



## NPPF – the waiting is almost over

The media storm which greeted the publication of the draft National Planning Policy Framework (“NPPF”) is set to intensify as the Chancellor announced in this week’s budget that the NPPF will be published and will come into effect on Tuesday 27 March. This controversial document, which aims to replace over a thousand pages of planning policy to around fifty, has led to claims from some quarters that it is a ‘developer’s charter’ which puts large tracts of the English countryside at risk of inappropriate development. The Government contends that the presumption in favour of sustainable development will unblock the planning system and give the economy a much needed boost whilst maintaining protection of the greenbelt and other designated areas. Watch this space for comment and analysis of the NPPF following its publication next week.

## Localism Act – Update

Regulations to bring into force key provisions of the Localism Act 2011 have recently been published and these are summarised below. For an overview of the principal planning provisions in the Act, see our Client Briefing ‘Localism Act 2011: What you need to know’ of December 2011, which can be read [here](#).

## The Neighbourhood Planning (General) Regulations 2012

These Regulations come into force on 6 April 2012 and implement provisions relating to the new statutory regime for neighbourhood planning introduced by the Localism Act. The Regulations set out the procedure for designating a neighbourhood area including what is to be included in an application for designation of a neighbourhood area and the requirements on the local planning authority to publicise such an application. The Regulations also set out the procedure for designating an organisation or body

as a neighbourhood forum, authorising them to act in relation to the related neighbourhood area, set out the procedure for making neighbourhood development plans and include provisions relating to neighbourhood development orders and community right to build orders. Schedule 1 includes a list of consultees for (1) neighbourhood development plans and (2) neighbourhood development orders and community right to build orders respectively.

## The Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012

On 1 April, the Infrastructure Planning Commission (IPC) will cease to exist. Its role in examining applications for major infrastructure projects will pass to the Planning Inspectorate and its role in determining such applications will pass to the Secretary of State. These Regulations, which come into force on 1 April, make amendments relating to the abolition of the IPC and the transfer of functions to the Secretary of State.

## Linden Homes Ltd v Bromley Borough Council 2011 [2011] EWHC 3430 (Admin)

Judgment was handed down in this case on 19 December 2011 and is relevant to anyone seeking either to object to or rely on an emerging development plan document. The case highlights the duty on planning inspectors, when reporting on the soundness of a local planning authority’s development plan documents, to properly consider the issues raised during the examination process and demonstrates that the courts are willing to rule against an inspector’s findings regarding soundness of a development plan document if the inspector has not fulfilled this duty.

## The facts

Bromley Borough Council’s proposed Bromley Town Centre Area Action Plan (a development plan document) was considered by an inspector at an examination in public, as legally required. The claimant, Linden Homes, who was interested in redeveloping a railway station site covered by the Area Action Plan (AAP), raised a number of objections to the AAP policies, which were considered at the examination. In particular, Linden Homes opposed a policy providing for 250 homes to be created on the railway station site on the basis that limiting the number to 250 rendered their scheme unviable in financial terms and would achieve a density level below that which was acceptable for such a location. Linden Homes provided a report from planning consultants and an assessment of economic viability by BNP Paribas to support their position.

The inspector concluded that the Area Action Plan was legally 'sound'. Linden Homes claimed that it was not sound because, essentially, the inspector had failed to take into account the evidence base in reaching his conclusions. In particular, the inspector had failed to grapple with the principal issue and an important element of the case, his conclusions on viability were purely speculative and he had not given sufficient reasons for his conclusion.

### The decision

The court held in favour of Linden Homes and declared the AAP unsound. It ruled that: (1) the conclusions that the inspector drew in relation to the housing figures did not appear to comply with relevant guidance. The "soundness" of a development plan document depends on it being founded on a robust and credible evidence base and on it being deliverable, flexible and able to be monitored. Alternatively, the reasons given by the inspector in relation to these important issues did not enable Linden Homes to understand why the inspector reached the conclusions that he did – although reasons may be brief, comprehensible reasons must be given; (2) the inspector failed to take account of material evidence which goes directly to the issue of viability of the AAP; (3) it was perfectly appropriate to categorise the inspector's conclusions on viability and alternatives as purely speculative, the inspector did not grapple with the evidence of the bank, which was unchallenged and which directly contradicted his findings; and (4) the inspector had not grappled with the evidence, as he had been bound to do in these circumstances. The inspector's approach had been flawed on the grounds of procedural fairness on that point.

Developers with a scheme affected by an emerging development plan document should consider scrutinising the case made by the local planning authority to assess whether there are points which are vulnerable to challenge.

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