

Reports to planning committee

A recent Court of Appeal case (Palmer-v-Herefordshire Council & anr [2016]) has provided guidance as to how committee reports should be construed.

Briefly, the main issue in this case for the Court to consider was whether the Council had failed to comply with its statutory duty under s.66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 which states: 'In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.' We are all aware from Barnwell Manor that degree of harm (if any) is a matter for the decision maker, but if the decision maker decides that there is harm, he is not entitled to give it such weight as he thinks fit. To the contrary he must give it considerable weight.

The court considered that in reading an officer's report, the court must not impose too demanding a standard. The officer's reports are addressed to a knowledgeable readership who will have working knowledge of the statutory test for determining planning applications. To succeed in a judicial review it has to be shown that the overall effect of the report significantly misleads the committee about material matters, which remain uncorrected at the committee before a decision is made.

It is always important for the officer's reports to be clear and to identify the relevant material considerations and statutory tests. If we can help you with any of this, please contact Steven Bell (whose details are at the end of this newsletter), who will be happy to discuss your needs.

Written Ministerial Statement

In a statement issued on 12 December 2016, the Minister for Housing and Planning confirmed that where a planning application conflicted with a Neighbourhood Plan that had been brought into force, the local planning authority should not normally grant permission. However, the Government argued that those behind Neighbourhood Plans were "often frustrated that their plan is being undermined" because the local planning authority was unable to demonstrate a five-year land supply and so therefore the plan is considered out of date.

The Minister also confirmed that where communities plan for housing in their area in a Neighbourhood Plan, those plans should not be deemed to be out-of-date unless there is a significant lack of land supply for housing in the wider local authority area. The Government is also offering those communities who brought forward their plans in advance of this statement time to review their plans.

The statement said that consequently "relevant policies for the supply of housing in a Neighbourhood Plan that is part of the development plan" should not be considered to be out of date under paragraph 49 of the NPPF where - at the time of decision - the following circumstances are met:

- this written ministerial statement is less than two years old, or the Neighbourhood Plan has been part of the development plan for two years or less;
- the Neighbourhood Plan allocates sites for housing; and
- the local planning authority can demonstrate a three-year supply of deliverable housing sites

Whilst every effort has been made to ensure that the content of this newsletter is up-to-date and accurate, no warranty is given to that effect and nplaw does not assume responsibility for its accuracy and correctness. The newsletter summarises latest legal developments but is no substitute for specific legal advice after consideration of all material facts and circumstances.

The Neighbourhood Planning Bill

The Neighbourhood Planning Bill has been making its way through the House of Commons. It had its Third Reading in the House of Commons on 13 December 2016 and has passed to the House of Lords, where it is scheduled to have its Second Reading on 17 January. We would anticipate it receiving Royal Assent in the Spring of 2017.

You will recall that the key elements of the Bill include:

- Establishment of a Planning Register – to enable potential registration of prior approval applications and notifications of permitted development to be on the planning register
- Simplification of the Compulsory Purchase process
- Proposals to strengthen neighbourhood planning
- Further restrictions to the use of Planning Conditions

We have had some recent indication of the government's intentions concerning the latter two points, as the Department for Communities and Local Government (DCLG) has published a response to its recent consultations.

With regard to the implementation of neighbourhood planning provisions in the Bill, the government proposes:

- that regulations setting out the detail of the process for modifying an existing neighbourhood plan will replicate as far as possible the existing regulations for making a new plan
- introducing a new "basic condition" to ensure that a neighbourhood plan proposal does not adversely affect any existing plan that remains in place, in areas where neighbourhood area boundaries have changed
- reviewing Statements of Community Involvement (SCIs) at least every five years
ensuring that local planning authorities include their policies on providing advice or assistance to groups preparing neighbourhood plans and their policies for involving interested parties in the preliminary stages of plan-making in their SCIs within 12 months of Royal Assent of the Neighbourhood Planning Bill

With regard to improving the use of planning conditions, the government has indicated it will introduce into the Bill a requirement for local planning authorities (LPAs) to seek the agreement of the applicant when imposing pre-commencement conditions. There will be a default period of 10 working days after which the applicant's agreement is deemed to be given. This period will begin once the LPA has given notice of its intention to impose a pre-commencement condition and sought the agreement of the applicant. However, the applicant and LPA can make a written agreement for an alternative time period.

The DCLG has also said it will introduce secondary legislation to expressly prohibit the following six conditions:

- Conditions that unreasonably impact on the deliverability of a development.
- Conditions that reserve outline application details.
- Conditions that require the development to be carried out in its entirety.
- Conditions that duplicate a requirement for compliance with other regulatory requirements.
- Conditions requiring land to be given up.
- Positively worded conditions requiring payment of money or other consideration.

Once the Bill receives Royal Assent, we are intending to hold a training session on how the key aspects of the Act are likely to impact upon your work.

Draft Housing and Planning Act 2016 (Permission in Principle etc) (Miscellaneous Amendments) (England) Regulations 2017

The draft Housing and Planning Act 2016 (Permission in Principle etc) (Miscellaneous Amendments) (England) Regulations 2017 have been published and laid before Parliament for approval by resolution of each House.

The Regulations will make various procedural and other technical changes to existing legislation. They will be part of the suite of subordinate legislation which implements the new "permission in principle" planning consent route introduced by the Housing and Planning Act 2016. The purpose

of the changes is to ensure that various procedural requirements which apply to existing types of planning consent will also apply consistently to the new “permission in principle” regime. The Government’s intention in creating the regime is to provide developers with a more effective route to establish whether land is suitable for new housing.

The Housing White paper

The Communities Secretary has confirmed that the much-anticipated Housing White Paper will be published in January 2017 and “will set out a range of radical plans to boost the housing supply.” The Autumn Statement outlined that the White Paper would set out a comprehensive package of reform to increase housing supply and halt the decline in housing affordability. The new Housing Infrastructure Fund and £1.4bn were intended to support these aims.

The key elements of the White Paper are likely to be:

- National Planning Policy Framework (NPPF) changes, some of which were consulted on from the end of last year (and any related national Planning Practice Guidance changes)
- The Government response to DCLG’s ‘Technical consultation on implementation of planning changes’, which included questions on the resourcing of local planning authority (LPA) departments, planning fees, permission in principle (‘PIP’) and brownfield registers
- The secondary legislation needed to implement the recommendations of the Local Plans Expert Group’s, including the detail of when and how the Communities Secretary might intervene in the local plan process, and recognition of the time and
- costs associated with the production of a local plan
- Encouragement for modern construction methods
- Details regarding the Government’s policy and legislative approach to starter homes;
- The detail of the anticipated permitted development right to demolish offices and rebuild residential
- The outcome of, and Government response to, the community infrastructure levy review.

We will of course update you once the White Paper has been published and we have had the opportunity to consider how the proposals are likely to affect your work.

Starter Homes

The Housing Minister Gavin Barwell has confirmed that 2017 will see the first Starter Homes being built on brownfield sites across the country. They will be built exclusively for first-time buyers between 23 and 40 years old at a discount of at least 20% below market value.

The first wave of 30 local authority partnerships – selected on the basis of their potential for early delivery – will spearhead the schemes. These partnerships have been established under the government’s £1.2 billion Starter Homes Land Fund which supports the development of starter homes on sites across England. The Starter Homes Land Fund was set up to prepare suitable land for quality starter home developments which can be built on by developers or through accelerated construction by 2020.

In addition, the Homes and Communities Agency has issued a call seeking expressions of interest from local authorities who are interested in using their land to deliver homes at pace through the £1.7 billion accelerated construction recently announced. The government hopes that this will see up to 15,000 homes started on surplus public sector land by 2020.

If you have any queries relating to this newsletter or wish to seek planning advice, please contact:

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