

Welcome to *forward planning* September 2008 where we review some of the key recent planning news and publications.

Since our last newsletter the pace of change in the planning world has not slackened, despite calls from some quarters for a period of relief to allow recent changes to bed-in and despite continuing upheaval in the development industry.

A key change that came in at the start of June has been the revision to PPS12, which brings in new arrangements for Local Development Frameworks. These changes augment a realignment of the relationship between government and the public sector, which has seen controls on the public sector slackened in return for greater cross-sector integration and better focus on delivering the government's promised housing growth and sustainable communities objectives.

Increasing the speed and efficiency of the planning system has been a government objective for some years and new procedures for the submission of planning applications in England and Wales, introduced in April 2008, are the government's latest attempt to achieve this. Despite the intention however, the evidence so far points to a slower, more complicated system, which carries considerably more cost for developers.

Simplifying processes and procedures is also a guiding principle behind the government's proposed reforms of the heritage protection regime now the subject of a Heritage Protection Bill. The reforms promise greater clarity and transparency but look likely to bring in additional requirements and controls on development affecting heritage sites.

Meanwhile the Competition Commission has issued its final report on the UK grocery market which, alongside the much reported *Barker Review of Land Use Planning*, has fed into a review of PPS6, with proposed changes to the PPS now on consultation and which look set to replace the much debated 'need' test with a new and strengthened impact test designed to promote consumer choice and competition.

Since our last issue, London has elected a new mayor with Boris Johnson ousting incumbent Ken Livingstone in May and ushering in new priorities for development in the Capital.

We take a look at all these issues in this edition of *forward planning*

Where is planning heading?

It is perhaps unfortunate that the more fundamental structural changes to the planning system have coincided with a significant downturn to the property market. Whilst these structural changes are long-term and will continue to impact after the

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NEW APPLICATION REQUIREMENTS STIFLE INVESTMENT

Changes to the application process have been mounting up in recent years. The Government claims that these have speeded up the planning system, but applicants know that it has actually become slower- and considerably more expensive too.

The introduction of 'Best Value' determination targets in 2003/4 gave incentives to planning authorities to determine major applications within 13 weeks (and minor ones within 8). But as with so many target-driven policies, this simply distorted the system, with councils finding ways around the rules. Exacting 'validation' requirements were introduced to delay registration, 'draft' applications were invited; and some authorities even advised applicants not to date their applications so that they could begin processing before the statutory period had begun.

Next came pre-application charges (re-introduced from 2003 onwards), reaching up to £4,000 so far for a single meeting with one Council; and further large increases in application fees in 2008 (with large schemes now topping-out at £250,000). It is not hard to see why many feel that the changes have delivered quite the opposite of the government's claims.

And yet it has not finished even now. Greatly increased financial contributions are sure to result from the imminent Community Infrastructure Levy- and there have been rumblings that even the current level of charging is insufficient to recover all the costs of the planning system.

During the development boom, these measures held up new investment. In the current downturn, they will surely only make the delivery of new housing and other necessary development even more problematic.

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current difficult market conditions are resolved, more immediate impact is being felt by progressive changes to the planning application process, which is putting greater expectation on development proposals in terms of information, public scrutiny and cost.

With the Planning Bill currently making its way through the legislative process which promises more changes, including the introduction of the Community Infrastructure Levy and the Independent Planning Commission, it seems certain that additional demands will be placed on developers.

Despite a general acceptance that the planning system should evolve, the government's response to simplify and speed up the system appears to be solely in respect of the overarching policy framework. At the planning application level there are signs that the Government is over-complicating the system, reducing its transparency whilst significantly increasing the cost burden on developers. Given that the Government expects the same developers to deliver the very objectives that are driving the pace of change to the planning system, it is at the very least questionable whether the changes are sustainable, particularly if the current economic downturn continues for some time.

ALL CHANGE AT THE GREATER LONDON AUTHORITY

Boris Johnson was elected Mayor of London on 2nd May 2008 and immediately made two key planning appointments with Sir Simon Milton as his Planning Policy Advisor and Ian Clement as Deputy Mayor responsible for decisions on planning applications. Sir Simon Milton has since been appointed Deputy Mayor in charge of policy and planning, relinquishing his position as Leader of Westminster City Council.

Boris has informed the property industry that he will lead a pro-development administration although this will be dependant upon securing the appropriate infrastructure to support future growth. He has made it clear that 'quality of life' for Londoners is of the utmost importance.

One of the Mayor's first actions has been to sign a 'Memorandum of Understanding' in which he has promised to use his Mayoral planning powers to overrule borough decisions only as a last resort, a key indication that he will take a more considered approach to planning than his predecessor. Most recently the GLA published '*Planning for a Better London*' which sets out the priorities of the new administration and the areas Boris will seek to amend in the London Plan.



Key priorities include:

- Replacing the 50% affordable housing target with a reduced target (probably 35%) in order to stimulate development
- Increasing social housing within the affordable content of residential development
- Reinstating previous view corridors in order to temper tall building proposals
- Continuing with current development rates through high density development
- Reviewing regeneration/employment requirements of outer boroughs through a London Commission
- Delivering Crossrail - Boris will look at ways to extract contributions from development proposals to help fund this project
- Rejuvenating High Streets across London

Look out for the next *forward planning* newsletter for a further update on the Mayor of London.

DRAFT PPS6 - NO NEED FOR NEED?

On 10th July the Government published for consultation proposed changes to Planning Policy Statement 6: Planning for Town Centres (PPS6). The consultation runs until 3rd October 2008.

The stated intention of the draft PPS is to refine the policy approach to planning for town centres, rather than to make significant policy changes. The refinements are intended to strengthen the Government's 'town centre first' policy and will have implications for retailers, developers and local authorities.

The main changes proposed relate to how planning applications for "main town centre uses" (generally, but not exclusively, over 2,500 sq.m gross) in edge-of-centre or out-of-centre locations which are not in accordance with an up to date development plan strategy should be assessed.

Significantly, the requirement for an applicant to specifically demonstrate 'need' is removed with a new impact assessment framework, combined with a retained sequential approach requirement, suggested as the way forward.

The new impact test is broad in scope with emphasis on economic, social and environmental as well as strategic planning impacts thus enabling positive and negative town centre and wider impacts to be taken into account.

Suggested 'key' impacts which applicants must assess include:

- how the proposal relates to the development plan
- impact on planned in-centre investment
- whether the proposal is of an appropriate scale (the existing 'scale' test)
- impacts on in-centre trade/turnover taking into account consumer expenditure capacity
- effect upon town centre vitality and viability, including local consumer choice and retail diversity (range, type and quality of goods)

with wider impacts to be considered including:

- impact upon sites outside town centres being developed in accordance with development plan
- accessibility, sustainable transport, linked trip promotion; impact on traffic
- affects on employment and job creation
- for retail proposals, to the ability to claw-back existing trade leakage
- affect upon economic and physical regeneration over 5 years post implementation
- how the proposal will make efficient and effective use of land

The draft-PPS indicates that significant negative impacts will normally justify refusal of planning permission. However adverse

'key' impacts may be outweighed by significant wider economic, social and environmental benefits and in such cases LPA's are required to consider proposals favourably.

A cautionary note however is that the failure of a retail proposal to deliver on issues such as design quality, place-making and sustainable development objectives is likely to present an unacceptable impact warranting refusal irrespective of any wider benefits a proposal may secure.

The removal of the need test was anticipated having been outlined in the Government's Planning White Paper (2007) and follows criticism by the Barker Report that its application was a "blunt instrument" which had the unintended effect of restricting competition and limiting consumer choice, a criticism echoed by the Competition Commission in its grocery market investigation report.

One of the purposes of the revisions to the PPS6 tests is to move retail assessments away from a series of judgments which lent themselves to misinterpretation and, because of their technical nature, could lead to distorted results and be costly to both prepare and consider.

However, the proposed new impact test does, at first reading, appear to encompass many unrelated and not readily measurable components. The assembly of the data to be considered for the new test will require a number of subjective forward looking judgments to be made. This is especially so given the requirement to consider long term impact (beyond 5 years) and issues including design, sustainability and climate change. This could perpetuate the perceived current subjective and inconsistent decision making which has given rise to this revision to policy guidance.

Further guidance on the assessment of impacts is to be published separately alongside the revisions to PPS6 once finalized. This further guidance was originally promised by the current PPS6 (2005). It is hoped that the further guidance will provide a clear understanding of what the new retail impact test will comprise in practical terms and be subject to prior consultation. Without the further guidance it will be left for the market to interpret the somewhat ambiguous guidance and a new impact test will, over time, 'evolve'.

One issue not addressed by the draft PPS is the introduction of a 'competition test' to the planning system for new grocery floorspace over 1000 sq.m, as recommended by the Competition Commission's final report on the supply of groceries in the UK (April 2008).

The Government's recently published response to the Commission's report puts this matter on hold pending further reflection on the Commission's recommendation. The Government is expected to report further on this issue later this year.

NEW PPS12 STREAMLINES LDF PREPARATION

Late last year, alongside the Planning Bill, the Government put forward draft regulations and revisions to Planning Policy Statement 12 in a bid to streamline the plan-making process.

The government has now formally revised PPS12, along with amending regulations which came into effect on 27th June 2008.

As expected PPS12 removes the preferred options stage from LDF preparation and brings forward the final period of consultation to before submission to the Secretary of State.

The test of soundness now requires DPDs to be "Justified, effective and consistent with national policy".

PPS12 retains the requirement to demonstrate that the strategy of DPDs is the most appropriate when considered against reasonable alternatives although, with the removal of the preferred options stage, the assessment of alternatives may not be evident to consultees until the release of the proposed submission document.

Other principle changes include:

- An allowance for Core Strategies to allocate strategic sites for development. (Strategic sites are those considered central to achievement of the strategy and where investment requires a long lead-in time)

- A requirement on LPAs to provide a delivery strategy
- A requirement for core strategies to be informed by an infrastructure planning process and be backed by evidence of what physical, social and green infrastructure is needed to enable the development proposed for the area. This evidence should cover who will provide the infrastructure and when it will be provided
- The minimum time horizon for core strategies is extended from 10 years to 15 years from the date of adoption

The main significance of PPS12 however, is likely to come from its overarching message that the role of LDFs is to be the mechanism for promoting growth and delivering regional strategies within a community-centric local policy framework. It re-emphasises the expectation first set out in PPS12 2004, for LDFs to promote spatial planning and reflect the community strategies. However, this is taken a step further, with clear expectation that LDFs, and Core Strategies in particular, will plan and deliver government policy and regional strategies and thereby housing growth. In short, the simplification to the LDF system is there to ensure the Government's growth agenda is achieved. Whether it will receive the expected response from LPAs remains to be seen.

GL HEARN EXTEND REGENERATION CAPABILITY

Stuart Baillie joined GL Hearn at the beginning of June as an Associate Director in the Planning and Development Division. Stuart will have a key role in promoting the firm's regeneration capability. With 10 years planning and regeneration experience working in both the public and private sectors, Stuart joins following six years in regeneration consultancy with WSP Group prior to which he was a Major Projects Officer with the London Borough of Newham.

Initially, Stuart, will be focusing upon development led regeneration projects, specifically:

- Unlocking the potential of brownfield development sites; and
- Adding value to planning applications by drawing out the regeneration benefits and aligning these with local/regional regeneration themes and stakeholder strategies.

He will also be seeking to develop a Regeneration Advisory Role with a range of key clients. This is something GL Hearn has recently established successfully with clients including the London Development Agency and the London Borough of Newham.

Clearly there are synergies with other work GL Hearn undertakes and we are currently reviewing our skills base and regeneration project experience with the objective of developing a menu of services packaged together to provide clients with a comprehensive and innovative regeneration service. This will allow us to respond more effectively to our clients' needs in addressing town centre strategies, site specific proposals and regeneration frameworks.

For more information contact Stuart Baillie on 020 7851 4994 email stuart_baillie@glhearn.com

PROPOSED REFORM OF HERITAGE PROTECTION REGIME

In April the Government published a draft Heritage Protection Bill. The Bill is a precursor to the Heritage Protection Act which, assuming legislative time is granted, could be on the statute books by 2010.

Key legislative changes proposed by the Bill include:

- A single list of designated heritage sites (buildings, monuments, parks and gardens etc)
- The list of all designated sites to be made available online
- English Heritage to become responsible for identifying and designating sites; with a right of appeal to SoS for CM & S
- Interim legal protection for places being considered for designation
- 'Heritage Asset Consent' to replace listed building and scheduled ancient monument consents

The fundamental principles of conservation, as set out in PPGs 15 & 16 and English Heritage's recently published "Principles of Conservation" are expected to remain in place.

English Heritage is promoting the Bill as an opportunity to make the system simpler, more transparent and more accessible and understandable for the public.

It is likely that some areas of heritage protection that have provoked controversy in recent years will be clarified including:

- Partial demolition in conservation areas to be brought back under local authority control
- The requirement to preserve or enhance conservation areas when assessing development will be broadly to "preserve the best and enhance the rest" (rather than allowing for the substitution of one existing poor building with another)

Whilst the Bill is being promoted as largely uncontroversial and designed to make heritage protection more 'user friendly', there are some things to look out for such as:

- Increased opportunity for third parties to prevent demolition when designation is under consideration
- Powers for Local Authorities to control the demolition of buildings on locally designated list

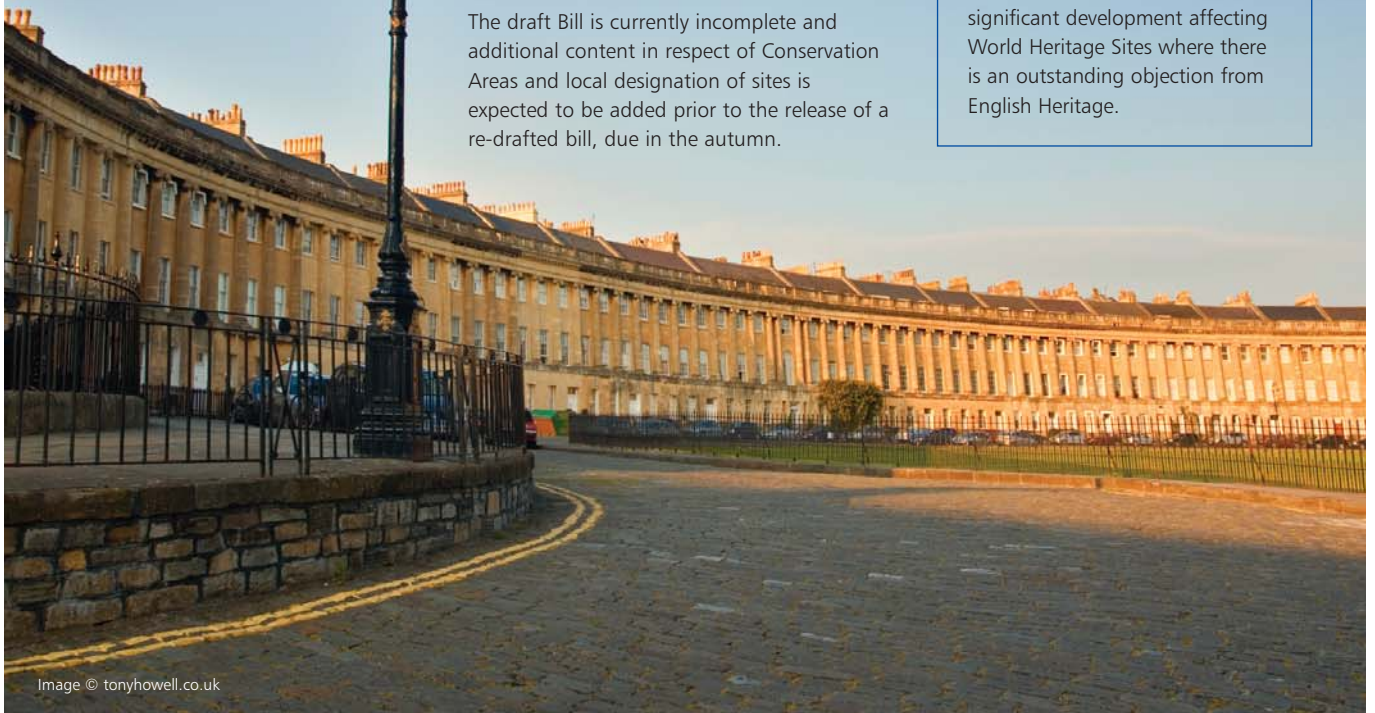
The draft Bill is currently incomplete and additional content in respect of Conservation Areas and local designation of sites is expected to be added prior to the release of a re-drafted bill, due in the autumn.

Changes proposed to protection of World Heritage Sites

In a separate exercise the Government has released draft proposals to define World Heritage Sites as "Article 1(5)" land thereby giving them the same degree of protection as that enjoyed by national parks, conservation areas and Areas of Outstanding Natural Beauty.

The objective of the draft CLG circular "Protection of World Heritage Sites" is to preserve the value of World Heritage Sites to the public and prevent any damage to their attraction to tourists, by preventing the cumulative impact of inappropriate development on the Sites.

The proposals are part of a package of measures intended to increase the protection which the planning system provides for World Heritage Sites and follows consultation on separate proposals to enhance call in powers for significant development affecting World Heritage Sites where there is an outstanding objection from English Heritage.



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