Butterworths Planning Law Service

Bulletin Editor

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CASES OF INTEREST

Interpretation of Green Belt Policy in PPG2 – Inappropriate Development

Newlyn Dean & Sons Ltd v SSCLG and East Dorset District Council (2014) EWCA Civ 193

This case concerned the interpretation of PPG2 in relation to enforcement notices issued in respect of the use of green belt land for paintballing and livery purposes, and the erection of related structures. A planning inspector had found the development to be 'inappropriate development' as it materially reduced the openness of the green belt. This case revolved around the words in PPG2 para 3.4 in which new buildings are not 'inappropriate development' if constructed for specified purposes including 'essential facilities for outdoor sport and outdoor recreation, for cemeteries and for other uses of land which preserve the openness of the Green Belt and which do not conflict with the purposes of including land in it'.

The appellant argued that the words 'preserve the openness of the Green Belt and which do not conflict with the purposes of including land in it' apply only to 'other uses of land' – ie uses apart from outdoor sport and recreation and for cemeteries.

The Court of Appeal disagreed, upholding the decision of the High Court. It took the view that to construe the wording in this way would not be consistent with overall Green Belt policy and there was no obvious reason to assume that the draftsman of PPG2 should have intended to limit the words in the way that the appellant had argued. Further, other references in PPG2

did not support the appellant's argument, including para 1.7 which provides that the basic aims of green belt policy take precedence over other land use objectives.

A local authority can substitute a description of an existing lawful use for the use set out in a lawful development certificate application

Freedman, R (*On the Application Of*) *v Wiltshire Council* [2014] EWHC 211 (Admin) (6 February 2014) [2014] EWHC 211 (Admin), [2014]

This case concerns a challenge to a Certificate of Lawfulness of Existing Use or Development (CLEUD) granted under s191 of the TCPA 1990.

An application for a CLEUD was made for a building known as the 'Old Workshop', one of a number of former agricultural buildings on a site in Wiltshire. In addition, the application included an area to the south of the Old Workshop for ancillary vehicular parking. The applicant contended that there had been a material change of use of the Old Workshop for B1 offices and the land to the south to use for ancillary parking in connection with the use of the Old Workshop for a continuous period of 10 years or more.

The LPA did not accept that the Old Workshop had been used for offices for a continuous period of 10 years and declined to grant a CLEUD for the Old Workshop but issued a CLEUD stating that use of the land for vehicular parking (not simply for ancillary vehicular parking) was lawful.

The certificate was challenged by a local resident on the grounds that the LPA had no jurisdiction under s 191 to substitute a different use, vehicular parking, for the use applied for, which was ancillary vehicular parking.

The CLEUD was quashed.

The court held that an LPA has power under s 191(4) of the TCPA 1990 to substitute a description of an existing lawful use for the use set out in the application provided that it is satisfied, on a balance of probability, that the evidence demonstrates that the use as set out in the substituted description has been carried on continuously for a period of 10 years or more.

In the present case, the use applied for was ancillary vehicular parking, that is parking in connection with and ancillary to the use of the Old Workshop for office use. The LPA had power to substitute a different use, namely use for vehicular parking (that is, vehicular parking by any person, and not limited to parking in connection with and ancillary to the use of the Old Workshop) provided that it was satisfied, on a balance of probabilities, that the land had been used for vehicular parking for a continuous period of 10 years or more. However, what the LPA had done was to aggregate periods of use for ancillary parking with a period of use for parking generally in calculating whether there had been 10 years or more continuous use for parking. This was not permissible and the LPA had not approached the question of substituting the description of vehicular parking in the correct way and did not consider whether the evidence established, on a balance of probabilities,

that the land to the south of the Old Workshop had been used for a continuous period of 10 years or more for the use as set out in the substituted description.

Court gives guidance on non planning councillors attending planning committee meetings

Bishop's Stortford Civic Federation v East Hertfordshire District Council [2014] EWHC 348 (Admin) (21 February 2014) [2014] EWHC 348 (Admin)

In this case the Bishop's Stortford Civic Federation challenged the grant of an outline planning permission for mixed-use development by East Hertfordshire District Council for the redevelopment of a key site in Bishop's Stortford.

The developer had been in discussions with the council for a number of years in respect of the redevelopment of the site in which it had a property interest, but which also included existing council offices (which were to be surrendered and alternative premises for the council's front-line services to be provided in another building). Following a series of meetings in 2009 (of the council's executive and the full council) the council entered into arrangements with the developer including a Deed of Overage under which the council agreed to use reasonable endeavours to assist the developer in obtaining all necessary consents and to support it in promoting the development. The deed stated that the council was entering the deed as landowner, not as the local authority, and its powers as such were not fettered. The development was defined as the development in the draft planning brief.

The outline planning application subsequently submitted envisaged the demolition of the existing buildings on the site and replacement with a mixed-use development comprising retail, leisure, hotel, food and drink, residential, community uses, car parking, servicing and access arrangements, together with alterations to the public highway and/or public realm works and flood mitigation measures. The proposed development generated a number of objections including from the Federation.

The application was considered and approved at a 'lively' planning committee meeting which was, in addition to the planning committee members, attended by six other councillors (including the two ward councillors) councillor Tindale (leading the land negotiations with the developer on behalf of the council) and over 200 members of the public. Those opposed to the development as well as those in favour were granted an opportunity to have their say. Councillor Tindale also addressed the committee covering three matters: the land agreement with the developer which had been approved by the council's executive, which he argued, to renege upon would be 'morally bankrupt'; the fact that the town would lose out because of better retail facilities in neighbouring towns such as Harlow, Braintree and Stevenage; and that, if the developer withdrew, development would still take place, possibly housing.

The Federation challenged the grant of the planning permission on two grounds:

- councillor Tindale's remarks at the planning committee meeting 'polluted the well' and misled the committee by persuading members opposed to the development that the principle of mixed development on the site had already been established by a favourable vote in full council in 2009; and
- the council acted unfairly in granting planning permission by failing to give the Federation or others the opportunity to comment on additional documents submitted by the developer after the permission had been granted, in breach of reg 22 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

The challenge was dismissed by the court.

With regard to councillor Tindale's attendance at the committee meeting, the court held that he had no personal, prejudicial interest in the planning application and the law is that, unless there is an express provision in the council's constitution or other documents preventing attendance, any councillor can, with the committee's permission, in principle attend and address it. The court was not persuaded that councillor Tindale's reference to the 2009 arrangements, or their existence, had any influence on committee members. The officer's report directed members to the relevant planning issues and the majority followed its recommendations in favour of granting outline planning permission. In addition, all of the councillors in the majority were experienced, not new members and all members of the committee had received training which emphasised that they should always focus on planning matters only in their decision-making.

The second ground of challenge related to the fact that the developer, following the publication of the National Planning Policy Framework (NPPF), had submitted an Environmental Statement Addendum and a supplementary planning statement. These documents were placed on the planning file and were available for public inspection, but there was no consultation process. The court held that the documents were placed on the planning file, albeit not as good practice dictated uploaded onto the website and so the Federation had the opportunity to comment. They merely updated the situation in the light of the NPPF and there was no material change arising in respect of the changes in policy. Any unfairness to the Federation was entirely technical. The NPPF did not make any difference to the assessment of the application, indeed, it strengthened it. The law does not recognise a technical breach of natural justice.

The relevance of delay in an application to rectify the register of town and village greens

Adamson and others (*Respondents*) *v Paddico* (*267*) *Limited* (*Appellant*)

Mrs Gill Taylor (*on behalf of the Society for the Protection of Markham and Little Francis*) (*Appellant*) *v Betterment Properties* (*Weymouth*) *Limited* (*Respondent*) [2014] UKSC 7

On appeal from: [2012] EWCA Civ 262; [2012] EWCA Civ 250

Facts

These two appeals were heard together as they raised the same issue: the effect of a lapse of time on an application for rectification of the town and village green register.

The first case (*Betterment* case) concerned an area of some 46 acres which a local residents' group had successfully registered as a village green in 2001. In May 2005 the land was sold to Betterment Properties, who later that year applied to have the registration removed under s 14 of Commons Registration Act 1965 (four years after the registration). The High Court ruled in favour of removing the registration and that decision was upheld by the Court of Appeal.

In the second (*Paddico*) case, a residents' village had successfully applied to have 6.5 acres of land registered as a green in 1996. The company who owned the land began proceedings to rectify the register in 1997 but, after receiving legal advice, decided not to pursue the action further. In 2005, they sold the land to Paddico, who began their own s 14 claim in 2010 (14 years after the registration). The High Court allowed the application to rectify, but that decision was overturned by the Court of Appeal.

The Supreme Court heard appeals against both decisions, each concerned solely with the relevance of delay in bringing an application for rectification when a court has concluded that the registration of land as a town or village green ought not to have been made in the first place.

Decision

The Supreme Court held that the register should be rectified in both cases, with the residents' appeal in the *Betterment* case dismissed and the landowner's appeal in the *Paddico* case upheld.

The court held that there were three possible analogies which could be drawn to determine the correct approach to take.

The first was with the principles applicable to public law claims, specifically the principle that the need for certainty in public records (such as the register of town and village greens) can override the need for legality. However, the court considered that:

> 'While there is a public interest in respecting the register, which is conclusive until rectified, there is also a public interest in the register being accurate and lawfully compiled.'

The second was with the principles applicable to private law claims where the Parliament has provided a limitation period. This analogy was rejected since the Parliament had decided, in this case, not to set such a limit.

The third possible analogy was with the principles applicable to private property law claims where Parliament has not provided a limitation period, as embodied in the doctrine of laches (an equitable defence against a claimant who has unreasonably delayed bringing their claim). The court considered the various factors required for the defence to apply:

(a) The Claimant's knowledge of the facts – the landowners had in both cases bought the land with knowledge of the registration, but the court considered this relatively insignificant since their rights had still been severely curtailed; and

(b) Acquiescence by the claimant: the court found that it would not be appropriate to treat the landowners' failure to object to the inhabitants' use of the land after it had been registered as a green – by putting up fences, notices, etc – as acquiescence on their part, since it would have been unlawful for them to do so while the land was registered; or

(c) Detriment or prejudice to the defendant: the court found that there was no evidence of prejudice to local inhabitants in either case.

The court considered the third analogy the most appropriate, and through it concluded that the lapse of time, though a material factor, was not in either case sufficient to justify upholding the registrations.

Weight to be given to the preservation of the setting of listed buildings when considering planning applications

Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council [2014] EWCA Civ 137

Facts

In 2012 a planning inspector granted planning permission for a four-turbine wind farm which would be visible from Lyveden New Bield, a site protected by a range of heritage designations: it is a Grade I listed building, is included in the Register of Parks and Gardens of Special Historic Interest at Grade I, and is a Scheduled Ancient Monument.

The inspector found that the impact of the turbines 'would not reach the level of substantial harm' and granted permission. In March 2013, the High Court quashed the planning inspector's decision, holding that that the inspector had failed to:

(1) have special regard to the desirability of preserving the settings of listed buildings as required by the duty imposed under the Planning (Listed Buildings and Conservation Areas) Act 1990, s 66(1);

(2) correctly interpret the planning policies in PPS5; and

(3) give adequate reasons for his decision.

The appellant developer appealed against the High Court's decision on three grounds, submitting that:

(1) s 66(1) did not require a decision-maker to give any particular weight to the desirability of preserving the settings of listed buildings;

(2) the High Court judge had taken an over-rigid approach to PPS5 and its Practice Guide, which were not intended to be prescriptive; and

(3) the planning inspector had given adequate reasons.

Decision

The appeal was dismissed.

On ground (1), the Court of Appeal found that, in enacting s 66(1), Parliament had intended that the desirability of preserving the settings of listed buildings should not simply be given careful consideration, but should be given 'considerable importance and weight' when the decision-maker carried out the balancing exercise. The inspector's failure to do so was 'a fatal flaw in the decision.'

On ground (2), the court held that the policy guidance in PPS5 and the Practice Guide required the inspector to assess the contribution that the setting of Lyveden New Bield made to its significance as a heritage asset and the extent to which the wind turbines would enhance or detract from that significance. To answer that question he should have grappled with the objectors' argument that the setting of Lyveden New Bield was of crucial importance to its significance as a heritage asset because it was designed to have a dominating presence in the surrounding rural landscape, and to afford extensive views over it. Instead, the inspector had wrongly limited his assessment to the ability of 'the reasonable observer' to distinguish between the modern addition to the landscape and the historic landscape.

On ground (3) (which was linked to ground (2)), the court found that the inspector's reasoning had indeed been inadequate:

> 'If the "reasonable observer" test was the decisive factor in the Inspector's reasoning, as it appears to have been, he was not properly applying the policy approach set out in PPS5 and the Practice Guide. If it was not the decisive factor in the Inspector's reasoning, then he did not give adequate reasons for his conclusion that the harm to the setting of Lyveden New Bield would not be substantial.'

The proper test to be applied in relation to a fall-back position

Gambone v Secretary of State for Communities and Local Government and another [2014] All ER (D) 246 (Feb)

Facts

The claimant applied for planning permission to construct a bungalow in the garden of his property. The application was refused and the claimant appealed. The appeal was dismissed, but the claimant constructed a building without permission and, consequently, the authority issued an enforcement notice in respect of it.

The claimant appealed against the enforcement under, inter alia, grounds (b) and (c) of s 174(2) of the Town and Country Planning Act 1990 ('the Act'). He relied upon Class E of Pt 1 of Sch 2 to the Town and Country Planning (General Permitted Development) Order 1995 (the provision within the curtilage of a dwelling house of any building or enclosure, swimming or other

pool required for a purpose incidental to the enjoyment of the dwelling house as such, or the maintenance, improvement or other alteration of such a building or enclosure). The first inspector dismissed that appeal.

The claimant then applied to the LPA for planning permission for the retention of the building, with external and internal changes, for use as a workshop and gymnasium. The LPA refused that application and the claimant appealed.

He contended, inter alia, that even if the proposed building did not comply with Class E, he had the benefit of a strong 'fall-back' position: namely, that even if required to demolish the unauthorised building in accordance with the enforcement notice, he could erect a similar or less attractive structure compliant with Class E in its place.

The second inspector refused that appeal, concluding that the claimant's proposal was contrary to the relevant policies of the development plan and the National Planning Policy Framework. The claimant sought to quash that decision under s 288 of the Act. The claimant submitted, inter alia, that:

(1) the second inspector had not applied the proper test in relation to whether there had been a fall-back position;

(2) the second inspector had inadequately explained how he had taken the fall-back position into account in formulating his conclusions;

(3) the second inspector should have reached a definitive conclusion on what could be accomplished using permitted development rights; and

(4) the claimant should have been afforded an opportunity to deal in greater detail with the fall-back argument and the second inspector's concerns as to the credibility of fall-back occurring.

Decision

The claim was dismissed. The court held that:

(1) an inspector should approach a fall-back argument in two stages. First, he or she should ask whether the way in which the land would be developed would amount to a material consideration (ie whether there was more than a theoretical possibility that development would take place). Second, if so, he or she should decide what weight should be attached to it. The question of whether the fall-back represented greater harm than the proposal under consideration applied at the second stage of the assessment. In the instant case the second inspector had properly considered the fall-back position put to him and the prospect of the fall-back occurring. He had also considered the relative amounts of harm that might arise. He had been entitled to conclude that there had not been a significant probability that the construction of essentially the same building would arise;

(2) the reasons provided by the second inspector had adequately explained how he had taken the fall-back position into account and how he had reached his conclusion;

(3) it was not a matter for an inspector dealing with the kind of application in the instant case to conduct the kind of exercise undertaken when considering an application under s 191 or 192 of the Act (certificates of lawfulness of use or development/proposed use or development) regarding what could be accomplished using permitted development rights; and

(4) there had not been any lack of fairness in the procedures in the instant case, and there had been nothing in the way in which the second inspector had reached his conclusions which had given rise to any obligation on him to seek further submissions from the claimant.

The relationship between private nuisance and planning

Coventry and others v Lawrence and another [2014] UKSC 13 (26 February 2014)

In 2006, the appellants purchased and moved into a property known as Fenland it was built in the 1950s, located 560 metres from a stadium and 860 metres from a motocross track.

The stadium has been used for various motor sports since the late 1970s. In 1997 the LPA issued a Certificate of Lawfulness of Existing Use or Development stating that motor racing had become an established use of the stadium and had therefore become immune from planning enforcement. To the rear of the stadium, motocross track was constructed in 1992 pursuant to a temporary personal planning permission for motocross racing. The LPA granted permanent planning permission for this in July 2002.

Following complaints from the appellants, the LPA issued noise abatement notices which resulted in noise attenuation works being carried out in 2009. At the same time, the appellants issued proceedings for an injunction to restrain the nuisance.

At first instance, the court ruled that a nuisance had been committed and made an order limiting the level of noise to be emitted. On appeal the Court of Appeal unanimously overturned this decision, holding that the activities had not constituted a nuisance. The Supreme Court unanimously allowed an appeal.

The Supreme Court answered five key questions and, in doing so, overturned a significant amount of the established law on nuisance.

(1) The court held that it was possible to acquire a prescriptive right to commit what would otherwise be a nuisance by noise by showing at least 20 years uninterrupted enjoyment as of right (nec vi, nec clam, nec precario). However, in the instant case they found that the respondents had failed to establish such a right, as they failed to show that their activities during a period of 20 years amounted to a nuisance.

(2) The court held that it is no defence, for a defendant who is sued in nuisance, to contend that the claimant came to the nuisance by acquiring or moving into the property after the nuisance had started. In the

present case the claimant had used her property for essentially the same purpose as that for which it had been used by her predecessors since before the alleged nuisance started. However in the situation (not relevant in the instant case) where a pre-existing activity is claimed to have become a nuisance because a claimant has changed the use of or built on her land, the defence could be successful.

(3) In terms of assessing the character of the locality for the purpose of the nuisance claim, the court found that it is open to defendant to rely on his activities as constituting part of the character of the locality, but only to the extent that those activities do not constitute a nuisance:

'a defendant faced with a contention that his activities give rise to a nuisance, can rely on those activities as constituting part of the character of the locality, but only to the extent that those activities do not constitute nuisance – and to avoid any misunderstanding, if the activities couldn't be carried out without creating a nuisance, then they would have to be entirely discounted when assessing the character of the neighbourhood' [Para 74]

(4) In relation to the effect of planning permission on an allegation of nuisance, the court found that the fact that planning permission has been granted for a particular use does not prevent that use from being a nuisance. All it means is that a bar to that use imposed by planning law, in the public interest, has been removed.

The court stated it seemed wrong that through the grant of a planning permission , a planning authority should be able to deprive a property owner of a right to object to what would otherwise be a nuisance, without providing a mechanism for compensation. This was to be contrasted to ss.152 and 158 of the Planning Act 2008: section 158 expressly excludes claims in nuisance by neighbours as a result of the use of a property consequent upon a ministerial order permitting that use, and section 152 provides for appropriate compensation where a neighbour would, but for section 158, have had a claim in nuisance. It is also to be noted that section 76 of the Civil Aviation Act 1982 expressly excludes an action for nuisance owing to aircraft, but section 1 of the Land Compensation Act 1973 provides for compensation for neighbours (including in respect of nuisance by noise attributable to aircraft) when land is developed as an "aerodrome."

(5) Finally, the court considered the question of what, if any, principles govern the exercise of the court's jurisdiction to award damages instead of an injunction. The court concluded that there should be much more flexibility in considering whether to award damages rather than the mechanical application of A L Smith LJ's four-stage test set out in the *Shelfer* case. They added that:

'It is also right to mention planning permission in this context. In some cases, the grant of planning permission for a particular activity (whether carried on at the claimant's, or the defendant's, premises) may

provide strong support for the contention that the activity is of benefit to the public, which would be relevant to the question of whether or not to grant an injunction.' [Para 125]

NEWS

New online national planning practice guidance is launched on 6 March 2014

On 6 March 2014 the Department for Communities and Local Government launched the web-based National Planning Practice Guidance on the Planning Portal website – the first time that all planning guidance can be found in one place. The Guidance will be updated as necessary and users can keep a track of the changes by signing up for email alerts for particular sections. The Guidance covers the following 41 topics:

- Advertisements
- Air quality
- Appeals
- Before submitting an application
- Climate change
- Conserving and enhancing the historic environment
- Consultation and pre-decision matters
- Crown development
- Design
- Determining a planning application
- Duty to cooperate
- Ensuring effective enforcement
- Ensuring the vitality of town centres
- Environmental impact assessment
- Flexible options for planning permissions
- Flood risk and coastal change
- Hazardous substances
- Health and well-being
- Housing and economic development needs assessments
- Housing and economic land availability assessment
- Land affected by contamination
- Land stability
- Lawful development certificates

- Light pollution
- Local Plans
- Making an application
- Minerals
- Natural environment
- Neighbourhood Planning
- Noise
- Open space, sports and recreation facilities, public rights of way and local green space
- Planning obligations
- Renewable and low carbon energy
- Rural housing
- Strategic environmental assessment and sustainability appraisal
- Travel plans, transport assessments and statements in decision-taking
- Tree preservation orders and trees in conservation areas
- Use of planning conditions
- Viability
- Water supply, wastewater and water quality
- When is permission required?

As a consequence of the Guidance coming into force a number of guidance documents (including circulars and letters to chief planning officers) have been cancelled as from 6 March. These include the following:

- Circular 15/92 – Publicity for Planning Applications (1992) – retained for Wales;
- PPG13: A guide to Better Practice (1995);
- Circular 11/95 – The Use of Conditions in Planning Permissions (1995) – Annex A (model conditions) to be retained;
- Preparation of Environmental Statements for Planning Projects That Require Environmental Assessment: A Good Practice Guide (1995);
- Circular 10/97 – Enforcing planning control: Legislative provisions and procedural requirements and annexes (1997);
- Circular 02/99 – Environmental Impact Assessment (1999);
- Environmental Impact Assessment: A guide to procedures (2000);
- Letter to Chief Planning Officers (2002): Circular 11/95 – Use of Negative Conditions; and

- Planning Obligations: Practice Guidance (2006).

More PD rights announced in a Written Ministerial Statement by Nick Boles on Local Planning – March 2014

In a Written Ministerial Statement dated 6 March 2014 cu titled 'Local Planning' Nick Boles confirmed the changes the Government is proposing to make to permitted development rights following a consultation in August 2013 on proposals to amend the Town and Country Planning (General Permitted Development) Order 1995 (GPDO 1995) to allow further flexibilities between use classes. The Minister confirmed that the following proposals will be taken forward:

- permitted development rights allowing a change of use from shops (A1) and financial and professional services (A2) to houses (C3). This change of use will not apply to land protected by Article 1(5) of the GPDO 1995 (National Parks, the Broads, areas of outstanding natural beauty, conservations areas, World Heritage Sites);
- shops (A1) will be able to change to banks, building societies, credit unions and friendly societies, within the A2 use class. This does not cover betting shops or payday loan shops;
- up to 450 square metres of agricultural buildings on a farm will be able to change to provide a maximum of three houses. This change will not apply in Article 1(5) land but the Government expects 'national parks and other local planning authorities to take a positive and proactive approach to sustainable development, balancing the protection of the landscape with the social and economic wellbeing of the area';
- extension of the existing permitted development rights for change of use to state-funded schools to additionally cover registered nurseries. Agricultural buildings up to 500 square metres will also be able to change to state-funded schools and registered nurseries.

The Government believes the above steps 'will help facilitate locally-led development, promote brownfield regeneration and promote badly-needed new housing at no cost to the taxpayer. The reforms complement both the coalition government's decentralisation agenda and our long-term economic plan'.

New demolition direction is in force from 6 March 2014

The Town and Country Planning (Demolition – Description of Buildings) Direction 2014 came into force on 6 March 2014 (in England only) and replaces the Town and Country Planning (Demolition – Description of Buildings) Direction 1995. The 1995 Direction was partially quashed by the Court of Appeal in *SAVE Britain's Heritage v SSCLG* (2011) in which the court held that demolition was capable of being a project falling within the Environmental Impact Assessment Directive and as a consequence the demolition of listed buildings, buildings in conservation areas, scheduled

monuments or buildings which were not a dwelling houses or adjoining a dwelling houses ought to be excluded from the definition of development.

The Direction merely regularises the position following the *SAVE* decision. Under the Direction the following are not development:

- the demolition of any building with a cubic content not exceeding 50 cubic metres; and
- the demolition of the whole or any **part** of any gate, fence, wall or other means of enclosure outside conservation areas.

Other types of demolition are therefore development but may be permitted under Class A or B of Pt 31 of the GPDO 1995.

Written Ministerial Statement by Nick Boles on Housing – 6 February 2014

In a Written Ministerial Statement Nick Boles has sent a clear message to councils trying to undermine the Government's planning reforms aimed at 'providing badly needed new homes on brownfield sites, close to urban locations and transport links, at no cost to the taxpayer'.

The statement refers in particular to the recent challenge by Islington and other London Councils (and dismissed in the High Court) to the permitted development (PD) rights introduced in 2013 under which offices can be changed to housing and the 'disproportionate' use of Article 4 directions to remove these PD rights by eight councils. Out of these eight councils, he names Islington and Broxbourne Borough councils as using these powers disproportionately and both these councils have been written to '… to request that they consider reducing the extent of their directions so that they are more targeted. This will ensure that offices which should legitimately benefit from this national right can do so. Ministers are minded to cancel Article 4 directions which seek to re-impose unjustified or blanket regulation, given the clearly stated public policy goal of liberalising the planning rules and helping provide more homes'.

He states that planning guidance is also being updated to clarify when 'levies' are appropriate to be charged for office to residential change under the PD rights.

Further reform of judicial review announced – 4 February 2014

On 5 February 2014 the Government published its response to the consultation 'Judicial Review: proposals for further reform' which ran from 6 September 2013 until 1 November 2013. The consultation generated 325 responses which confirmed the Government's belief that there is a compelling case for further reform. The Government has therefore confirmed that it will take forward the following reforms:

- create a Planning Court to speed up the consideration of planning and related judicial reviews and statutory challenges – the Government has

dropped the initial proposals to create a Planning Chamber in the Upper Tribunal instead opting for a Planning Court in the High Court on the grounds that the new rules and case management procedure that a Planning Chamber in the Upper Tribunal would have required would cause delay;

- introduce a new permission filter stage for statutory review under s 288 of the TCPA 1990 where the Secretary of State determines a s 78 appeal or calls in application under s 77 – this would align s 288 applications with judicial review;
- make changes to how the courts deal with judicial reviews which are unlikely to affect the outcome for the applicant by amending the current test of 'inevitable' to ensure judicial reviews cannot proceed on the basis of minor 'technicalities';
- reduce the potential for delay to key projects and policies by increasing the scope of leapfrogging appeals (where a case can move directly from the court of first instance to the Supreme Court);
- strengthen the implications of receiving a Wasted Costs Order by placing a duty on the courts to consider notifying the relevant regulator and/or the Legal Aid Agency (LAA) when one is made;
- set out the circumstances in which a court can make a protective cost order in non-environmental judicial reviews to ensure they are only used in exceptional cases properly in the public interest;
- establish a presumption that interveners in a judicial review will have to pay their own costs and any costs that they have caused to either party because of their intervention;
- introduce new requirements for all applicants for judicial review to provide information about how the judicial review is funded in the courts and Upper Tribunal and how the courts should use this information;
- restrict payment of legal aid for work on permission applications unless permission is granted subject to discretionary payment by the LAA.

The Government does not propose to make any changes to the scope of legal aid for planning challenges under ss 288 and 289 of the TCPA 1990 (legal aid is not generally available in respect of planning cases or statutory challenges under ss 288 and 289 of the TCPA 1990 other than where an individual is at immediate risk of losing their home as a result of the proceedings in question), or to the ability of local authorities to challenge nationally significant infrastructure projects under the PA 2008 as originally proposed.

The Government has also published the Criminal Justice and Courts Bill, containing provisions for the establishment of a new specialist Planning Court, where expert judges will be employed to deal with disputed schemes.

GUIDANCE

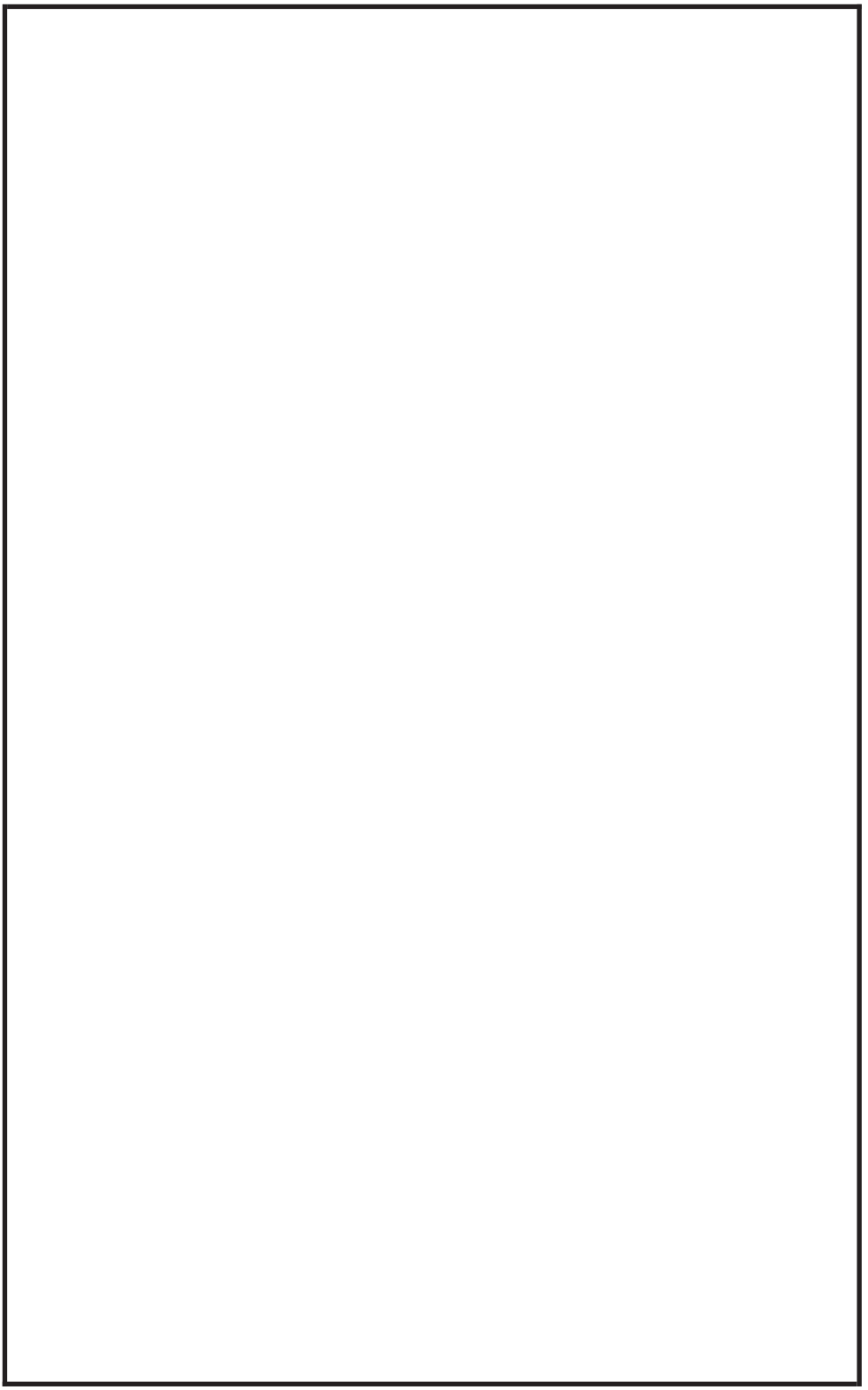
Revised DEFRA guidance on the changes to the registration of town and village greens to reflect the addition of new trigger events which preclude registration

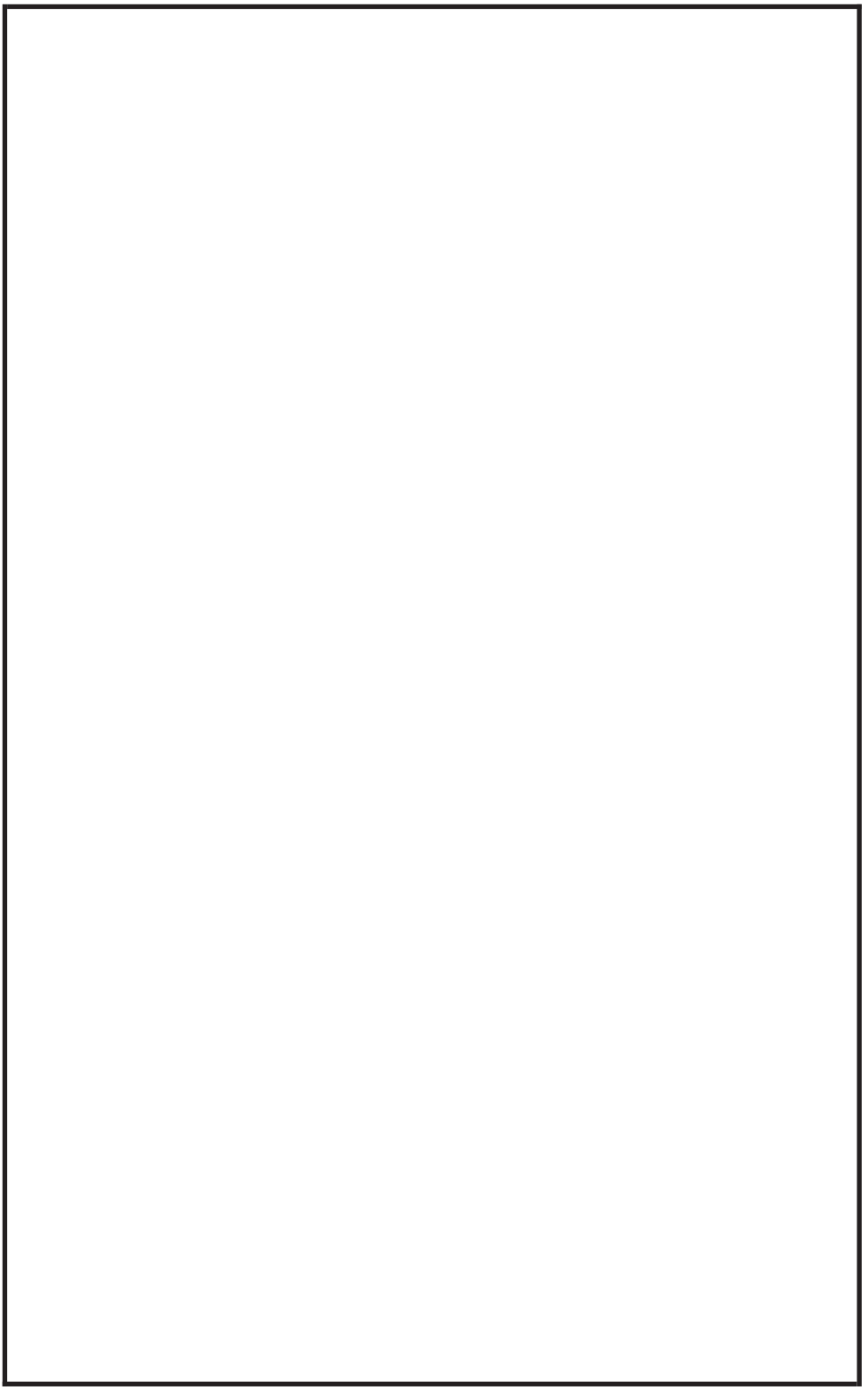
In February 2014 DEFRA published the sixth version of its Guidance to Commons Registration Authorities in England on ss 15A–15C of the Commons Act 2006. The Guidance has been updated to reflect the fact that new trigger events have been added to s 15C and Sch 1A of the Commons 2006 Act by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014 (SI 2014/257).

The February 2014 Guidance is broadly the same as previous versions, with Chapter 2 advising Commons Registration Authorities that where a trigger event has occurred in relation to land, the right to make an application for registration of that land as a town or village green is excluded. The Guidance has been updated to state that there are now 14 trigger events in Sch 1A (as amended by the 2014 Order). It also sets out that there are new terminating events (events which restore the right to apply for registration of the land as a green) accompanying the new trigger events.

The template letter to local planning authorities and the Planning Inspectorate seeking their confirmation of trigger and terminating events (at Annex A) has been amended to reflect the update by the 2014 Order.

In addition, para 6 has been amended to refer to the fact that separate guidance for the completion of form CA16 (the application form for depositing landowner statements and highways statements, and for lodging highways declarations) is now available.





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