nplaw Planning Law Update

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At our recent Planning Law Update Seminar, we covered a number of different areas of law which were in a state of flux. The last week has seen a flurry of activity in many of these areas so we thought that we would provide you with an update by way of this newsletter.

The Neighbourhood Planning Act 2017

The Neighbourhood Planning Bill received Royal Assent on 28 April and is to be known as the Neighbourhood Planning Act 2017. The full text of the Act can be found here.

Sections 1 to 7 are concerned with neighbourhood planning; Sections 8 to 13 deal with local development documents; Section 14 will introduce restrictions on the imposition of planning conditions and Schedule 3 to the Act will make consequential changes to existing legislation in respect of planning conditions. There is no commencement date for any of these provisions, but we will let you know when arrangements are made for these to come into effect.

Section 15 requires the Secretary of State to amend the GPDO "as soon as reasonably practicable after the coming into force of this section" to restrict permitted development (PD) rights currently applying to "drinking establishments". This section came into immediate effect on the passing of the Act and the Secretary of State acted very swiftly indeed by making the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2017 (SI 2017 No.619) and the accompanying Town and Country Planning (Compensation) (England) (Amendment) (No. 2) Regulations 2017 (2017/620) on 28 April, both of which will come into force on 23 May. The effect of SI 2017/619 is to remove PD rights allowing the change of use of a building from Class A4 (drinking establishment), Classes A1 (shops), A2 (financial and professional services), and A3 (restaurants and cafes) and to a temporary flexible use or a state-funded school for up to 2 academic years. PD rights allowing for the demolition of buildings in Class A4 use are also removed. There is a limited new PD right allowing change of use of a building from A4 to a mixed use A4 and A3 (restaurants and cafes) use, or from those uses to an A4 use. The practical effect of SI 2017/620 is that if a local planning authority withdraws the new PD right by issuing an Article 4 direction, compensation is only payable in respect of planning applications made within the first 12 months after the Direction takes effect, and can be avoided altogether if 12 months' notice of the Direction is given

Section 17 has also come into immediate effect. This allows the Secretary of State to extend the scope of the planning register that must be maintained by LPAs to cover Prior Approval applications and notifications of proposed development under PD rights.

The remainder of the Act, from section 18 onwards, is all about compulsory purchase and mainly deals with the issue of compensation.

Brownfield Registers and Permission in Principle

Local Planning Authorities ('LPAs') will be obliged to prepare, maintain & publish registers of brownfield land suitable for residential development and must produce a Brownfield Land Register by the end of this year.

To be included in the register, brownfield land must meet certain criteria:

- The land must have an area of at least 0.25 hectares, or be capable of supporting at least 5 dwellings.
- The land must be suitable and available for residential development.

Residential development of the land must be 'achievable', which means that the LPA considers that development is likely to take place within the next 15 years.

The Register must include all eligible land in Part 1 of the Register and must specify:

- The minimum and maximum net number of dwellings which the LPA believes the site can support; and
- The scale and use of any non-housing development.

If the LPA wishes to grant Permission in Principle (PiP) in relation to an eligible site, it must also enter the relevant land on Part 2 of the register, specifying also the Permitted Level of Development. Before doing so, the LPA must publicise proposal and consult widely with relevant bodies including all those normally consulted in relation to a planning application for similar development. The inclusion of a site in Part 2 of the Register constitutes grant of PiP for the Permitted Level of Development.

The DCLG has produced a helpful document entitled Brownfield registers and permission in principle – Frequently asked questions which provides information on local authorities' implementation of new brownfield registers of land suitable for housing, and permission in principle under the Town and Country Planning (Brownfield Land Register) Regulations 2017 (2017/403) and the Town and Country Planning (Permission in Principle) Order 2017 (2017/402) (which came into force on 16 and 15 April respectively).
It states that the Government will publish statutory guidance to explain the policy for brownfield registers in more detail by Summer 2017 and will also set out its expectations for the operation of the policy and the requirements of the secondary legislation.

Section 215 Notices

At our recent seminar, we discussed the usefulness of serving notices under s.215 of the Town and Country Planning Act 1990 to require proper maintenance of land. In order to serve such a notice, it must appear “to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area”. In a High Court case heard last week, it was held that it was improper for a local authority to use this power to require an individual to paint her house white instead of the red- and white-striped painting she preferred. The court said that to use s.215 to deal with issues regarding aesthetics fell outside the intention and spirit of the Planning Code. Or in other words aesthetics does not equal amenity.

Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant)

The long-awaited decision from the Supreme Court in this case is due to be published on 10 May 2017.

In February of this year, the Supreme Court heard the appeal from the landmark decision of the Court of Appeal in the case of Suffolk Coastal D.C. v Hopkins Homes and Richborough Estates Partnership LLP v Cheshire East Borough Council.

The court was asked to consider the meaning of "relevant policies for the supply of housing" in paragraph 49 of the NPPF. The Court of Appeal had settled on a "wide" definition, which had the effect that policies for the protection of Green Belt and AONB as "policies for the supply of housing" to be treated as "out of date" where a Council could not demonstrate a 5 year housing land supply and triggering the presumption in favour of planning permission in paragraph 14 of the NPPF.

Suffolk Coastal D.C. also challenged a second ground in the judgment where the Court of Appeal had ruled on the approach to assessing the impact of development on the significance of heritage assets.

This is the first time the Supreme Court has considered the NPPF. It also gives the Court the opportunity to reconsider the principle that holds that the meaning of planning policy is a matter of law.

New EIA Regulations

The Government has been making a suite of new EIA Regulations. Amongst them are the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (2017/571). They come into force on 16th May and replace the current (201i) Regulations (2011/1824).

The purpose of the new Regulations is to transpose changes to the EIA Directive (by EU Directive 2014/52/EU) into domestic law. The principal changes are:

• The introduction of co-ordinated procedures for projects which need not only EIA but also assessment under the Habitats Directive or the Wild Birds Directive.

• Amendments to the list of environmental factors to be considered as part of the EIA process. These include replacement of ‘fauna and flora’ by ‘biodiversity’ and a new requirement to consider the vulnerability of the development to major accidents or disasters.

• A new requirement to use competent experts. This applies both to the developer and the consenting authority.