

Review

Planning



Conservative Party clarifies proposals for the Infrastructure Planning Commission (IPC)

The IPC was established by the Planning Act 2008 and is currently scheduled to start work in October 2009 and begin hearing cases in early 2010. It will determine applications for consents for Nationally Significant Infrastructure Projects (NSIP).

In our May edition of this Planning Review, we reported that the Conservatives opposed the creation of the IPC. They believe that the IPC is anti-democratic because it transfers certain planning decisions away from elected local authorities and ministers to the Commissioners, who will be made up of appointees.

Charles Hendry MP, the shadow energy minister, recently outlined the Conservative's position. He confirmed that a Conservative government will abolish the IPC and hand NSIP applications back to the Secretary of State. The IPC planning team will be redeployed as a "large projects team" to the Planning Inspectorate and would make recommendations to ministers about NSIPs.

Another proposed change relates to National Policy Statements (NPSs), the documents which will set out national policy for NSIP development. The 2008 Act currently provides for Parliament to make recommendations in respect of proposed NPSs but the Conservatives propose to give Parliament the power to vote on NPSs which will also have to be ratified as secondary legislation.

The Conservatives consider that their proposals will reduce the likelihood of legal challenges to NSIP consents and they have promised further clarification later this year. Their proposed changes will have to be implemented by primary legislation. Even if the Conservatives win the next general election, as has been predicted, it appears that there will be sufficient time for any application, which has been made or sent to the IPC, to be determined before the relevant legislation is in place to abolish the IPC.

There have also been reports of a leaked letter from shadow communities secretary, Caroline Spelman to Tory-run LPAs, that Conservatives also intend to abolish Regional Spatial Strategies and regional planning bodies.

PLANNING CONSULTATIONS

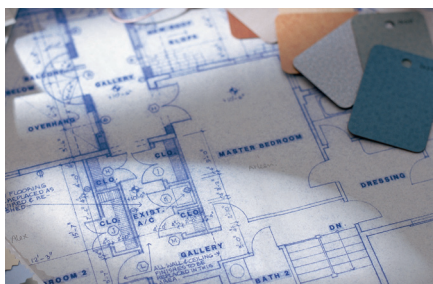
There are several proposed changes in planning procedure – some dealing with Killian Pretty recommendations and others relating to planning policies. Some of current DCLG consultations are summarised below.

Consultation paper on proposed amendments to Planning Policy Statement 25: Development and Flood Risk

The purpose of the proposed amendments is to clarify aspects of the existing national spatial planning policy on development and flood risk and, in particular, to clarify how PPS 25 policies should be applied to certain types of development. The development referred to includes critical infrastructure (such as electricity sub-stations), emergency services facilities, certain facilities requiring hazardous substances consent and wind turbines.

The consultation applies to England only. It is open from 11 August 2009 to 3 November 2009. Although the general public is welcome to respond, the consultation is aimed at bodies involved with flood risk management, some of which are listed in the consultation document. The DCLG aims to publish a response and a revised version of PPS 25 by December 2009.

The Conservative government will abolish the IPC and hand NSIP applications back to the Secretary of State.



Consultation on Policy Statement on Regional Strategies and Guidance on the establishment of Leaders' Boards

The main aim of this consultation is to consult on the new draft policy statement which will replace existing Government policy on preparing Regional Spatial Strategies (Planning Policy Statement 11), and to give guidance to Regional Development Agencies on Regional Economic Strategies. Stakeholder views are sought on the scope and approach taken in this draft policy statement and the principles which responsible regional authorities and other existing stakeholders will need to adhere to in reviewing, revising, implementing and monitoring Regional Strategy.

In addition, views are sought on the draft regulations to support the implementation of Part 5 of the Local Democracy, Economic Development and Construction Bill and the draft guidance on the preparation of Schemes for the establishment of Leaders' Boards. Leaders' Boards will be established under the Bill for each region (outside London). They will comprise of elected members drawn from participating authorities and will assist local government to act collectively at the regional level in relation to the revision and implementation of the Regional Strategy jointly with the RDA. They are a mechanism for democratic input into the Regional Strategies.

The consultation applies to England only. Responses are sought from anybody but are particularly desired from local authorities and the private, public and voluntary sectors.

The consultation opened on 6th August 2009 and will close on the 30th October 2009. The Government aims to publish the final policy in early 2010.

PUBLICITY FOR PLANNING APPLICATIONS

This consultation by the DCLG is open in England only and has been established to consider whether changes should be made to planning legislation in relation to publicising planning applications. This consultation is in response to the Government's response to the Killian Pretty Review which recommended that LPAs should no longer be required to publish notices of planning applications in newspapers and sets out a number of options in this regard.

The consultation is open to everyone but responses are particularly sought from LPAs, civic and community groups, experts in equality and planning and the local newspaper industry. It is open from 30 July 2009 to 23 October 2009.

A summary of the responses will be published alongside a Government announcement on the way forward.

STREAMLINING INFORMATION REQUIREMENTS FOR PLANNING APPLICATIONS

This DCLG consultation deals with making information requirements for planning applications clearer, simpler and more proportionate. The document contains the proposed new approach to LPAs' local lists of information requirements, the proposed changes to the use of Design and Access Statements, and the proposed change to the standard application form in relation to agricultural holdings certificates.

The consultation relates to England only. Anyone can respond but responses are particularly sought from LPAs, the development industry, civic and amenity groups, disability groups and other stakeholders. It is open from 30 July 2009 to 23 October 2009.

The DCLG will publish a summary of responses and proposals are expected to come into force in April 2010.

IMPROVING PERMITTED DEVELOPMENT

The aim of this DCLG consultation is to improve the regulation of permitted development rights and developments which benefit from the 'prior approval' regime. The responses will help inform policy.



The consultation applies only to England and is open to anyone who wishes to respond. It runs from 30 July 2009 to 23 October 2009. Summaries of the responses received will be published on the DCLG website, together with an announcement of the Government's decision on the way forward.

Mayor and Burgess of Barnet London Borough Council v Anthony Joseph Alder and Others (High Court - 31/7/07)

ENFORCING PLANNING CONTROL THROUGH INJUNCTIONS

The LPA applied for an injunction to restrain a breach of planning control by the owner of the property in question. The property was a semi-detached building that was occupied by a school which adopted both the national curriculum and a strict Orthodox Jewish religious education. The LPA had refused a retrospective application for planning permission for change of use to the school because the school had resulted in increased activity, noise and disturbance, which caused significant harm to neighbouring properties.

An enforcement notice was issued which required closure of the school within 11 months. The appeal against this notice was dismissed. The school attempted and failed to find alternative accommodation over the next three years. A second application for planning permission for change of use was made and rejected by the LPA. An appeal against this refusal was pending but in the meantime the LPA sought an injunction to restrain the continuing use of the property as a school.

In seeking the grant of the injunction before the High Court, the LPA argued that the appeal against the refusal of the change of use application was merely an attempt to delay compliance with the enforcement notice, that the school had enjoyed ample time to comply with it and that compliance would cause minimal disruption to the pupils of the school.

The court found that the possibility that a planning appeal might be successful was, as a general rule, a relevant factor in determining whether or not to grant an injunction. In this case the school had not deliberately delayed in trying to find alternative premises and it could not be blamed for thinking its second change of use application had a real prospect of success. However, the LPA had given due consideration to the school when issuing the enforcement notice and was entitled to require compliance with it within a certain date. As the inspector had found that the harm caused by the school's breach of planning law was serious, on the facts of this case no substantial weight could be given to the prospects of success of the school's second appeal.

It was therefore just and proportionate to require the building to revert back to its former use. Any inability the school had to find an identical building did not outweigh the harm the school in its current location caused. The court therefore granted the injunction but suspended it for 5 months to allow alternative provision to be made for the pupils' education.

This decision demonstrates the balance of competing factors when considering whether an injunction is justified in the circumstances.

Langley Park School for Girls Governors v London Borough of Bromley and Langley Park School for Boys Governors (Court of Appeal - 31/7/09)

PLANNING PERMISSION MATERIAL CONSIDERATIONS

The governors of the girls' school (the appellant) appealed against a decision of the High Court which had dismissed its application for a judicial review of a grant of planning permission to the boys' school governors (the interested party).

The boys' school site was on land which the LPA had designated as Metropolitan Open Land (MOL) in its Unitary Development Plan. The government had given funding approval for a project to rebuild the school and a feasibility study had identified three options and specifically recommended one of them. The interested party adopted that recommendation and was granted planning permission for the recommended site.

The LPA's planning committee report found that the proposed development's impact on the MOL was one of the main issues to be considered but concluded that, on balance, the proposal was acceptable. The appellant challenged the grant of planning permission, arguing that the LPA had not properly considered one of the other options given in the feasibility study and thus had failed to take into account a material consideration.

The High Court found that the LPA had been entitled to conclude that the alternative option was an irrelevant consideration. The appellant argued that the alternative feasibility study option would greatly reduce the injury to the openness and visual amenity of the MOL. This was because this option proposed to locate the proposed development on an already built up area of the MOL rather than the open part of the site, which the grant of planning permission allowed for.

The Court of Appeal found, in quashing the grant of planning permission, that the decision to grant the permission was seriously flawed. The LPA's planning committee report was inadequate because it had failed to analyse the possible impact of the proposed development on the MOL, nor had it expressed any conclusion as to the extent to which the openness and visual amenity of the MOL would be injured by the proposed development. The relative impact of the different siting options for the development had not been considered. The LPA committee should have considered the possibility that the injury to the MOL would be reduced if the development was located on the built up area of the MOL.

The court found that where there were clear planning objections to a proposed development, the more likely it was that it would be relevant to consider whether those objections could be overcome by an alternative proposal. The fact that the alternative option was not included in the planning application was thought by the LPA committee to be a sufficient reason for not considering whether an alternative site for the development would have less impact. They had erred in failing to consider the alternative site.

This decision reiterates an important point on the materiality of alternative development proposals - they are more relevant where there are clear planning objections to the original proposal.

FURTHER INFORMATION

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