Hammonds

Insight

December 2008

Built Environment Group (Planning)

The Planning Bill Receives Royal Assent

The Planning Bill received its long awaited Royal Assent on 26 November 2008. The Planning Act 2008 (the Act) introduces the Government's new consent regime for approving major infrastructures projects of national importance. Through these reforms of the planning system it is hoped that the decision-making process will become more efficient, quicker and cheaper and long public inquiries will be avoided.

The Act contains provisions to establish the Infrastructure Planning Commission which will be tasked with deciding whether to grant all necessary consents for projects of national significance. National Policy Statements will be used to set out Government policy on such projects, with the hope that social, economic and environmental policies will be integrated. The Government has stated that this will be done by way of public consultation, engaging citizens and communities affected in the consultation process. To streamline the process, inquiries and decisions will be subject to strict statutory timetables.

The Act also provides the enabling powers to provide for a Communities Infrastructure Levy (CIL), which will allow local authorities in England and Wales to raise money from developments in their area to reinvest in the facilities needed as a result of the developments.

The Act provides only general enabling clauses and much of the detail of the CIL will be contained in secondary legislation. The CIL has been included to ensure that the costs of providing infrastructure can be funded by the developers of land although the link to any uplift in value has been removed. However, local authorities will have the choice of whether to impose the CIL and at what level if they do. Equally they may continue to rely on section 106 Agreements.

The Planning and Energy Act 2008 Comes Into Force

The Planning and Energy Act 2008 (the P&E Act) came into force on 13 November 2008. The provisions of the P&E Act allow local planning authorities to require, through their development plan, "reasonable requirements" that (1) a certain proportion of energy used in developments be obtained from renewable sources in the local area, (2) a proportion of energy used in developments must be low carbon energy from local sources and that (3) developments in the area must comply with energy efficiency standards which are higher than the energy requirements of building regulations as set out in legislation or national policies.

Such requirements must not contradict any national policies which relate to renewable energy, low carbon energy or energy efficiency, as the case may be. The power is also subject to the requirements to prepare local development documents in accordance with the local development scheme, and national policies, the regional spatial strategy and other relevant documents set out in Section 19 of the Planning and Compulsory Purchase Act 2004.

Review of Planning Process Published

The final report of the Killian Pretty review was published on 24 November 2008. Joanna Killian, chief executive of Essex County Council and Brentwood Borough Council and David Pretty, former group chief executive of Barratt Developments, led the review. The report makes recommendations for reducing the delays and complexities of the planning system. The recommendations include:

- Authorities' performances would be assessed in the round with less emphasis on the speed of decision making.
- The number of planning conditions will be reduced.
- Planning obligation agreements will be faster and clearer.
- A simpler system for dealing with small-scale minor planning applications is proposed to free up resources for larger cases.

The Government has signalled that it supports the broad thrust of the report and intends to publish an implementation plan early in the New Year setting out in detail how it intends to respond to the proposals. The report can be viewed on the Planning Portal website (www.planningportal.gov.uk) or the Department of Communities and Local Government website (www.communities.gov.uk/).

Law Reports

Gass v Secretary of State for Communities and Local Government – QBD - 25 November 2008

G appealed against an inspector's decision to refuse planning permission for the development of a paintballing enterprise on an area of green belt land which was located in the remote countryside on a no-through road. The first ground of appeal was that the inspector had made a mistake of fact when coming to the conclusion that the track that had existed previously on the approach to the site was not a "private

way" for the purpose of permitted development rights. The inspector considered PPG 2 (para 1.6) which states that one of the objectives of the use of green belt land was to provide opportunities for outdoor sport and recreation near urban areas. Although he found that paintballing was an outdoor recreation, he did not think it was near an urban area. Notwithstanding that it was 2½ miles from the nearest urban area the inspector, in coming to his conclusion, had regard to the lack of public transport links to the site. He also found that the enterprise was likely to cause a visual intrusion and risk an encroachment into the surrounding woodland.

The court held that the inspector was entitled to come to his views. His factual error would not have led to an alternative finding so there were no grounds for quashing his decision. The Court could not criticise the inspector's interpretation of para 1.6 of PPG2 and although his view that the site was not near an urban area was contentious, the inspector was entitled to take into account the availability of public transport links in coming to his conclusions.

Ashwell Property Group Plc, Ashwell (Barton Road) Limited v Cambridge City Council – Court of Appeal – 22 October 2008

A appealed against a High Court decision which upheld the decision of the local authority to adopt a local plan which retained as part of the city's green belt a green field site in which A had an interest. A policy of the Regional Planning Guidance called for a review of the city's green belt and provided a formula for release of those sites from the green belt if such release could be carried out without significant detriment to green belt purposes. The review was carried out in relation to the structure plan. A's site was not earmarked for release despite their representations seeking its release. Following the adoption of the structure plan, the authority reviewed its local plan and A again sought release of part of the site from the green belt. The inspector concluded that there were no exceptional grounds for releasing A's site. A appealed to the Court of Appeal on the ground that a review of the green belt was required twice – at local and structure plan stage. They also said that the authority should have considered whether, in accordance with the RPG, a release could be carried out without significant detriment to green belt purposes and then should have considered whether there were any exceptional circumstances allowing release in accordance to PPG2.

The Court of Appeal dismissed the appeal and held that it was clear from the RPG that a single review of the green belt was intended and not two consecutive reviews at structure and local plan stage. There was no confusion of the tests in the RPG and the PPG. The test in the regional policy regarding "significant detriment to green belt purposes" was part of a wider consideration of material factors including suitability of the development and, in relation to any particular location, whether, pursuant to PPG2, there were exceptional circumstances for altering the green belt. The Court of Appeal also held that A had failed to make out a case of exceptional circumstances.

Taylor Wimpey UK Limited v Crawley Borough Council – QBD – 15 October 2008

The High Court quashed part of Crawley Borough Council's local development core strategy for not adequately taking into account the structure plan and for placing undue importance on an appeal decision. The challenge was made by Taylor Wimpey (TW) who had an interest in an area of land close to Gatwick Airport. The area had been identified by the local authority as suitable for residential development. TW applied for permission to develop the area but the application was put on hold pending the Government's review of air travel which suggested that a second runway might be built at Gatwick with a final decision in 20 years' time. A second runway might, even if it avoided TW's land, cause aircraft noise of between 60 and 66 decibels. Following the Government's review, the authority implemented a structure plan requiring adequate sound insulation for areas with 60-66 decibels of aircraft noise in line with PPG 24. However, an annexe of PPG 24 stated that the desired upper limit for major new housing developments was 60 decibels.

In an appeal against the non-determination of TW's application for planning permission, the Secretary of State stated that TW's land was not necessary to meet housing need and the desired limit of 60 decibels in Annex 3 of PPG 14 was a material consideration against granting permission. In the preparation of the core strategy, the examination inspector amended the core strategy to state that areas should not be developed if they were likely to be subject to aircraft noise of 60 decibels or more. The High Court held that because of the tailoring of the structure plan policy to take into account PPG 24 and the proposals regarding Gatwick Airport, the structure plan policy (requiring sound insulation for areas with aircraft noise of between 60 and 66 decibels) was a highly relevant matter which the examination inspector had failed to take into account. The Court also held that he had failed to give a reason for adopting the policy in the core strategy which was contrary to the structure plan policy and more prescriptive than PPG 24.

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