



PLANNING BULLETIN

THE PLANNING BILL

As per the 2007 Queen's speech, the Government has introduced the Planning Bill which seeks to make the Planning System more transparent, quicker and fairer. Communities Secretary Hazel Blears said:

"Through quicker and high quality decisions our Planning Bill will help deliver on the Government's long-term vision for Britain in relation to housing, climate change, energy security, transport provision, and prosperity and quality of life for all."

"The new measures show that it is possible to deliver not only a faster and more efficient planning system, but high quality decisions with greater community involvement."

"There will always be controversial projects that stir opinion and require difficult judgements to be made. However having a stronger system will ensure all opinions - particularly those of the public are heard sooner. Making good judgements in less time is of benefit to everyone. Long-lasting stale-mates that finally stagger to a conclusion are no good for anyone."

Details of the key measures of the Bill are given in the attached Appendix to this Bulletin. However, in summary:

- Ministers to set national priorities for major infrastructure projects (such as roads, rail, power stations) following public consultation and Parliamentary scrutiny.
- Infrastructure applications will be made through a single consent regime and the application will be determined by an Independent Commission consisting of leading experts from a range of fields within a clear framework of legal duties set by Parliament and policy set by Government.
- Developers to have a legal duty to consult the local community, local authorities and key stakeholders on their projects as they prepare them.
- Developers will have to pay a new financial tariff (called a "Community Infrastructure Levy" to be determined on the quantity and type of development) for improvements to local infrastructure to be set by the "charging authorities" - including the Local Planning Authority.
- The need to provide more supporting information enabling the registration and determination of planning applications.
- The Secretary of State through the Planning Inspectorate to determine the type of planning appeals – written representations, informal hearings or public inquiry and not the appellant.

- Make it easier for homeowners to extend their homes by amending the General Permitted Development Order thereby enabling development without the need for planning permission, including conservatories, small scale extensions, solar panels and wind turbines.

Commentary

The Planning Bill was laid before Parliament in November 2007 and comprises of 140 pages, 189 sections and 6 schedules. As a Public Bill, it must pass through a number of stages in the House before it receives Royal Assent and becomes the Planning Act 2008.

The Bill aims to make the planning system more transparent and fairer and involve the public at all stages of the planning process. However, whether the Planning Bill can deliver these laudable objectives remains questionable. This is because the Bill introduces yet more changes to an already complex planning system which is struggling to deliver sustainable development through the determination of a record amount of planning applications and the ongoing difficulties in determining planning applications due to a planning policy vacuum associated with the failure of the adoption of the new style Local Development Documents.

In our view the Planning Bill is unlikely to deliver its objectives because Local Planning Authorities are severely under resourced to implement not only the measures in this Bill but also the plethora of other measures being made by Government to improve the effectiveness and accountability planning system, including the delivery of 3 million homes by 2020 as sought by the Housing Green Paper.

There is also the inherent contradiction of the need to involve the public at all stages of the planning system – and yet, to ensure that decisions are not delayed and made promptly in delivering the Governments sustainable development agenda.

Therefore applicants – including the UK’s major housebuilders and commercial developers - will still face long delays in the determination of their applications even when the Planning Bill becomes law. Applicants will almost certainly face increasing costs in making and negotiating their planning applications – exemplified by the requirement for much more supporting information to be submitted and negotiated before the application is even registered and then the need to ensure that all developments meet the Government’s Green Agenda building standards. Developers costs will rise with the new Community Infrastructure Levy and other planning obligation and policy requirements, including the need to provide on site affordable housing.

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The New IPC and Development Consent for Infrastructure of National Importance

New Infrastructure Planning Commission (IPC) with powers to authorise Compulsory Purchase Orders and Issue 'Development Consent' for infrastructure projects of 'National Importance'. The sorts of projects included in this will be utilities pipelines; reservoirs and dams; highways; airports; harbours; railways lines and rail freight terminals; generating stations and power lines (overhead) and waste processing facilities (including water).

In parallel with the IPC, there will be new procedures to follow regarding the pursuit of Development Consent. This will firstly comprise a 28 day period for the IPC to decide whether or not to accept an application for an 'order to grant development consent'.

The application procedure is then set out, along with a number of pre-application requirements, which include the applicant's duty to consult. Assistance and advice from the IPC can only be given in relation to application procedures and making reps. The decision process appears to be no longer than 6 months as a 'process of examination', with a refusal or consent (with 'requirements' attached).

Development Consents will last as long as specified by the IPC.

Changes to National Policy Statements

Undertaking from the Secretary of State to amend, suspend or review Planning Policy Statements (PPSs) at any time, particularly when a National Policy Statement has been overridden by other policy.

There will be a requirement to carry out a sustainability appraisal of new PPSs as well as including an indication of the 'weighting' afforded to different policies, as well as reasons for such policies, which will be set out in the documents themselves.

Changes to Existing Planning Regimes

- Amendments to Section 106 of the Town and Country Planning Act 1990 to reflect the new IPC and Development Consents, and references to the new Climate Change Bill.
- Delegated officer decisions will now be subject to Council review, where an applicant requests it (in a prescribed form). Such decisions can be upheld or overruled.
- New power to allow 'non material' changes to be made to planning permissions.
- Changes to Tree Preservation Regulations.
- Secretary of State to be given new powers to determine the route to appeal, i.e. written representations; informal hearing or public inquiry.
- Amendments to planning and planning appeal fees regulations.

New Community Infrastructure Levy

As expected, this will be a statutory planning charge - now referred to as 'CIL', imposed by local planning authorities/the Secretary of State/the Mayor of London/Welsh Ministers or any other authority with responsibility for town and country planning. These will be referred to as 'charging authorities'. Charging authorities have the power (and are required to) set, revise and publish rates and will collect the CIL directly.

The CIL Regulations will determine that it will be charged:

1. on land when developed as a result of planning permission
2. to the owner of the land at the time when CIL becomes payable
3. the amount will be determined at the point at which planning permission first permits the development

Technicalities:

It will apply even if the land does not increase in value as a result of planning consent.

It can be used to 'reimburse' expenditure that has already occurred.

It can be reserved to be spent on future infrastructure projects.

It can be used to pay administrative costs in connection with the infrastructure or CIL itself.

It can be used in the provision of loans, guarantees or indemnities.

Charging authorities can also make provision for other projects if CIL is no longer needed for projects specific to the development.

Charging authorities can work jointly, with one authority collecting on behalf of many.

Collection can be on account or in instalments and payment can be 'in kind' in the form of making land available for infrastructure development; carrying out works, or providing services. Non-payment or late payment of CIL can impact upon the validity of a planning permission and can even constitute a criminal offence.

The Secretary of State may set a maximum level that a charging authority can levy, as well as directing a charging authority on where it should be spent.

CIL can be applied generally (e.g. District-wide), within specific areas, and (importantly) can account for exceptional circumstances. Whether this means that brownfield sites with significant development 'abnormals' may be exempted, remains to be seen at this stage.