orders (Special Procedure) Act 1945.

The Committee heard cases presented on behalf of Central Bedfordshire Council and Bedford Borough Council on four petitions and on behalf of three companies, Waste Recycling Group Ltd, WRG Waste Services Ltd and Anti-Waste Ltd.

On 12 December 2012, the Committee concluded that there was no case for Covanta to answer in respect of either of the petitions of general objection from Central Bedfordshire Council and Bedford Borough Council, nor in respect of a petition of amendment from WRG. In respect of the petitions of amendment offered by the two Councils the Committee decided that there was a case to answer only in respect of amendments proposed in relation to the planned Bedford to Milton Keynes Waterway. The Committee was persuaded that the completion of necessary works for the waterway would be much more expensive after Covanta had built its facility than would be the case if they were carried out first.

Consequently, Covanta and the two Councils have agreed to enter into a s 106 agreement which requires Covanta to provide up to £3,375,000 towards the costs of the works required for construction of the proposed waterway, which would cross the Green Lane land to be compulsorily acquired by Covanta under the DCO. As this has been resolved without the DCO having to be amended, the DCO will now formally be published.

The report says the s 106 agreement is to be published on the Parliament website.

CONSULTATION

PD rights for broadband cabinets and overhead lines to facilitate superfast broadband networks proposed by DCMS – 29 January 2013

The proposed changes to siting requirements for broadband cabinets and overhead lines to facilitate the deployment of superfast broadband networks

consultation published by DCMS sets out the changes to the planning system which the Government hopes will lead to the best superfast broadband network in Europe by 2015.

The proposed changes are:

- **New overhead lines** – removal of the requirement (in the Electronic Communications Code (Conditions and Restrictions) Regulations 2003), to underground new telecommunications lines for a period of 5 years so that so that communications providers can deploy new overhead infrastructure as PD. In addition, the prior approval requirements will be removed for all areas other than SSSIs.
- **Cabinets** – removal of the prior approval requirement for fixed broadband cabinets except in SSSIs on a temporary basis for 5 years.

The changes will be implemented by amendments to the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 and the Communications Act 2003 via the Growth and Infrastructure Bill.

The consultation closed on **13 March 2013**.

Consultation on streamlining more areas of the planning application process – 21 January 2013

DCLG's: Streamlining the planning application process – A consultation was published on 21 January 2013 aimed at removing some of the bureaucracy which has built up over the planning application process over the recent years.

This is the second consultation on changes to the planning application process in England: the Government is implementing changes proposed in the 'Streamlining Information Requirements for Planning Applications' consultation published in July 2012.

This consultation proposes changes in the following areas:

- **Design and access statement requirements** – D & A Statements were introduced by the PCPA 2004 as a means of ensuring applicants had considered the suitability of the design and that the scheme's accessibility by prospective users. However, concerns have been raised that they are excessively burdensome for many applications and have not led to better design outcomes. The Government proposes making two changes to D & A statements in relation to thresholds and content. It proposes requiring D & A statements for major applications as defined in Art 2 of the DMPO (excluding mining and waste development) and for listed building consent. In designated areas (conservation areas and World Heritage Sites) a D & A statement will be required for the extension of an existing building where the floor space created exceeds 100 square metres and/or the erection of a building/s where the cubic content of the development exceeds 100 cubic metres. The content of the statements is also to be simplified and less prescriptive;

- **Validation of applications and appeal** – The Government proposes amending Art 29 of the DMPO to include new conditions on the information LPAs can request from applicants. The changes, as transposed from the Growth and Infrastructure Bill, are as follows: information requests should be reasonable having regard to the nature and scale of the proposed development; and information requests should relate to matters that it is reasonable to think will be a material consideration in the determination of the application. Furthermore, the Government will re-introduce a right of appeal under s 78 of the TCPA 1990 where a LPA refuses to validate an application on the grounds of insufficient information. This right of appeal was removed in 2009 following changes to the validation requirements (*Newcastle CC v Secretary of State for Communities* (2009). The Government proposes reinstating the right of appeal, and introducing a new and simple procedure whereby an applicant informs the LPA in writing, setting out why it thinks the information requested by the LPA to validate the application is not necessary. The LPA would have to respond to the applicant within the statutory time period for determining the application (or within 7 working days, in the exceptional circumstances where the statutory time period had already lapsed), either by validating the application or issuing a non-validation notice. The serving of a non-validation notice (or failure to do so within the specified timescale) could then form the basis of a subsequent appeal. Art 29 of the DMPO would be amended to refer to these 'non-valid applications' and this change would have the effect of allowing applicants to appeal against non-determination under s 78.

- Reconsideration of the requirement introduced in 2003 for a decision notice granting planning permission to include a summary of reasons and a summary of the policies and proposals in the development plan which are relevant to the decision to grant planning permission – the current requirement is considered burdensome and unnecessary whilst adding little transparency or improving the quality of decision making. The Government proposes to amend Art 31 of the DMPO to remove the statutory requirement for LPAs to include on decision notices both a summary of reasons and a summary of the policies and proposals in the development plan which are relevant to the decision to grant planning permission. The requirement to give full reasons for each condition proposed and where an application is refused permission will remain. As will the duty in relation to applications accompanied by an environmental statement; and the duty in instances where the SoS grants permission.

The consultation contains an Impact Assessment at Annex 1 and proposed amendments to the DMPO and Planning (Listed Buildings and Conservation Areas) Act 1990, which make procedural provision for applications for LBC and CAC, in Annex 2.

The consultation closed on **4 March 2013**.

Stopping up and diversion orders – Government response to consultation – 9 January 2013

In July last year, the DfT published a consultation paper on streamlining the application process on stopping up and diversion orders in response to the Penfold Review of 2010.

On the 9 January 2013, the DfT published the Government response on stopping up and diversion orders: reform of the application process for local highways confirming the Government will go ahead with its proposal to allow an application for a stopping up or diversion order to be submitted concurrently with the planning permission (the Growth and Infrastructure Bill contains a provision to give effect to this measure) but it will **not** be proceed with the proposal to devolve the decision-making process on stopping up and diversion orders to local authorities. Applications will therefore, continue to be made to the Dft.

Rights to light consultation – Law Commission – 18 February 2013

The Law Commission published the Rights to Light consultation on 18 February 2013 whose main aim is to investigate whether the law by which rights to light are acquired, enforced and extinguished provides an appropriate balance between the important interests of landowners and the need to facilitate the effective and efficient use of land through its development. The consultation stems mainly from the decision in the case of *HKRUK II* (*CHC*) *Ltd v Heaney* (2010) where the court granted an injunction requiring demolition of the upper floors of a building which obstructed a neighbour's right to light, in lieu of a damages payment.

Views are sought on the following provisional proposals:

- the law of prescription, or acquisition of rights to light by long use, which can in some circumstances create rights to light where a person has received light over a neighbour's land for 20 years, should be abolished for the future and replaced by a new statutory test;
- the introduction of a new statutory test to clarify the current law on when courts may order a person to pay damages instead of ordering that person to demolish or stop constructing a building that interferes with a right to light – this is aimed at making rights to light disputes easier and cheaper to resolve;
- the introduction of a new statutory notice procedure, which will require those with the benefit of rights to light to take action within a certain period of time in order to claim an injunction (ordering a neighbouring landowner not to build in a way that infringes their right to light; and
- the extension of the jurisdiction of the Lands Chamber of the Upper Tribunal to extinguish rights to light that are obsolete or have no practical benefit, with payment of compensation in appropriate cases, as it can do under the present law in respect of restrictive covenants.

Interestingly, the consultation document also seeks evidence from consultees about:

> 'alternative ways in which rights to light disputes are commonly resolved and the costs of doing so, including evidence about the costs of a local authority using section 237 TCPA 1990 to resolve rights to light disputes'.

S 237 empowers local authorities to override rights, including rights to light.

The consultation closes on **16 May 2013**.

REPORTS/PUBLICATIONS

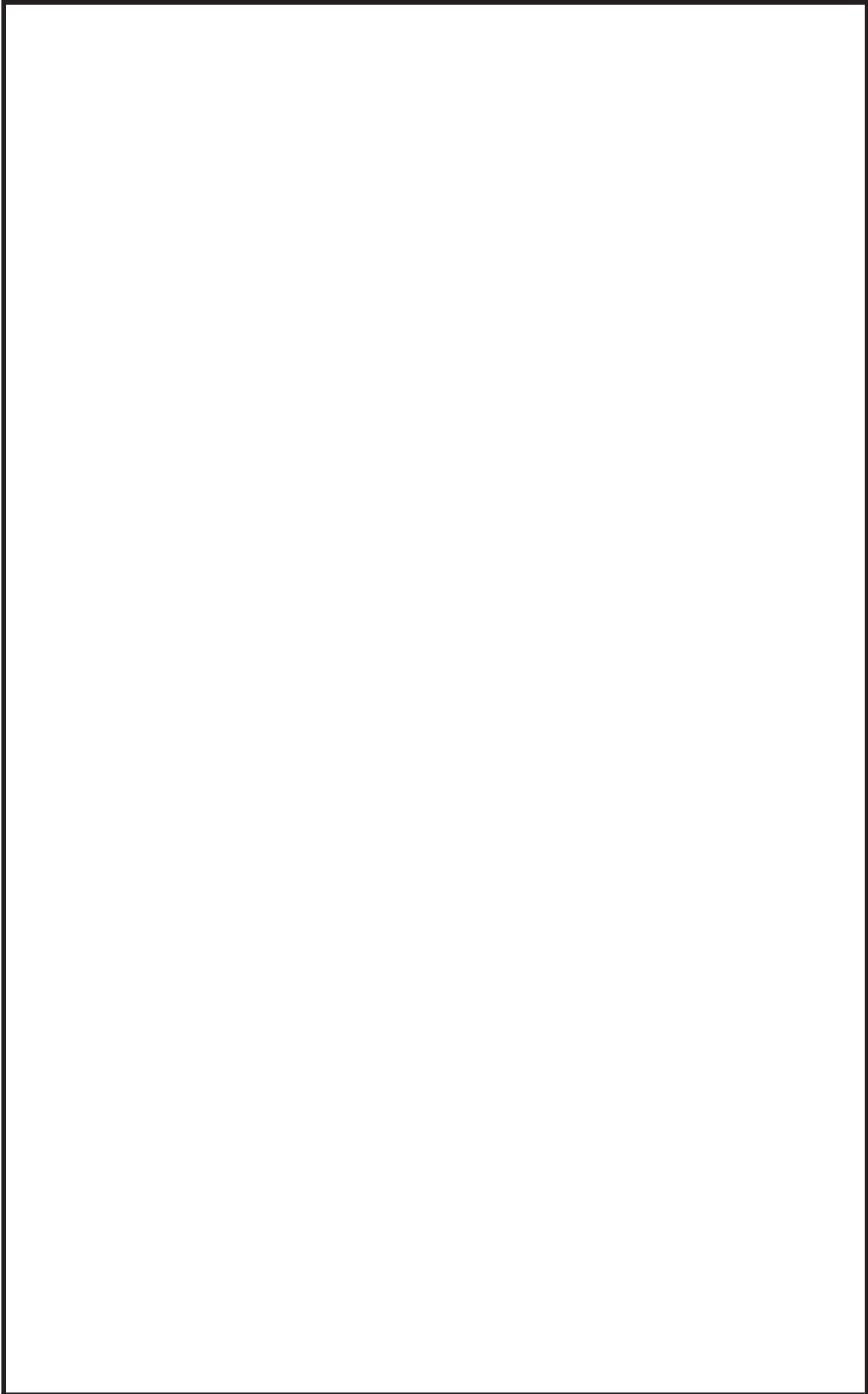
DCLG publishes updated guidance on the pre-application process for NSIPs – 10 January 2013

Following the 'light touch' consultation DCLG undertook from 13 April 2012 – 6 July 2012 on the suite of seven guidance documents underpinning the Planning Act 2008, it published the updated Planning Act 2008: guidance on the pre-application process on 10 January 2013.

The new guidance covers all the main steps that an applicant needs to take before submitting a development consent order (DCO) application, including:

- pre-application consultation;
- EIAs and HRAs;
- drafting a DCO.

Applicants must take this and any other guidance published on the pre-application procedure for NSIP applications, into consideration under s 50(3) PA 2008.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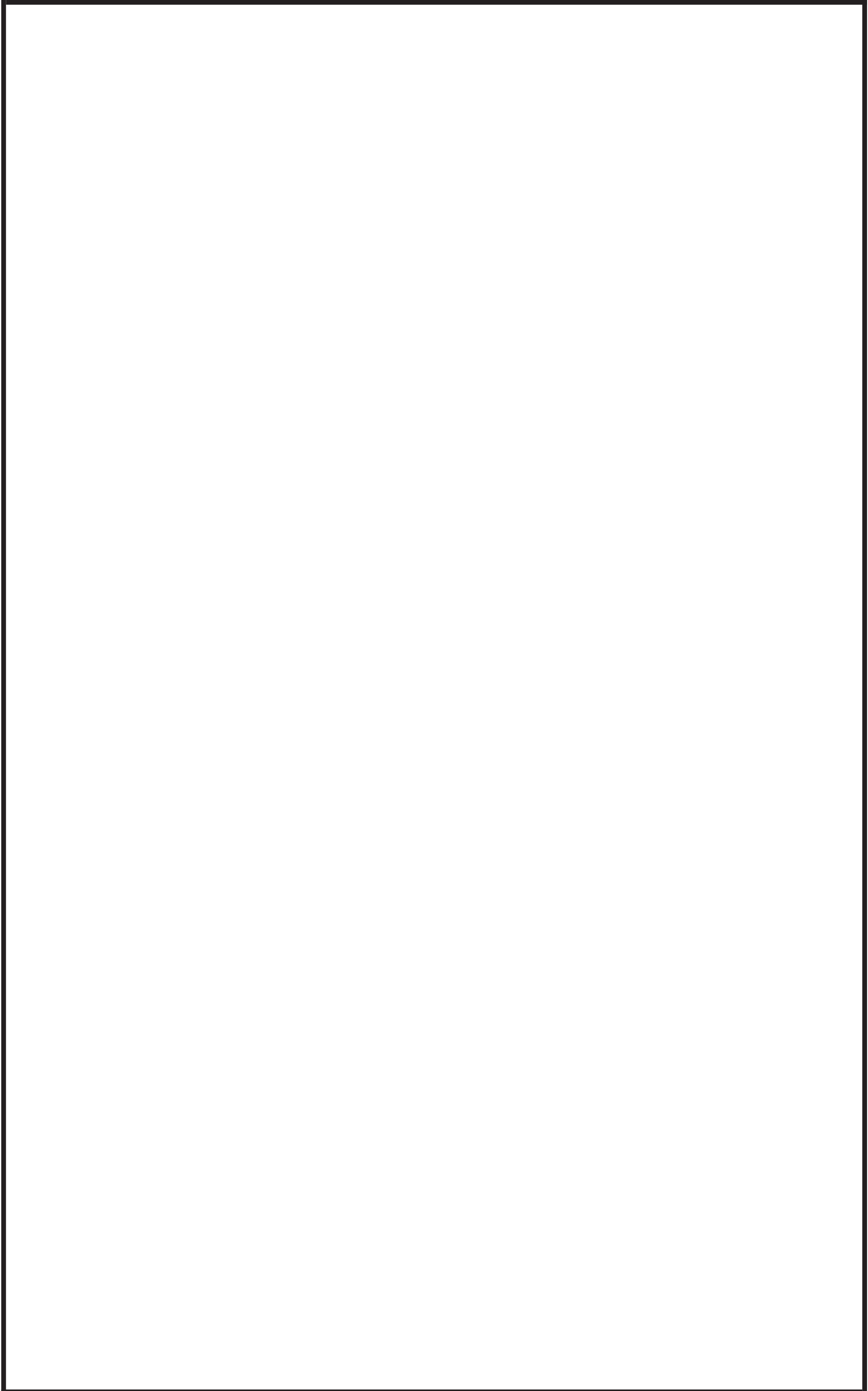

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© Reed Elsevier (UK) Ltd 2013
Published by LexisNexis Butterworths

Printed and bound in Great Britain by Hobbs the Printers Ltd, Totton, Hampshire

ISBN 978-1-4057-7747-6