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 137–152. This bulletin covers material available until 12 November 2012.

LEGISLATION

New PD rights allowing more flats to be created above retail and commercial premises come into force on 1 October 2012

Currently, the GPDO 1995 allows ancillary space within a retail unit (A1) or financial/professional services unit (A2) to be converted to residential use, provided the A1 or A2 use is on a floor below the residential part of the building, there remains a ground floor shop frontage/display window, and only a single flat is created as a result of the change of use.

SI 2012/2257 – The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2012 amends the GPDO 1995 so that two flats can now be created. The other conditions (class A1 or class A2 use is on a floor below the residential part of the building etc.) remain.

The aim behind the proposals is to bring more vacant and underused properties back into economic use and at the same time contribute to delivering more homes.

New rules to keep planning permissions alive for longer are in force on from 1 October 2012

SI 2012/2274 – The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 and SI 2012/2275 – The Planning (Listed Buildings and Conservation Areas) (Amendment)

(England) Regulations 2012 implement the promise in Eric Pickles' statement of 6 September 2012, that there would be a one year extension to the temporary provisions introduced in October 2009, which allow applicants to extend the time limits for implementing a planning permission by use of a streamlined application process.

The amendments allow applicants with unimplemented extant planning permissions and listed building and conservation area consents granted on or before 1 October 2010 (previously the deadline was 1 October 2009) to apply for a replacement permission for the same development, subject to a new time limit for implementation. As before, such applications will be subject to a lower fee, less onerous information and consultation requirements and a design and access statement will not be required.

The original measures were introduced in 2009 as a temporary response to the economic circumstances. As the economic outlook remains uncertain, the Government has decided to extend the scope of the measures for another year.

In addition, the Order amends article 31 of the DMPO so that LPAs, from 1 December 2012, have to include a statement on every decision letter stating how they have worked with the applicant in a positive and proactive way, in line with paragraphs 186–187 of the NPPF.

In a letter to Chief Planning Officers, Steve Quartermain, the Chief Planner, states, perhaps rather optimistically, that:

> 'in the majority of cases it will be sufficient for the authority to include a simple statement, confirming that they have implemented the requirement in the NPPF.'

An increase in the level of charges imposed by highway authorities where street works take longer than reasonably necessary

The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) (Amendment) Regulations 2012 (2012/2272) come into force on 1 October 2012 and amend the Street Works (Charges for the Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 by increasing the level of charges that may be imposed by English highway authorities by way of penalty where street works carried out by utility companies and others take longer than reasonably necessary.

Amendments to CIL Regulations are published on 15 October 2012

The Government published the draft Community Infrastructure Levy (Amendment) Regulations 2012 on the 15 October 2012. They contain further amendments to the Community Infrastructure Levy Regulations 2010 (2010/948). The Regulations are expected to come into force by the end of the year.

The main changes are:

- The relationship between s 73 TCPA 1990 applications and CIL is made clearer to eliminate the prospect of double charging. Where planning permission is granted prior to a CIL charging schedule being in force and a s 73 application is granted when a CIL charging schedule is in force in the area, the development will be liable to pay CIL only to the extent of any increase in the amount of CIL due on account of the later permission when compared with the original one.
- Further, where planning permission is granted under s 73, in circumstances where CIL in respect of the original permission has been paid, in calculating the amount of CIL due in respect of the later permission the CIL payment in respect of the original permission may be set off.
- CIL will not be chargeable on development granted permission under neighbourhood development orders (including Community Right to Build Orders).
- CIL monies can be used for the *'improvement, replacement, operation or maintenance'* of infrastructure, rather than just capital expenditure.
- Amendments are made to the way CIL is calculated to correct an error in the current charging formula that could result in sites where some existing buildings are demolished and others retained, being overcharged.
- The social housing relief formula is amended to prevent relief being granted incorrectly where a development includes retained housing, some of which would be used for social housing.
- To allow the Mayor of London to allow payment of CIL in instalments in an area where a London borough does not charge CIL.
- To make amendments in respect of the publication of charging schedules as provided for in the Localism Act 2011.
- To make replacement planning permissions granted under Article 18 of the DMPO 2010 exempt from the CIL charge.

Duty to co-operate is extended to Local Enterprise Partnerships and Local Nature Partnerships – in force 12 November 2012

The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2012 come into force on 12 November 2012 and include Local Nature Partnerships and Local Enterprise Partnerships as bodies who must be co-operated with by people who are bound by the duty to co-operate in relation to the planning of sustainable development under the PCPA 2004.

The Localism Act 2011 made a number of amendments to the PCPA 2004 including the insertion of new s 33A which imposed a duty on LPAs, county

councils and prescribed persons to co-operate with each other and with bodies prescribed under s 33A(9), in relation to the planning of sustainable development.

These regulations amend the TCP (Local Planning) (England) Regulations 2012, to include LEPs and LNPs in the list of prescribed bodies for the purposes of s 33A(9).

The Growth and Infrastructure Bill is introduced in the Commons on 18 October 2012

The Growth and Infrastructure Bill published on 18 October 2012 was described in the DCLG as a Bill to:

> '… help the country compete on the global stage by setting out a comprehensive series of practical reforms to reduce confusing and overlapping red tape that delays and discourages business investment, new infrastructure and job creation.'

This relatively short bill contains some important amendments to the TCPA and PA 2008 regimes and had its second reading on 5 November 2012. If enacted the bill would make the following changes:

- **Option to make planning application directly to Secretary of State instead of the LPA** (clause 1 and Schedule 1). A new s 62A is inserted after s 62 (applications for planning permission) of the TCPA 1990 under which an applicant can chose to make a planning application (and any related listed building consent or hazardous substances consent application) or approval of reserved matters, directly to the SoS if the LPA is 'designated' for such purposes, ie it is poor performing, and the application is not a s 73 application.
  - The SoS must publish the criteria that are to be applied in deciding whether a local authority should be by-passed in this way. The Homes and Communities Agency, Mayor of London, Mayoral Development Corporation and an Urban Development Corporation cannot be so 'designated' by the SoS.
  - Additional amendments to the TCPA 1990 as a consequence of s 62A are made including allowing the Mayor to call-in an application of strategic importance made to the SoS under s 62A.
- **Planning and compulsory purchase proceedings costs** (clauses 2 and 3). Amendments are made to sections 320 and 322 TCPA 1990 so that the SoS can direct a 'portion' of the costs (as opposed to the whole cost) to be recoverable from a party in a planning appeal, whether by way of inquiry, hearing or written representations.
  - In relation to compulsory purchase inquiries, the SoS can direct recovery of costs from parties where arrangements are made for an inquiry which does not take place or where a party does not attend an inquiry.

- **Limitation on the information to be submitted in support of planning applications** (clause 4). S 62 TCPA 1990 is amended so that the LPA requirements in respect of a planning application must be reasonable having regard, in particular, to the nature and scale of the proposed development. Furthermore, evidence/details on a particular matter should only be required where that matter will be a material consideration when determining the application.
- **Modification or discharge of affordable housing obligations** (clause 5 and Schedule 2). A new s 106BA is inserted into the TCPA 1990 and applies to planning obligations in England which contain affordable housing (AH) provisions.
  - A person against whom an AH provision is enforceable may apply to the LPA to have the AH provision modified, replaced, removed or discharged (where the planning obligation only contains AH provisions). The action the LPA takes will depend upon whether this is a first application or second (or subsequent) application in respect of the same AH obligation.
  - For a first application, the LPA must modify, replace, remove or discharge the AH obligation if the AH requirement means that the development is not economically viable or must determine that the AH requirement is to continue without modification/replacement.
  - For a second/subsequent application, the LPA may modify, replace, remove or discharge the AH obligation or decide the AH provision is to continue without modification/replacement.
- **Disposals of land held for planning purposes** (clause 6). Clause 6 removes an anomaly whereby currently general consents for the disposal of land by local authorities can be given under the LGA 1972 for less than best consideration but cannot be given under s 233 of the TCPA 1990 where land is held for planning purposes.
- **Periodic review of minerals planning permissions** (clause 8 and Schedule 3). The Environment Act 1995 introduced new requirements for an initial review and updating of old mineral planning permissions and the periodic review (every 15 years) of all permissions thereafter. The Bill amends the provisions of that Act.
- **Stopping up and diversion of highways and public paths** (clause 9 and 10). S 253 and 257 TCPA 1990 are amended in relation to England only, so that the process for an order to stop up or divert a highway or public path can start at the same time as a planning application instead of having to wait until planning permission has been granted.
- **Declarations negating intention to dedicate way as a highway** (clause 11). S 31(6) Highways Act 1980 is amended so that the SoS can make regulations prescribing the form of statements, maps and declarations made under the section which a landowner can use to negate any intention to dedicate a public right of way, and the fee payable in such cases.

LEGISLATION

- **Registration of a TVG** (clauses 12, 13 and 14 and Schedule 4). A new s 15A is inserted into the Commons Act 2006 under which an owner of land in England can deposit a statement and map with the commons registration authority, which will bring to an end any period of use 'as of right' for lawful sports and pastimes on the land to which the statement relates. In effect, stopping the 20 years from accruing.
  - The form of the statement and map will be prescribed by regulations which can provide for the statement to be combined with a statement/ declaration under s 31(6) Highways Act 1980.
  - Where the requisite period of twenty years' use as of right has already accrued by the time the statement and map have been deposited, an application for registration of the land as a town or village green can still be made within a period of two years from the date of the deposit in reliance on section 15(3) of the Commons Act 2006.
  - The deposit of the statement and map will not prevent commencement of a new period of recreational use as of right, but an owner of land can deposit subsequent statements in order to interrupt future periods of use.
  - A new s 15B is inserted into the CA 2006 which requires a commons registration authority to keep a register containing prescribed information about statements and maps deposited with it. This information may be included in a register maintained by the authority under s.31A of the Highways Act 1980.
  - A new s 15C is also inserted into the CA 2006 which prevents an application for a TVG to be made under s 15 (1) of the CA 2006 if any of the 'trigger events' occur, e g an application for planning permission. The right to apply under s 15 (1) is restored only where one of the 'terminating events' occurs against its corresponding trigger event, e g the planning application is withdrawn.
  - The exclusion of the right to apply does not affect the accrual of any period of user as of right or prevent any such user ceasing to be as of right.
  - Clause 14 amends in relation to England the power in s 24(2)(d) of the CA 2006 to charge fees for applications to amend a register of common land or a register of town or village greens.
- **Power stations – need to give notice to the SoS on how a new or converted power station is fuelled** (clause 15). There will no longer be a need to notify the SoS that a power station is to be fuelled by petrol or gas.
- **Conditions of licences under Gas Act 1986: payments to other licence-holders** (clause 16). The Gas Act 1986 is amended so that the proposed gas Network Innovation Competition can go ahead.
- **Variation of consents under s 36 of the Electricity Act 1989 and deemed planning permission** (clauses 17 and 18). A new s 36C is inserted into the

Electricity Act 1989 which allows s 36 consents for the construction, operation or extension of generating stations, to be varied on application to the SoS, Scottish Ministers and the MMO as appropriate. Currently, s 36 consents cannot be varied. The amendment is intended to put s 36 consent holders in the same position as those with development consent orders under the PA 2008.

- Clause 18 inserts a new s 90 (1A) and (1B) into the TCPA 1990, allowing the SoS to make directions in relation to deemed planning permission when either the new power to vary s 36 consents or the existing power to vary s 37 consents for overhead lines (in 37(3) (b)) is exercised.

- **Special Parliamentary Procedure under the PA 2008** (clause 19). Sections 128 and 129 of the PA 2008 are repealed so that SPP will not apply where a statutory undertaker or local authority has objected to its land being taken and the applicant is not itself a statutory undertaker or local authority.

- In addition, SPP will no longer apply where open space land is being acquired and there is no suitable replacement land available, and the delay caused by the SPP would not be in the public interest. SPP will continue to apply to National Trust land.

- **Modification of SPP in certain cases** (clause 20). Modifies SPP itself so that only the issue that triggered SPP can be considered in Parliament.

- **Bringing business and commercial projects within the PA 2008 regime.** S 35 of the PA 2008 under which one can ask the SoS to direct that a project is a *'nationally significant infrastructure project'* is replaced with a new s 35 and a s 35ZA is added. The words *'business or commercial project*(*s*) *of a specified description*' are added but regulations will set out what types of project are included. Housing is specifically excluded. Consent of the Mayor of London is required if the business or commercial project is wholly or partly in London.

- The s 35 direction may be given if the SoS thinks the project is of national significance on its own or in combination with other projects of the same kind. The clause does not allow an infrastructure project and a business and commercial project to be considered together.

CASES OF INTEREST

A new certificate of lawfulness cannot be challenged on the grounds that the original planning permission to which it relates was incorrectly granted

R (Hood) v Redcar and Cleveland BC [2012] EWHC 2366 (Admin) – 22 June 2012 – Mr Jeremy Richardson QC

This case concerned an abattoir in the village of Boosbeck. The site had been used as an abattoir for many years – since the 1800s. Since 2007 the abattoir

building had been not been used for that or any other purpose. A new owner wished to use the premises, once again, as an abattoir and applied for and was granted a certificated of lawfulness by the LPA. A villager applied to the court for permission to apply for judicial review to quash the decision to grant of certificate on the basis that when the planning permission was granted in 1990 to extend the abattoir building, there had been no EIA undertaken, in breach of the regulations then applicable.

The Court dismissed the application for permission taking the view that, even if there had, wrongly, been no EIA undertaken in respect of the 1990 planning permission (which was not clear because when the 1990 permission was granted, screenings were not methodically recorded by the LPA), the time to challenge the 1990 permission had long since passed and so the 1990 permission had correctly been treated by the LPA as a valid one in taking the decision to issue the certificate of lawfulness.

Notice of application for planning permission under the TCPA 1990 and TCPA (Development Management Procedure) (England) Order 2010 must be given to all subject landowners, but not before the application is made

R (on the application of O'Brien) v West Lancashire Borough Council [2012] EWHC 2376 (Admin) – 12 July 2012 – Mr Stephen Davies

The claimant applied for judicial review of the LPA's grant of planning permission to allow the interested party to build three new homes in the garden of a property in Skelmersdale, which the Claimant's property overlooked. Part of the garden had been owned by the Homes and Communities Agency (HCA) and although the HCA had transferred the land to a new owner the transfer had not been duly registered at HMLR and the HCA thereby remained the legal and registered owner of the land. The claim was founded upon the argument that as the interested party had not given prior notice of the planning application under the s 65 TCPA 1990 to the HCA they had failed to give notice to all owners and therefore the grant of planning permission could not stand.

The claim did not succeed. The Claimant had argued that the relevant legislation in force at the time (TCPA 1990 and TCP (Development Management Procedure) (England) Order 2010) meant that the notice had to be served on all relevant owners of the land before the application was made. However, it was held that there was neither an express nor an implied requirement for this in the legislation and that if this had been intended it would have been stated. The fact that the planning application form envisaged that the certification of appropriate notice having been given would form part of the application did not itself compel such a conclusion.

Furthermore, it was clear from the judgment in *Main v Swansea City Council* (1985) 49 P & CR 26 that the court had discretion as to whether to quash a grant of planning permission in the event of non-compliance with the

notification and certification requirements. This discretion remained notwithstanding the introduction in 2004 of s 327A TCPA 1990 which provides that a LPA may not entertain a planning application where there has been a failure to comply with a requirement of the Act. Relevant to the decision of the Court was that the HCA held the view that it was no longer the owner of the land. It confirmed that it did not consider itself to have been prejudiced as a result of not being notified of the planning application and it had no objection to the proposals. Taking these factors into consideration, the Court held that this was not an instance in which it should exercise its discretion to quash the planning permission and declined to do so.

Further guidance on the SEA process from the High Court – 21 September 2012

Cogent Land LLP v Rochford District Council* (*2*) *Bellway Homes Ltd [2012] EWHC 2542* (*Admin*) *– 21 September 2012 – Mr Justice Singh

Facts

The case concerned a challenge to housing policies contained in the housing chapter of the adopted Rochford Core Strategy. The claimant's land was not identified as one of the locations suitable for housing in the Strategy. The Strategy was challenged principally on the grounds that there had been a breach of the SEA Directive because the Strategic Environmental Assessment (SEA) and Sustainability Appraisal (SA) accompanying the Strategy were defective.

The Core Strategy had throughout its development from the initial Issues and Options stage draft to the final pre submission draft, been accompanied by a SEA and SA. The examination of the Strategy had also been suspended following the High Court ruling in *Save Historic Newmarket Ltd & Ors v Forest Heath District Council & Ors* [2011] EWHC 606 (Admin) (25 March 2011) so that the LPA could review its SA and SEA in light of this case, which had found a sustainability appraisal accompanying a core strategy to be flawed because it failed adequately to assess the alternatives prior to the adoption of the strategy in question. The LPA in the present case produced an addendum to the SA and SEA (Addendum) prior to the adoption of the Strategy.

Decision

The court dismissed the case, rejecting the challenge that the Addendum was an *'ex post facto justification'* to justify decisions already taken and held the Addendum was adequate and capable as a matter of law of curing any earlier defects in the SEA process.

The decision is important in providing guidance on what action can be taken it is discovered that an SEA is defective and needs to be repaired. The court held that:

- unlike an EIA report the SEA is not a single document;

- SEA is a process culminating in a report;
- the SEA Directive requires the environmental assessment to be taken into account before the adoption of a plan;
- it would be absurd if a defect in the development plan process could never be cured prior to its adoption.

The use of a recreation ground by local inhabitants was 'by right' and not 'as of right' because it had been provided by the local authority under statutory powers for that purpose

***Barkas v North Yorkshire County Council [2012] EWCA Civ 1373 – LJ's Sullivan, Richards and McFarlane* (*23 October 2012*)**

The case concerns an attempt by residents living close to the Haredale playing field in Whitby to designate it as a town or village green under s 15 of the Commons Act 2006. The field was maintained as a recreation ground on a council estate by the local authority under s 12 of the Housing Act 1985 during the relevant 20 year period under s 15(2) of the 2006 Act.

The CA has upheld the decision of the HC that when local inhabitants indulge in lawful sports and pastimes on a recreation ground which has been provided for that purpose by a local authority in the exercise of its statutory powers, they do so 'by right' and not 'as of right'. The land could not therefore, be registered as a TVG.

The case is of considerable importance for local authorities as it means that where recreational land is held by them under statutory powers, it will not be possible to have it registered as a TVG.

NEWS

Highways stopping up orders to be allowed to be made in parallel with a related planning application

In a Written Ministerial Statement on the 18 September, Stephen Hammond set out his response to the July Consultation paper on streamlining the application process on stopping up and diversion orders, which in turn, was published in response to the Penfold Review of 2010 and as promised in the Implementation of the Penfold Review of November 2011.

The consultation closed on 24 August 2012 and related to England only. It sought views on three options to speed up and simplify the process for obtaining highways stopping up/diversion orders where planning permission has been granted. The Government has decided to pursue option 1 now as a 'quick win' first step: a new streamlined process allowing applications for stopping up orders to be made in parallel with the relevant planning application resulting in two separate applications would be submitted as now: the planning application submitted to the LPA and a separate stopping-up application to the Secretary of State/London Borough.

A response to the remaining options and consultation responses is to be published by the end of November.

The report states the consultation responses broadly supported option 1, however, the Byways and Bridleways Trust was completely against this option, feeling that it would: *'not allow meaningful negotiation and may be prejudicial to the interests of the wider public*'. The Government accepts that running concurrent applications for both stopping up and planning may lead to abortive costs where plans are initially unclear or subject to potential change and/or could lead to work 'on the ground' affecting a highway for a planning application that may not be successful, but states a stopping up order will not be granted until planning consent has been received.

Major changes to housing and planning are announced on 6 September 2012

On 6 September 2012 the Government announced further measures intended to boost the economy by making changes to the planning system. The measures are aimed at delivering: up to 70,000 new homes, 140,000 jobs and a £40 billion guarantee for major infrastructure projects and £10 billion for new homes. The measures include:

- A £200 million investment in housing sites to ensure that the high-quality rented homes that are needed are available to institutional investors quickly. A taskforce is to be established to bring together developers, management bodies and institutional investors to broker deals and deliver more rented homes. To give institutional investors the assurance they need to invest in this area the Government will be issuing a debt guarantee for up to £10 billion for this scheme and the affordable housing scheme set out below. Under the scheme, the Government will enable providers to raise debt with a Government guarantee, where they commit to investing in additional new-build rented homes

- Extension of the FirstBuy scheme to March 2014 with an additional £280 million allocation, with a matching contribution from house builders.

- Accelerating the delivery of locally-supported, major housing sites by working in partnership with local authorities, scheme promoters and communities.

- Legislation is proposed to allow planning applications to be decided by PINS, if the LPA has a track record of consistently poor performance in the speed or quality of its decisions. In support of this, more transparent reporting of council performance on planning will be required and increased use of PPAs for major schemes. Planning Inspectors will have more power to initiate an award of costs in planning appeal proceedings, where it is clear that an application has not been handled as it should have been with due process.

- A consultation shortly on options to speed up planning appeals – and for a new fast-track procedure for some small commercial appeals.
- Extension for an additional year of a measure allowing developers to seek to extend their planning permission by use of a streamlined procedure before they expire – see SI 2012/2274 – The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 considered above.
- Review of the thresholds for some of the existing categories of nationally significant infrastructure projects, and also to bring new categories of commercial and business development into the PA 2008 regime.
- Extension of the principle of one-stop-shop for non-planning consents for major infrastructure, and amendment of the Special Parliamentary Procedures.
- Introduction of legislation now, to be effective in early 2013, which will allow developers to appeal s 106 affordable housing provisions. The Planning Inspectorate will be instructed to assess how many affordable homes would need to be removed from the s 106 agreement for the site to be viable in current economic conditions. The Planning Inspectorate would then, as necessary, set aside the existing s 106 agreement for a three year period, in favour of a new agreement with fewer affordable homes. Councils are encouraged to take the opportunity before legislation comes into effect to seek negotiated solutions where possible. Alongside this, the Government is currently consulting on legislation that would allow developers to renegotiate non-viable s 106 agreements entered into prior to April 2010.
- Encouraging councils to use the flexibilities set out in the NPPF to tailor the extent of Green Belt land in their areas to reflect local circumstances. Councils are encouraged to make best use of this land, whilst protecting the openness of the Green Belt in line with the requirements in the NPPF.
- A consultation 'shortly' on changes to increase existing PD rights for extensions to homes and business premises in non protected areas for a three-year period. According to press reports, people will be able to build larger extensions on houses – up to eight metres long for detached homes and six metres for others.
- Introduction of PD rights to enable change of use from commercial to residential – see below. It will be recalled that the Government published its response 'Relaxation of planning rules for change of use from commercial to residential: Summary of consultation responses and the Government's response to the consultation' in July 2012 in which it stated it decided not to pursue changes to the GPDO 1995 (to make it easier to change the use of buildings from commercial to residential) but rather, insert a new policy into the NPPF encouraging LPAs to approve such applications. The Government has now decided it will amend the GPDO after all.

Failure of the duty to co-operate in the North London Waste Plan

S 110 of the Localism Act 2011 inserts s 33A into the PCPA 2004 imposing a duty on a LPA to co-operate with other LPAs, county councils and bodies or 'other persons as prescribed'. The section came into force on 15 November 2011. The other persons prescribed are those identified in regulation 4 of the TCP (Local Planning) (England) Regulations 2012 and the bodies prescribed under s 33A (1) (c) include the Environment Agency, Mayor of London and TfL amongst others.

The duty to co-operate requires, in particular, each person, including a LPA,

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken; and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

The duty under s 33A (2) PCPA 2004 applies to the preparation of development plan documents, and activities which prepare the way for and which support the preparation of DPDs, so far as relating to a strategic matter. A 'strategic matter' is:

(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas

An inspector has suspended an inquiry into the North London Waste Plan (NLWP), on the grounds that seven London Boroughs (Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest) had failed the duty to co-operate, following complaints by two regional waste bodies (the South East Waste Planning Advisory Group and the East of England Waste Technical Advisory Body), that the Councils had not engaged with planning authorities outside London on the NLWP. The NLWP sets out the waste management planning framework for the for the next 15 years up to 2027 and identifies sites for waste management use and sets out policies for determining waste planning applications.

The Councils sought to argue that as the NLWP is not proposing any development or use of land which would have a significant impact outside the 7 Boroughs, it had complied with the duty, insofar as the duty to co-operate does apply (in relation to the seven London Boroughs).

The inspector concluded in a paper that waste management was capable of constituting a 'strategic matter' and that the NLWP did not comply with the legal requirements of s 33A of the PCPA 2004 (as amended) in that there has not been constructive, active and ongoing engagement during the NLWP's preparation between the Councils' and the planning authorities to which significant quantities of waste are exported.

DfT publishes draft planning conditions for adoption of unadopted highways – 18 September 2012

The DfT has published Draft Planning Conditions (and notes) for adoption of new roads in relation to unadopted roads. The draft conditions have been developed by a Working Group of representatives from central and local government to assist in preparing unadopted roads for adoption by local highway authorities with the aim of protecting the interests of new residents. Local highway and planning authorities may wish to consider imposing these draft planning conditions on planning permissions where appropriate. The draft conditions 'ensure that arrangements for the future management and maintenance of new roads within developments, is confirmed at the planning stage' and that roads are then completed to an appropriate level and maintained in an appropriate way in advance of their adoption under s 38 Highways Act 1980 or until a suitable private management and Maintenance Company/Agreement is in place.

The responsibility for maintenance of unadopted roads normally falls on the frontagers, ie the owners of the property fronting that road although the local highway authority may adopt the road but this is at their discretion.

The MoJ sets out proposals for a cost capping scheme for JR cases which fall within the Aarhus Convention

In August the Government published its consultation response to the MoJ consultation (Cost Protection for Litigants in Environmental Judicial Review Claims) it undertook last year. As a result, the Civil Procedure Rules will be amended in December 2012 and the following will then apply:

- A fixed recoverable costs regime will apply in all cases where the claimant states in the claim form that the case is an Aarhus case and the reasons why this is so, subject only to the court determining that the case is in fact not an Aarhus case at all. It will not be dependent on permission having been granted.
- The liability of the claimant to pay costs of the defendant will be capped at £5,000 if the claimant is an individual and at £10,000 where the claimant is an organisation; and the liability of the defendant to pay the costs of the claimant will be capped at £35,000.
- The fixed recoverable costs for both the claimant and defendant cannot be challenged, but the fixed costs regime will not apply if the claim is not within the scope of the Convention.
- The rule proposed by Lord Justice Jackson for appeals for cases that have been heard under a fixed costs regime will also apply for appeals in cases brought under the Aarhus costs regime.

The Heseltine Review recommends more planning changes – 31 October 2012

In March this year the PM asked Lord Heseltine to report to the Chancellor and Vince Cable as to how to more effectively create wealth in the UK. The

resulting 'No stone unturned in pursuit of growth' report published on 31 October 2012 includes 89 recommendations. In his report launch speech at Birmingham City Hall, Heseltine stated that what is needed is a:

> 'new partnership between the private and public sectors, between local communities and central government, the better use of public money and consequently the levering of private investment.'

The Government will now consider the recommendations and respond in the coming months.

The European Commission outlines plans to streamline the EIA process – 26 October 2012

Over the course of the last two years or so the European Commission has been undertaking a review of the EIA Directive 2011/92/EU (codified Directive 85/337/EEC and its three subsequent amendments) which included a wide public consultation in 2010 (1365 replies in total) concluding with a Conference in Belgium on 18–19 November 2010.

As a result of this review, the EC adopted a proposal for a new Directive on 26 October 2012 that amends the current Directive, which has not significantly changed over the last 25 years.

The main objective of the changes is to correct a number of shortcomings identified in the review process, to update the Directive to reflect ongoing environmental and socio-economic changes/ challenges and align with the principles of smart regulation. The shortcomings of the Directive are grouped into three problem areas:

1) the screening procedure;

2) the quality and analysis of the EIA; and

3) the risks of inconsistencies within the EIA process itself and in relation to other legislation.

The main amendments are:

- The definition of 'project' in Article 1 now includes demolition works, in accordance with the Court ruling in case C-50/09 (*EC v Ireland*) and the definition of 'environmental impact assessment' is also added. The possibility of not applying the Directive is limited to projects of national defence as their sole purpose (as is currently the case) and extended to cover civil emergencies as is already the case under the SEA Directive.
- Article 2(3) is amended to introduce an EIA 'one-stop shop', allowing the coordination or integration of assessment procedures under the EIA Directive and other EU legislation, thus allowing the possibility of a EIA and AA being done together perhaps?
- Article 3 is amended so that only 'significant' effects of a project are assessed, by reference to a number of factors, including, population, human health and biodiversity etc.

- Article 4 sets out the information (in a new Annex II.A) which the developer is to send to the competent authority for screening purposes and at Annex III the selection criteria the authority is to take into account when making a decision. The screening decision must be made within 3 months of the application (a maximum 3 month extension can be granted where the project is complex).
- Article 5 on the contents of the ES is comprehensively amended. Although the core requirement for the developer to submit ES is maintained, its form and content is streamlined and specified in Annex IV. Scoping is now compulsory and the information to be included in a screening opinion is specified. In addition, to ensure the resulting ES is of sufficient quality, it must be prepared by 'accredited and technically competent experts' or verified by these experts by the competent authority. Interestingly, the developer cannot use an expert for the ES where the same expert has been used by the competent authority to prepare the scoping opinion.
- The time-frames for public consultation on the ES are to be a minimum of 30 days and a maximum of 60 days. A further 30 day extension is allowed in exceptional cases (Article 6(7)).
- Article 8 on decision making is substantially amended to include several new provisions:

  (1) the EIA process must be concluded by the competent authority within 3 months where all information has been provided;

  (2) the competent authority is required to include in the development consent decision itself certain information, eg summary of the consultation comments;

  (3) mandatory monitoring of significant adverse environmental effects is introduced in order to assess the implementation and effectiveness of mitigation and compensation measures;

  (4) before deciding to grant or refuse development consent, the competent authority is required to verify that the information of the ES is up to date.
- The information provided to the public when development consent is granted is to include a description of the monitoring arrangements.
- Article 12 is amended in order to specify the information Member States need to provide to the EC for monitoring the implementation of the Directive.
- A new Annex II.A sets out the information to be submitted by the developer for screening of projects listed in Annex II.
- Annex III (which lays down the criteria to be used by competent authorities for screening Annex II projects) is amended.

- The information to be included in the ES under Annex IV is amended to insert additional information requirements concerning the assessment of reasonable alternatives, the description of monitoring measures and the description of aspects related to new environmental issues (eg climate change, biodiversity, disaster risks, use of natural resources).

The proposal will now be sent to the European Parliament and the Council to be adopted through the co-decision procedure. It is expected to enter into force in March 2014, depending on the progress of the legislative process.

The launch of GOV.UK on 17 October 2012

The Government launched the GOV.UK website on 17 October (https://www.gov.uk/) which replaces the Directgov and Business Link websites. The Government's ultimate aim is to consolidate of all Government websites on to a single domain.

The next phase will involve 24 Government department websites and a number of agencies/NDPB websites being merged into the 'Inside Government' section of Gov.Uk website by March 2013. The final phase will include the transition of remaining agencies/NDPBs and is due to be completed by March 2014.

All compulsory purchase and land disposal work will be dealt with by the National Planning Casework Unit from 1 October 2012

Steve Quartermain, the Chief Planner, wrote to LPAs on 25 September 2012 informing them that following the transfer of all new compulsory purchase and land disposal work from 1 May 2012, to the National Planning Casework Unit (NPCU) in Birmingham, from 1 October 2012 all existing cases will also be transferred to the NPCU and subsequently dealt with by that Unit.

Lord Taylor to lead a review of planning guidance – DCLG – 16 October 2012

Following the coming into force of the NPPF in March this year, the Government has been considering what to do with the vast array of practice guidance notes, circulars etc supporting the now cancelled PPGs and PPSs. On 16 October the DCLG announced that Lord Taylor of Goss Moor will chair a review into the existing 6,000 pages of planning practice guidance with the aim of drastically reducing the existing guidance and ensuring that new guidance supports effective planning.

The other members of the review group are Simon Marsh (Royal Society for Protection of Birds), Andrew Whitaker (Home Builders Federation), Trudi Elliott (Royal Town Planning Institute) and Councillor Mike Jones (Leader of Cheshire West and Chester Council). The members will sit pro bono as individuals, not as representatives of their respective organisations.

The group will report, in time for the Autumn Statement, with recommendations as to:

- which practice guidance should be prepared as a priority;
- which DCLG guidance should be cancelled immediately; and
- the timetable for the completion of the work on the remaining guidance.

The Government's response to the heritage reform consultation undertaken earlier this year

DCMS undertook a 4 week consultation on improving the listed building consent process in the summer. The Government's response to the consultation has now been published in October 2012. The Government has decided:

- not to introduce a system of prior notification for deemed LBC but instead, to introduce a system of local and national class consents akin to the LDOs and GPDO 1995 for planning;
- LPAs will be able to grant a Certificate of Lawful Works (CLW) for prospective listed building works (but not for retrospective) akin to a CLOPUD under s 192 of the TCPA 1990;
- the use of accredited agents providing expert opinion to LPAs on whether LBC application works were acceptable is not being pursued due to overwhelmingly negative feedback (the Government will however, consider alternative non-legislative routes); and
- it will also consider further, the factors discouraging LPAs from using Urgent Works Notices, Repairs Notices and CPOs where listed buildings are at risk and identify potential reforms.

CONSULTATION

Changes to increase PD rights for extensions to homes and business premises in non-protected areas

On 12 November 2012, DCLG published the 'Extending permitted development rights for homeowners and businesses: Technical consultation'. It explains that the Government proposes

> 'to make it quick, easier and cheaper to build small-scale single-storey extensions and conservatories, while respecting the amenity of neighbours.'

The consultation estimates that 20,000 new extensions could generate up to £600m of construction output, supporting up to 18,000 jobs. In addition, each family who benefits will save up to £2,500 in planning and professional fees, with total savings of up to £100m a year.

The Government is proposing changes to the following parts of Schedule 2 of the GPDO 1995 where a property is not in a 'protective area' as defined in

Article 1 (5) (National Parks, Areas of Outstanding Natural Beauty, conservation areas, World Heritage Sites, Norfolk and Suffolk Broads) and Sites of Special Scientific Interest. In addition, the changes will only be in force for 3 years from the date of the regulations implementing the changes coming into force in recognition of the current economic circumstances which require:

> 'exceptional measures to assist hard-pressed families and businesses and to stimulate growth'.

In a departure from the normal position, developments would need to be completed within the 3 year period and to ensure this is done, the LPA will need to be notified on completion of the development.

The measures proposed are:

- Single-storey rear domestic extensions under Part 1, Class A (development within the curtilage of a dwellinghouse) – to increase the size limits for the depth of single-storey rear domestic extensions from 4m to 8m (for detached houses) and from 3m to 6m (for all other houses). No changes are proposed for extensions of more than one storey and flats are excluded. All other limitations and conditions contained in Part 1 Class A would remain.

- Conversation of garages under PD rights for use by family members. The consultation seeks views on whether more can be done to make it easier to convert garages into family annexes. Currently, improvements/alterations to garages under Part 1 Class A is permitted if the garage is attached to the house or under Part 1 Class E if it is freestanding.

- Extensions to shops and financial/professional services establishments under Part 42 Class A – to increase shop and professional/financial services establishments size limits for extensions from the current 50m2 (provided the gross floor space of the original building is not increased by more than 25%) to 100m2 (and 50% respectively). It would also be permissible to to build up to the boundary of the premises, except where the boundary is with a residential property (when the requirement to leave a 2m gap would remain). All other limitations and conditions would remain.

- Extensions to offices under Part 41 Class A – to increase the size limits for extensions to offices from the current 50m2 (provided the gross floor space of the original building is not increased by more than 25%) to 100m2 (and 50% respectively). All other limitations and conditions would remain.

- New industrial buildings under Part 8 Class A – to increase the size limits for new industrial buildings within the curtilage of existing industrial premises from the current 100m2 (provided the gross floor space of the original building is not increased by more than 25%) to 200m2, (50% respectively). All other limitations and conditions would remain.

CONSULTATION

The consultation also proposes removing some prior approval requirements for the installation of broadband infrastructure (cabinets, telegraph poles and overhead lines) under Part 24 of the GPDO 1995 on Article 1(5) land for a period of 5 years. All works will have to be completed within the 5 years to count as PD. The prior approval requirement will continue to apply in SSSIs.

The consultation closes on 24 December 2012.

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