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 31 August 2012.

LEGISLATION

The London Legacy Development Corporation's planning powers

The London Legacy Development Corporation (Planning Functions) Order 2012 (2012/2167) comes into force on 1 October 2012. The London Legacy Development Corporation (LLDC) was established by the London Legacy Development Corporation (Establishment) Order 2012 (S.I. 2012/310) for the purpose of regenerating the Olympic Park and surrounding areas. The Order makes the LLDC the LPA for an area in East London including the Olympic Park, covering parts of the London Boroughs of Hackney, Newham, Tower Hamlets and Waltham Forest for the purposes specified in the Order.

Amended Habitats regulations came into force on 16 August 2012

The Conservation of Habitats and Species (Amendment) Regulations 2012 (2012/1927) and The Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2012 (2012/1928) came into force on 16 August 2012 amending the Habitats Regulations (the Conservation of Habitats and Species Regulations 2010) and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 respectively.

The Conservation of Habitats and Species (Amendment) Regulations 2012:

- Removes certain inconsistencies between the controls imposed by the SSSI regime under Part 2 of the Wildlife and Countryside Act 1981 and the Habitats Regulation regime.
- Revokes regulation 22 thereby removing a provision requiring the appropriate nature conservation body to notify the Secretary of State where it considers that there is a risk that an operation that it has not given consent to may be carried out.
- Revokes regulation 38(5) to ensure that the MMO and Welsh Ministers have byelaw/order making powers which are consistent with those of the Inshore Fisheries Conservation Authorities and consistent with the MMO and Welsh Ministers' powers to make byelaws/orders in respect of Marine Conservation Zones.
- Amends regulation 58 to make it clear that the offence of breaching a licence applies to anyone authorised to carry out activities under the licence (and not just the licence holder as was previously the case).
- Amends regulation 60 to make it clear that the appropriate assessment provisions apply to any plan or project which a competent authority proposes to undertake or give consent to.
- Introduces new regulation 129A, which places a duty on the Secretary of State/Welsh Ministers to take appropriate steps to encourage research and scientific work for the maintenance or restoration of habitats and species at favourable conservation status, and for the protection, management and use of any population of wild bird.
- Amends s 15 of the National Parks and Access to the Countryside Act 1949 to make it clear that Local Nature Reserves may be designated for the purposes of re-establishing bird habitat.
- Removes a restriction on the making of byelaws or orders for the protection of European marine sites.

Draft planning fees regulations increasing planning fees by 15% in England have been published

As announced by Greg Clark on 3 July 2012 draft planning fees regulations have been published (The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012) which will, once in force, replace the current Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989. The draft regulations:

- raise existing fees by 15%;
- introduce two new fees:

  a fee of £195 in respect of applications for urgent crown development applications made to the Secretary of State under s 293A of the TCPA 1990. It requires the fee that would otherwise be paid to the LPA to be paid to the Secretary of State; and

a fee in respect of applications to the LPA under s 17 of the Land Compensation Act 1961 (certificates of appropriate alternative development).

The neighbourhood planning regime came into force in August following further regulations

The Neighbourhood Planning (General) Regulations 2012 (2012/637) came into force on 6 April 2012 and set out the procedure for the designation of neighbourhood areas and neighbourhood forums and for the preparation of neighbourhood development plans and neighbourhood development orders (including community right to build orders).

A referendum must be held on a neighbourhood development plan, neighbourhood development order or community right to build order before it can come into legal force. This referendum must be held after the plan or order has been independently examined. The Neighbourhood Planning (Referendums) Regulations 2012 (2012/2031) came into force on 3 August 2012 and set out the matters relevant to referendums.

The Neighbourhood Planning (Prescribed Dates) Regulations 2012 come into force on 1 September 2012 and provide that the date of the referendum or additional referendum is the 'prescribed date'.

New regulations on access to local authority meetings and information

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 come into force on 10 September 2012 and apply to councils operating executive arrangements under Part 1A of the Local Government Act 2000 (a mayor and cabinet executive or a leader and cabinet executive).

The main thrust of the regulations is for the public to have access to meetings and documents where a local authority executive, committee or individual is taking an executive decision. The Regulations prescribe the circumstances in which such meetings may be held in private. They also set out circumstances in which written records relating to executive decisions are to be made and when those records are to be open to the public.

The regulations revoke and replace the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 and subsequent amending regulations.

CASES OF INTEREST

The Court of Appeal confirms the correct test to be applied by screening decision makers when deciding whether an EIA is required

R* (*Burridge*) *v Breckland District Council [2012] EWHC 1102* (*Admin*); *Loader, R* (*on the application of*) *v Secretary of State for Communities and Local Government & Ors [2012] EWCA Civ 869* (*29 June 2012*) – *LJs' Pill, Toulson and Sullivan

Facts

In July 2009, the Secretary of State gave a screening direction in which he stated that the proposed redevelopment of a bowls club to form 41 sheltered apartments for the elderly, car parking, outdoor bowls green, indoor rink and other facilities was not EIA development and did not require an ES. The screening direction was challenged on the basis that the Secretary of State had misdirected himself as to the meaning of 'significant effects on the environment' in Article 2(1) of the EIA Directive and regulation 2 of the 1999 EIA Regulations (now replaced by the 2011 EIA Regulations).

Decision

The challenge was dismissed. The challenge had centred on the meaning of 'significant environmental' effects with the claimant arguing this meant a real prospect of influencing the outcome of the application for development consent, a view reinforced by the wording used in the screening checklist contained in the European Commission's Guidance on EIA screening dated June 2001. The claimant also argued that unless the decision-maker can exclude on the basis of objective evidence any real possibility of the effects being significant, an EIA is required.

The court rejected this approach and held that the test to be applied is whether a project is likely to have significant effects on the environment. The purpose of the checklist in the EC guidance is to help decide whether the effects are likely to be significant. Establishing that the environmental effect will influence a particular development consent decision may well be a necessary requirement for a decision that development is EIA development but it is not determinative of whether the effects are likely to be significant and so ought to be considered.

A LPA can take it's liability to pay compensation into account when considering making a revocation order under s 97 of the TCPA 1990 – Supreme Court

The Health and Safety Executive v Wolverhampton City Council [2012] UKSC 34 – and Press Summary – 18 July 2012 – Lord Hope (Deputy President); Lord Walker; Lord Dyson; Lord Sumption; Lord Carnwath FB 92

Facts

Planning permission was granted by the Council for the erection of four blocks (A–D) of student accommodation in close proximity to a liquefied petroleum gas (LPG) facility. The Council consulted the Health and Safety Executive (the HSE) prior to the grant of the permission and they objected to the development on the grounds that there was a risk of harm to people at the proposed development. The Council nevertheless granted the permission. The HSE only discovered that the permission had been granted after works to blocks A- C were advanced. The HSE sought to persuade the Council to revoke the permission which it refused to do and the HSE issued judicial review proceedings:

- to quash the permission; and
- for an order requiring the Council to revoke the permission. The HSE argued that the Council's failure to revoke the permission was unlawful because the Council had wrongly taken it's liability to pay compensation into account when deciding whether to revoke under s 97 TCPA 1990.

By the time the matter came to court, the issue of revocation was confined to block D as the other blocks had been completed. The High Court declined to quash the permission and the decision not to revoke. The Court of Appeal unanimously agreed that the Council's decision not to make a revocation order in respect of block D was unlawful and should be reconsidered. However, the court was divided over whether the Council, in exercising its powers under s 97 in respect of block D could take into account, as one of the material considerations, its liability to pay compensation under s 107.

Decision

The Supreme Court dismissed the HSE's appeal on the compensation point. Following the reasons of the majority of the CA, the question was whether *'a public authority, when deciding whether to exercise a discretionary power to achieve a public objective, is entitled to take into account the cost to the public of so doing'*. As custodian of public funds, the authority must have regard to the cost to the public of its actions and particularly the proportionality of the cost and whether there was a more economic way of achieving the same objective. S 97 required the same approach. Material considerations did not exclude cost and 'material' in the ordinary sense was the same as 'relevant'. Where there were relevant financial considerations, they should not be

treated as irrelevant. The Council had a range of options open to it (revocation under s 97 preventing block D from being build being one of them) each with compensation implications and it would be 'curious' if comparative costs could not be one factor in the overall balance.

Are poultry sheds development?

Valley Action Group Ltd, R (on the application of) v Bath and North East Somerset Council & Anor [2012] EWHC 2161 (Admin) (27 July 2012) Mrs J Lang

This case concerns the definition of 'development' so that a number of operations which might not previously have been thought to be development could now fall within the definition particularly in relation to portable, mobile or temporary structures.

Facts

Two planning decisions relating to agricultural land within the Cotswold AONB and Green Belt were challenged:

- the LPA's conclusion that 10 poultry units measuring approximately 20m x 6m x 3.5m high, each capable of housing 1,000 laying hens (although in practice they housed ducks) were not development and therefore did not require an EIA; and
- the LPA's screening opinion that a newly constructed stock pond (15m x 12m) did not require an EIA.

The land was subject of an Article 4 direction and so agricultural PD rights could not be relied upon. The units were not fixed to the ground but were on metal skids to allow them to be moved when pulled by a tractor and were pegged down with metal spikes when needed. The units contained slatted floors, manually operated conveyor belts, drinkers, feeders and internal lighting. They were powered by an on-site external generator and supplied with mains water.

The LPA concluded it could not take enforcement action for the placing of the poultry units on the land because this did not constitute development.

Decision

The court held that the LPA had taken too narrow an approach to the meaning of development in s 55 TCPA 1990. The term 'building' in s 336 (1) TCPA 1990 has a wide definition which includes 'any structure or erection'.

The LPA misunderstand the issue of permanence which has to be construed in terms of significance in the planning context. In this case, the units were permanently in the field and there was no limit on the length of time they would remain there – they could be there for years and they had a visual and landscape impact.

The LPA's submission that as each unit was prefabricated and easily assembled, its construction was not an operation 'normally undertaken by a person

carrying on business as a builder' (s 55 (1A) (d)) TCPA 1990) and so not a 'building operation' was rejected. The court held that s 55 (1A) is inclusive and not intended to be an exhaustive definition of 'building operations'. Further, the LPA had failed to consider whether the construction of the poultry units came within, 'other operations in, on, over or under land' the residual category in s 55(1) TCPA 1990. This residual category is not limited to building, engineering or mining operations and was sufficiently broad to encompass the construction/installation of the poultry units.

The court also held that the poultry units were capable of constituting 'intensive livestock installations' within the scope of the EIA Directive and Regulations.

The court stated that the definition of 'development' in s 55 can, and should, be interpreted broadly by LPAs so as to include, wherever possible, projects which require EIA under the EIA Directive/Regulations. The LPA had misdirected itself by holding that an EIA was only required if the poultry units constituted 'development' and fell within one of the classes for which an EIA was required under the EIA Regulations. Since the LPA was wrong about whether the units were development, it had erred by holding that no EIA was required.

A breach of the EIA Directive even though the minimum consultation period had been complied with

Halebank Parish Council, R (on the application of) v Halton Borough Council & Anor [2012] EWHC 1889 (Admin) (19 July 2012) – Judge Gilbart QC

Facts

Planning permission was granted for a storage and distribution warehouse on a site covering 110,769 sq m of floor space to be served by rail, owned by Halton Borough Council (also the LPA).

The application was complex and was sent to the Halebank Parish Council (PC) on 21 July 2011 with 21 days to respond. The PC had no scheduled meetings in August and requested an extension of time to consider the application. This was refused. A second request for more time received no response. HBC had originally planned to determine the application at a September 2011 committee meeting but a decision was made to bring the date forward to the 30 August 2011. The notice for this change of date was not sent out until the 19 August 2012 and correct site notices and advertisement were not placed until 8 and 10 August respectively. A further request by the PC for deferment of HBC's committee meeting was not dealt with.

The committee gave the Director of Planning delegated authority to grant permission after resolution of a number of conditions. A s 106 agreement was not entered into because HBC was the landowner. Instead, a development agreement was to be entered into, although this was not disclosed by HBC because it contained financial information.

The PC challenged the permission on six grounds. Of particular interest are the grounds that HBC inappropriately dealt with the application, particularly the way consultation was undertaken and that HBC should have required a s 106 agreement in respect of the development.

Decision

The planning permission was quashed. There was a breach of Article 6 of the EIA Directive which requires that authorities likely to be concerned by a project are given an opportunity to express their opinion on the request for development consent.

HBC should have addressed the arguments raised before it about the extension of the consultation period. It was incumbent on the HBC committee to consider the matter which it failed to do so. There was a breach of legitimate expectation because HBC had not complied with its own published Statement of Community Involvement (under s 18 of the PCPA 2004) which stated that where a consultation exercise took place over a period such as holidays, or if the proposals were complex, consideration would be given to a longer consultation period. The consultation had not been conducted fairly or effectively.

Although it was accepted that a development agreement route does not provide the same transparency as a s 106 agreement, the court held HBC was entitled to decide that, in the absence of being able to enter into a s 106 agreement, it would follow the development agreement route.

This case highlights the importance of following all relevant consultation procedures adequately and fairly and is reminder to authorities that they cannot circumvent their own policies.

Planning obligation and ownership of land

PNH (Properties) Ltd v Secretary of State for Communities and Local Government [2012] EWHC 1998 (Admin) Clive Lewis QC (sitting as a Deputy Judge of the High Court)

This case highlights the need at the outset to identify land which will be bound by a Section 106 obligation. If this involves land which falls outside the application site, then it will often be necessary to ensure that all the owners of that land join into the s 106 obligation to ensure that the land is properly bound by the obligation such that it is enforceable against successors in title. Failure to do this may result in the LPA being left with an obligation which it is unable to enforce, the developer/owner who is seeking to give such an obligation with the risk of having its application/appeal refused and it will provide any third party objectors with an opportunity to challenge the decision to grant planning permission on the basis that the necessary planning obligations have not been properly secured.

Facts

The claimant appealed against the refusal of planning permission for the construction of two dwellings on a site which formed part of a larger

woodland, the subject of a TPO. To overcome the main reason for refusal, the detrimental impact of the proposed development to the overall character of the woodland, the claimant submitted a unilateral planning obligation which applied to the application site. The obligation required the owner of the site to deliver and implement a woodland management agreement for the remainder of the woodland. The obligation did not, however, bind the remaining land. The inspector gave the s 106 obligation little weight for this reason and dismissed the appeal.

The claimant contended that the obligation was capable of binding the owner (i.e the claimant) and any person who derived title from the claimant. Consequently, the inspector erred in considering that there was no guarantee that the woodland management agreement would be delivered and implemented. An order quashing the inspector's decision was sought.

Decision

The court dismissed the claim. It held that the obligation only binds the site but requires activities to be carried out on a different area of land, i.e. the remainder of the woodland. If the remaining land were to be sold into separate ownership, the planning obligation would not apply to it and so the LPA would not be able to enforce any obligation against the successor in title to it. Consequently, the inspector was correct in concluding that there was no guarantee that the mitigation measures laid down in the planning obligation would be carried out.

Can you have an 'isolated' highway?

***Kotegaonkar v Secretary of State for Environment, Food and Rural Affairs & Anor [2012] EWHC 1976* (*Admin*) (*19 July 2012*)**

In this case the High Court considered whether a route which was unconnected to a public highway could become a public highway.

Facts

Dr Kotegaonkar bought a plot of land situated between a health centre and a parade of shops from the Council. A route of paving stones ran from the health centre car park across Dr Kotegaonkar's land to the forecourt of the shops. Planning permission was granted to develop the plot of land for sheltered housing but the Council later added the paving stones route to the definitive map as a public footpath. This prevented the implementation of the planning permission. The path ran from a public highway (Watling Street), over the land on which the health centre stands, and then along the line of paving stones across the plot of land to the forecourt of the shops.

Some months later an application was made for the route to be added to the definitive map and statement under the Wildlife and Countryside Act 1981. The Council made a modification order to do so and Dr Kotegaonkar objected to its confirmation. A public inquiry was held and the inspector concluded that the footpath was deemed to have been dedicated both under

s 31(1) Highway Act 1980 and at common law. Accordingly, the modification order was confirmed. Dr Kotegaonkar sought to quash the inspector's decision.

Decision

The court quashed the order. As a matter of principle, the concept of an 'isolated highway' (i.e. a highway that is unconnected to any other highway, either directly or via land over which the public have a right of access) is incongruous, because such a way does not have all of the requisite essential characteristics of a highway, for it is not a way over which there is 'a right for all Her Majesty's subjects at all seasons of the year *freely and at their will* to pass and repass without let or hindrance' (Wills J in *Ex parte Lewis* (1888)).

The health centre land and the land on which the shops are situated – which are joined by the footpath over the plot of land – are in private ownership, and there is no public right of way over either of them. In so far as members of the public enter either piece of land (e.g. to get to the footpath), they do so as licensees and can only do so at the will of the owners of the land who may withdraw the licence at any time; or physically block access to the way, with the result that the way is unusable by members of the public.

The position would have been different in this case if there was additionally a public right of way over the health centre land and/or the land on which the shops are situated, joining one or both ends of the route over the Dr Kotegaonkar's land to the public highway.

NEWS

A further Strategic Environmental Assessment is to be undertaken of the abolition of Regional Strategies following an ECJ ruling

It may be recalled that in April 2011 Bob Neill MP confirmed in a written ministerial statement that the Government would carry out a 'voluntary' SEA of its decision to abolish the eight Regional Strategies (RSs) following the CALA homes litigation. Eight environmental reports (one for each RS) were duly consulted upon between October 2011 and January 2012.

The legal basis for the abolition of RSs is contained in s 109 Localism Act 2011 which came into force on 15 November 2011. Under this section, an order can be made to abolish the existing RSs outside London.

In a written statement, the Parliamentary Under-Secretary of State, Baroness Hanham announced on 25 July 2012 that the Government is updating the October 2011 environmental reports and will be undertaking additional consultation. At the end of the consultation period, all consultation responses will be considered, including those submitted during the earlier consultation period.

In the coming weeks updated environmental reports for each of the other RSs will be published with an 8 week period for consultation responses.

The main reason for the Government's change of heart is the ECJ ruling on the interpretation and application of the SEA Directive in the case of *Inter-Environment Bruxelles ASBL & Others v Government of the Brussels-Capital Region* (C567/10) dated 22 March 2012.

The ruling concerned a challenge by a federation of neighbourhood committees in Brussels (the Inter-Environment Bruxelles) to an order of the regional authority (Brussels Capital Region) to repeal a land use plan. The IEB successfully argued that the order was incompatible with the SEA Directive because it did not require an environmental report to be drawn up for the total or partial repeal of a specific land use plan. The case significantly extends the type of plans and projects which could fall within the scope of the SEA Directive. It clarifies that that plans and programmes that are not mandatory under national legislation are still within the scope of the SEA Directive and that a SEA would be required for repeals of plans or programmes as well as their initial preparation/modification.

DCLG response to the consultation on planning fee changes – 3 August 2012

On the 3 August 2012, DCLG published Proposals for changes to planning application fees in England: Consultation – Summary of responses. The document summarises the responses to the consultation on proposed changes to the planning application fees. The Government has decided that decentralisation of fees is a 'complex proposal which would need further working through'. It has therefore decided on a one-off national increase in planning fees of 15% to relieve inflationary pressure on authorities. The Government has also decided not to allow fees to be charged for resubmitted applications.

Further measures proposed to simplify the planning system are announced – DCLG – 3 July 2012

The *Plan for Growth* was one of a number of documents published alongside the Budget 2011 aimed at returning the UK to sustainable, balanced economic growth by focusing on creating a strong and stable economy. The Plan identified the UK's *'slow and bureaucratic planning system'* as a significant burden on business and a number of measures were proposed in the Budget and Plan to streamline and further simplify the planning system.

In a Written Ministerial Statement dated 3 July 2012 Greg Clark announced plans to implement some of those measures as follows:

- Further funding to the four organisations currently offering support on neighbourhood planning: the Royal Town Planning Institute (Planning Aid); the Prince's Foundation for Building Community; the Campaign for the Protection of Rural England, working with the National Association of Local Councils and; Locality (the Building Communities Consortium).
- A consultation paper ('New opportunities for sustainable development and growth through the reuse of existing buildings') containing proposals for a number of possible changes to the Use Classes Order and

associated PD rights, including temporary or so called 'meanwhile' use of empty commercial premises as recommended in the Portas Review.

- A consultation paper ('Streamlining information requirements for planning applications') on making information requirements for planning applications 'clearer, simpler and more proportionate'.
- A consultation paper ('statutory consultee performance and award of costs') on an award of costs, if there has been an appeal against refusal of planning permission where a statutory consultee has acted unreasonably.
- An announcement 'shortly' on the approach to distilling the 6,000 pages or so of guidance into a more useable form.
- A consultation later in the year on speeding up the determination of planning appeals.
- Amendment to the declaration on the standard application form so that applicants are asked to confirm that the information provided is, to the best of their knowledge, truthful and accurate.
- Introduction of new regulations in the autumn to make technical amendments to regulations to clarify and improve the operation of the CIL regime.
- Introduction of new fee regulations in the autumn which will increase planning fees by about 15%; and
- Publication later in the year of proposals to underpin the 'planning guarantee' mentioned in the Growth Review, together with a report on existing performance against it by LPAs and the Planning Inspectorate. The Growth Review announced the Government's intention to introduce a 'planning guarantee', that it should take a maximum of 12 months to determine any planning application, including any appeal.

The NPPF summary of consultation responses and final impact assessment is published on 3 July 2012

The consultation on the draft NPPF took place between July 2011 and October 2011 and the NPPF was published on 27 March 2012. DCLG published a summary of responses to the consultation on 3 July 2012.

DCLG has also published a final impact assessment (National Planning Policy Framework: Impact assessment). This states that:

- a one-off transitional cost will be incurred by town planners and applicants in order to familiarise themselves with the consolidated and streamlined national policy guidance; estimated at £1.6m – £2.2m to councils and £3.1m – £4.2m to business;
- time savings for both councils and applicants are estimated to be an average annual £1.5m – £2.5m for councils and £3.9m – £6.2m (average annual) for applicants;

- Planning Inspectorate statistics on planning appeals show that the number of appeals has fallen slightly since the economic downturn, 22,897 in 2007/8 to 16,547 in 2010/11;
- the average annual cost of familiarisation with the new NPPF is estimated at £4.8m – £6.4m (first year only). Of this, £1.6m to £2.2m is estimated to fall to local councils and £3.1m to £4.2m to applicants;
- as at March 2012, 41% of councils had not published a core strategy and only 39% of councils had adopted a core strategy; and
- 90% of England, amounting to 12 million hectares, is not built on. Overall, up to 45% is protected by designations, such as AONB, SSSI, National Parks and Green Belt.

CONSULTATION

Defra consults on guidance on alternative solutions, imperative reasons of overriding public interest and compensatory measures

On 7 August 2012 Defra published a consultation seeking views on draft guidance it proposes to publish on the application of article 6(4) of the Habitats Directive.

Article 6(4) allows plans or projects which may have an adverse effect on the integrity of a European site to go ahead on grounds of 'imperative reasons of overriding public interest' (IROPI) when there are no alternative solutions and compensatory measures have been secured.

Once finalised, the guidance will form part of a wider new overarching guidance on the Habitats and Wild Birds Directives which will be published in March 2013 following consultation starting in November 2012. The consultation closes on **30 October 2012.**

Consultation on changing the listed building consent regime – DCMS

DCMS has been criticised by a number of bodies for undertaking a short four week consultation during the summer months (26 July 2012 – 23 August 2012) on improvements to the system of listed building consents. The consultation is the first under the revised consultation principles which allow a shorter consultation period.

The consultation was part of the Government's response to the Penfold Review of Non-Planning Consents. The consultation proposes the following:

- **Option 1** – A system of prior notification leading to deemed LBC. This would involve prior notification to LPAs of proposals for specified types of work, who would be able to respond to the notification with a request for a full LBC application within a specified time period, or to allow that period to lapse, with LBC thereby deemed to have been granted; or alternatively Option 2**.**

- **Option 2** – A system of local and national class consents granting deemed LBC. The Secretary of State, advised by English Heritage, would grant a class consent for an area or group of assets that cross local authority boundaries for a defined class or classes of works.
- **Option 3** – A 'certificate of lawful works to listed buildings'. This would allow LPAs to grant a certificate either for proposed works to a listed building which do not have an impact on special interest, or for existing works carried out in the understanding that no LBC was required, confirming that this was the case. This option could operate alongside any of the other options.
- **Option 4** – Replacing local authority conservation officer recommendations for LBC by those made by accredited agents, if LBC applicants so wish. This option would allow independent accredited agents to make expert recommendations to LPAs in the exercise of their statutory duty to determine applications. This option could operate in tandem with Options 1 or 2, and Option 3.

Some commentators have expressed concern about option 4 in particular, with the Institute of Historic Building Conservation saying the proposals are 'legally flawed' and remove the independent oversight of public interest that councils must observe. Also, agents may not be completely objective if they are being paid by a regular client.

A consultation on renegotiating section 106 obligations – DCLG – 13 August 2012

On 13 August 2012 DCLG published a consultation paper on the renegotiation of Section 106 planning obligations.

The consultation explains that there are currently around 1400 housing schemes of 10 or more housing units with planning permission that are stalled, of which 62% predate April 2010. The Government wants to kick-start stalled development by allowing for the easier renegotiation of planning obligations agreed in more buoyant market conditions.

Currently, s 106A TCPA 1990 allows voluntary renegotiation of a planning obligation at any time. However, where voluntary agreement cannot be reached, a formal request to reconsider an obligation can be made provided that the obligation is at least 5 years old. If the request is refused, there is a right to appeal to the Secretary of State.

The consultation proposes:

- continuation of renegotiation on a voluntary basis wherever possible;
- where agreement cannot be reached, signatories to s 106 agreements should be able to formally request reconsideration of planning obligations one month after the introduction of the new regulations bringing these new proposals into force;

- the proposals would only apply to planning obligations agreed prior to 6 April 2010;
- the current arrangements would continue to apply to all planning obligations agreed after 6 April 2010, i.e. the period will remain at 5 years; and
- the principles for modifying planning obligations contained in s 106A of the TCPA 1990 which require an obligation to '*no longer serve a useful purpose*' or that it '*continues to serve a useful purpose …equally well'* is to be modified.

The consultation ends on **8 October 2012**.

Stopping Up and Diversion Orders: Reform of the Application Process for Local Highways

On 16 July 2012, DfT published a consultation paper on streamlining the application process on stopping up and diversion orders as promised in the Implementation of the Penfold Review of November 2011.

The consultation related to England only and 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:

- **Option 1** – a new streamlined process allowing applications for stopping up orders to be made in parallel with the relevant planning application. Two separate applications would be submitted as happens now: the planning application submitted to the LPA and a separate stopping-up application to the Secretary of State or appropriate London Borough. This option would allow concurrent submission of both applications, enabling both to be considered at the same time.
- **Option 2** – in addition to option 1; devolving order-making powers from the Secretary of State to the highway authority. In two tier authorities, local highway authorities would consider the stopping up application while local planning authorities would have responsibility for determining the planning application. Unitary authorities would determine decisions both on the planning and stopping up applications. Where objections to a stopping up application are not withdrawn, the application would be referred to the Secretary of State who could hold a public inquiry as is currently the case. The Secretary of State would then determine the application after considering the recommendation of the inquiry inspector.
- **Option 3** – builds on option 1 and would devolve order making powers from the Secretary of State to the LPA.

The Government also sought views on whether authorities should make more use of s 116 HA 1980 under which local highway authorities can apply directly to a Magistrates' Court for an order to stop up a highway at the request of a developer under s 117 HA 1980.

The consultation paper explains that the Government has decided not to proceed with the Penfold recommendation to merge planning applications and applications for stopping up orders into a single regime. The Government has also decided (for now) against introducing a fee to allow the recovery of the cost of public inquiries where the Secretary of State allows a public inquiry to be held, where it has not been possible to resolve objections through negotiation, and which are not withdrawn.

The consultation closed on **24 August 2012**.

DCLG consultation on streamlining information requirements for planning applications – 3 July 2012 – England only

In *The Plan for Growth* published in March 2011, the Government committed to revisit the policy and guidance on the information that is submitted alongside planning applications. Initial views were sought at that time.

The Government's consultation on streamlining information required for planning applications seeks views on three proposals:

- Reducing the nationally-prescribed information requirements for outline planning applications currently set out in Article 4 of the DMPO 2010. The proposal is to remove the detailed information requirements relating to layout and scale for outline applications, where these matters are reserved, by deleting paragraphs 3 and 4 of Article 4 of the DMPO. It also proposes the removal of the mandatory requirement to provide details on scale at the outline stage, where scale is 'reserved'.
- LPAs to keep their local information requirements under frequent review. S 62(3) TCPA 1990 gives LPAs a broad power to require that applications for planning permission must include such particulars as they think necessary and such evidence in support of anything in, or relating to, the application as they think necessary. This broad power is supplemented by article 29(3)(d) of the DMPO which renders 'invalid' any planning application that is not accompanied by everything that the LPA has required using their powers under s 62(3). As a consequence, there is very little an applicant can do but supply the requested information if the application is to be determined. The consultation proposes amending articles 10 and 29 of the DMPO, with the effect of requiring LPAs to revisit their local lists of information requirements on (at least) a two-yearly basis.
- Amalgamate standard application form requirements for agricultural land declarations and ownership certificates. Currently, applicants must complete two separate certificates relating to land ownership: an 'agricultural land declaration' and an ownership certificate. The proposal is to change the standard application form by amending the ownership certificate to include a reference to agricultural tenants and deleting the separate agricultural land declaration.

The consultation closed on **11 September 2012**.

DCLG consultation on statutory performance and award of costs – 3 July 2012 – England only

The purpose of DCLG's consultation on statutory performance and award of costs is to hold statutory consultees (particularly those providing specialist technical advice) to account for the timeliness and quality of advice given. This is proposed to be achieved by the following changes to the Award of Costs Circular 03/09 (Costs Awards in Appeals and Other Planning Proceedings).

Amending guidance on statutory consultees:

- Paragraphs 7 and 8 of Part D of the Circular are to be cancelled so that statutory consultees are required to act reasonably in the same way that other third parties are expected to do. The effect of this is that a statutory consultee who is asked by the LPA to provide a technical or expert witness at the inquiry or hearing, will be regarded as a separate party in its own right and liable to an award of costs.
- Guidance in paragraph 24 of Part B will be amended and a new paragraph 6a to Part D inserted to support the intention that statutory consultees should take responsibility for their advice on appeal and should not be excluded from consideration of an award of costs on the grounds of unreasonable behaviour where their advice has been relevant to the refusal of the application.

Clarifying guidance regarding the development plan:

- A new paragraph B15a will be inserted to advise appeal parties that there should generally be no grounds for an award of costs against a LPA where it has refused a planning application that is clearly contrary to a development plan where no material considerations including national policy indicate that planning permission should have been granted.

Clarifying guidance on accurate and truthful information:

- An additional example of when an appellant may be at risk of costs will be inserted into paragraph B14 of the Circular. This would include instances where an appellant has relied on evidence that has been shown to be manifestly inaccurate or untrue. Equally, information the appellant relied on at the time of the planning application should have been accurate and true.

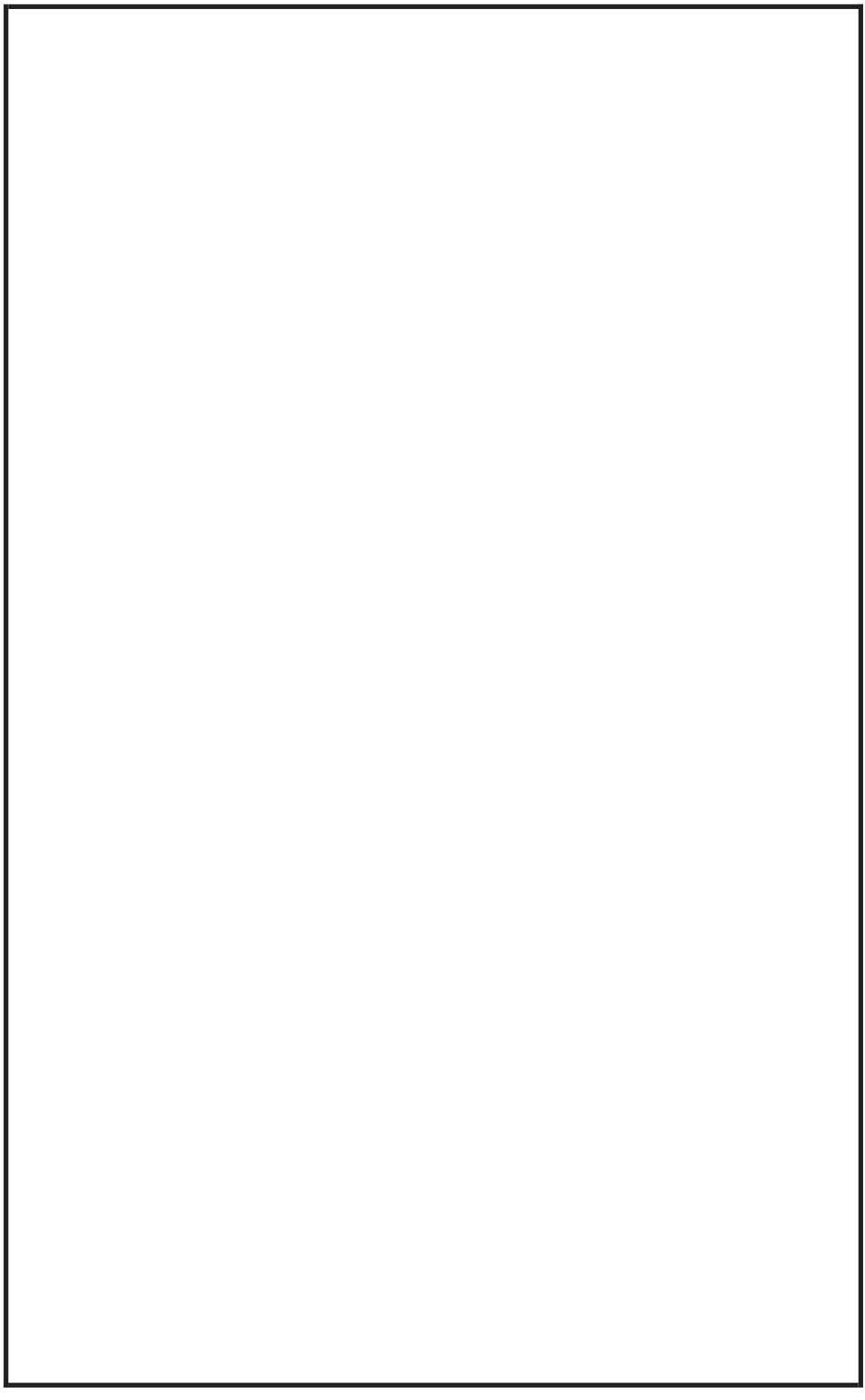
Other measures:

- The five main statutory consultees (Environment Agency, Natural England, Highways Agency, English Heritage and Health & Safety Executive) have published draft improvement plans and these plans set out a range of measures to improve the quality of service provided in relation to their role as a statutory consultee in the planning process.

CONSULTATION

The Government will consider the measures that are proposed with a view to ensuring that the key statutory bodies transparently account for, and improve, their performance.

The consultation closed on **11 September 2012**.



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