

planning UPDATE

OCTOBER 2013

October has seen a number of key developments in the planning industry, some of which are detailed below. For more regular updates, download our weekly digest at www.colliers.com/uk/planning

Headline Planning Issues

The main planning points of this Planning newsletter are:

- As the general election manifestos start to take shape, what did the main political parties say at their party conferences?
- A new fast track appeal process for small scale commercial development
- Council's fail to draft their local plans properly meaning the presumption in favour of sustainable development continues

Government Reforms

With the next general election only 18 months away, the three main parties used the party conference season to set out their latest manifesto proposals for planning.

Lib Dem Conference

The Liberal Democrats were the first major political party to hold their annual party conference. They have announced a number of planning proposals:

Improved provision for cycling

A proposal to require local authorities to 'provide for cyclists' in the planning system has been approved by delegates. This includes the expansion of the Local Sustainable Transport Fund; integration of the cycle network (with rail and bus travel); and; the creation of high quality, segregated cycle routes.

Self-build planning guidance

A new proposal to double the number of self-build dwellings to 22,000 by 2023. Councils will be obliged to establish demand for self-builds, compiling a list of people who want to build their own home and who will be prioritised when new brownfield sites become available. The HCA will be required to re-evaluate its land holdings and identify sites for self-builds. A £65m incentive package will be included to help self-build communities.

New use class for betting shops

Local councils should be empowered to decide whether or not to give approval for additional gambling venues. Moving betting shops into a new use class will allow local authorities greater control over their number.

Review the NPPF

Delegates voted to review the NPPF with the intention of boosting the green economy as part of the vision for a zero carbon Britain. The definition of sustainable development needs to be toughened up, as in reality the policy may not deliver a more sustainable future. This proposal also includes the following pledges:

- Reduce planning barriers by reforming planning policy
- Review planning guidance to reflect the important role that water and trees have in countering the heat island effect in urban areas.
- Require that new UK fossil fuelled power stations use their waste heat.

Labour Conference

The Labour Party was the second major political party to hold their annual party conference. They also have announced a number of planning proposals:

200,000 new homes a year by 2020

Ed Miliband has pledged that a Labour Government would build 200,000 new homes a year to help overcome the housing shortage. He said if houses are not built at this rate, by 2020 Britain will have a housing shortfall equivalent to two cities the size of Birmingham.

Use it or lose it

In order to reduce land banking Labour will introduce provisions to force private developers with planning permission to use or lose the land. Councils will be given powers to compulsory purchase land which has been banked and will increase planning fees for developers sitting on land banks to encourage them to build on these sites.

Affordable Rent would be axed

A new model to fund social housing would be introduced which will allow developers to charge higher rents than before, but giving them smaller capital grants.

New review on how to boost housing supply

The former chairman of the BBC Trust, Sir Michael Lyons will lead a review investigating how to boost housing supply which will help form Labour's housing legislation proposals.

Conservative Conference

The Conservative Party were the last major political party to hold their annual party conference.

Notwithstanding the many changes introduced since the last election they too have announced a number of planning proposals:

CIL changes

Nick Boles said that councils needed to make plans for housing older people. Developers providing such housing should not be charged CIL at the same rate as general market housing.

Housing supply

Mark Prisk, the (then) Housing Minister said that the reform of National Planning Framework is crucial and that Whitehall had been 'too slow' in getting rid of surplus public sector land. He went on to say that the UK must make a better use of the existing land and housing stock that already exists.

Government Cabinet reshuffle results in new Housing Minister

October's cabinet reshuffle resulted in Mark Prisk being replaced by Kris Hopkins, the Conservative MP for Keighley in Yorkshire. This reshuffle made way for a 'younger generation'. During Prisk's tenure as Minister for Housing he oversaw the fast-tracking of the second phase of the Help to Buy scheme. As parliamentary under-secretary of State for Communities and Local Government, Kris Hopkins has responsibility for housing, local growth, cities & regeneration, Thames Gateway, wind farms and trouble families. Brandon Lewis has been given the high streets, town centres and markets brief.

New Fast Track Appeal Process for Small Scale Commercial Development

The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2013 came into effect on 1st October 2013. This amendment allows for certain minor commercial appeals to be considered through a new fast track written representations appeals procedure. Applicable schemes comprise minor ground floor extensions to buildings in use for any of the defined uses in Part A of the use classes order which covers shops, financial & professional services, restaurants & cafes, drinking establishments and hot food takeaways. This process effectively mirrors that already in place for householder appeals.

This order also amends the other forms of planning appeals processes; in particular what documents are required to be submitted with an appeal. It front loads the process requiring a greater amount of information to

be submitted alongside the appeal forms, such as the appellant's statement of the case and a draft statement of common ground.

CIL Adoption target to be missed by half of councils

The extended deadline (April 2015) set by the Government for the adoption of CIL is likely to be missed by well over half of local councils, although 70% of councils are in the process of introducing the levy. The figures indicate that, on average, it takes 24 months between the publication of the preliminary draft changing schedule and implementation of the CIL. (Note: Further revisions to CIL regulations are expected to be released before our next newsletter is released)

Special measures for 3 councils

The Government has released statistics that show 3 councils are likely to be placed into special measures. Halton, Worthing and Blaby Councils have determined fewer than 30% of major planning applications within 13 weeks and over the period from July 2011 to July 2013. This special measure introduced this year means that in future applicants can choose to submit their major planning application to the Planning Inspectorate (PINS) for determination rather than the local authority.

Other Planning News

New policy on basements proposed in Westminster

Westminster has been subject to an increase in the number of basement conversions and extensions over recent years and has issued a new policy for consultation which aims to control their future development. The proposed policy is recommending that basement extensions of more than one storey and over 50% of a property's garden size will be recommended for refusal. The council aims to implement this new policy by 2015 and will be one of the first councils in the UK to tackle the issue of mega-basements. The consultation is open and can be found here: <http://www.westminster.gov.uk/services/environment/planning/planning-policy/basements-planning-policy/>. Two more topic papers on 'Flooding' and a 'Special Protection Area for Mayfair, St James and Cork Street' are due to be released by mid-November.

Core Strategies Update

Seven recent examples underline the issues facing councils as they continue to struggle to produce 'sound' planning strategies. In the absence of an up to date local plan, the presumption in favour of sustainable development remains, particularly if the council cannot demonstrate a 5 year land supply for housing.

Gravesham Borough Council – withdrawn. The local plan Inspector has reported that their plan is unsound as fails to meet in full the objectively assessed housing needs.

Hart District Council – withdrawn: The Inspector concluded the council "has not engaged constructively and on an ongoing basis" with neighbouring authorities in preparing its core strategy, concluding that "the council has not complied with the duty" (to co-operate).

Hartlepool Borough Council – withdrawn. Following a change in administration at the last Council elections, and public opposition to plans for a gypsy site and a large greenfield urban extension, the new administration has decided to withdraw the plan, despite a local plan Inspector concluding it could be 'sound' with some modifications.

Kirklees Council – Withdrawn: The Inspector accepted "that the council has made efforts" to seek the views of the Leeds City Region authorities, but "this involved consultation on an already chosen strategy" and "cannot take the place of co-operation through the plan preparation stages.

North West Leicester District Council – withdrawn. The Core Strategy failed to meet the Planning Inspectors concerns over the shortfall in housing land supply.

Waverley Borough Council – withdrawn. The Core Strategy underestimated the housing need so significantly that withdrawing the document and starting a new process of review and amendment would be the quickest route of getting an adopted plan.

Central Bedfordshire Council – delayed. The Inspector concluded that the Council's Gypsy and Traveller draft strategy was unlikely to be found sound at examination. The Council is intending to review the plan which will hold up the process.

When retail conditions mean what they say

A court judgement this month clarified the interpretation of planning conditions restricting the range of goods sold.

A retail park was subject to a restriction on the range of goods sold. The restrictive condition said the use of the unit "shall be for non-food sales only in bulky trades normally found on retail parks which are furniture, carpets, DIY, electrical goods, car accessories, garden items and other such trades as the council may permit in writing". It did not expressly remove the operation of the Use Classes Order.

The park owner argued that, in accordance with case law, as the permission did not expressly exclude the operation of the Use Classes Order, it could still be relied upon and so retailers on the park could also sell any other goods falling within Class A1.

The judge in this instance looked at the construction of the condition, relying on the use of the words "shall" and "only", and concluded that the phraseology was sufficiently clear so as to exclude the operation of the UCO by implication and effectively limit the range of goods which could be sold to those listed in the condition.

Retrospective consent granted due to office to residential permitted development rights

Two enforcement notices relating to the conversion of offices to residential in East Sussex have been quashed. The recently introduced office to residential permitted development rights demonstrated that these developments met the conditions for the conversion. The inspector concluded that this represented an important material consideration in determining the enforcement appeal.

Colliers International

Can you generate Renewable Energy?

Colliers International is working closely with a number of renewable energy developers who see the commercial property sector as a key market area for on-site renewable energy. On-site renewables can take the form of solar photo-voltaic panels (PV) on rooftops or a medium sized wind turbine of around 30-50m. The schemes can offer positive commercial benefits to landlords, tenants and the developer through generating clean energy. New income in the form of a Feed-in-Tariff (FIT) grant from the Government guaranteed for the

life of the scheme (up to 25yrs); reduced energy supply costs from conventional means; potential for rate relief, rental income and reduction in carbon emissions overall. We would be happy to look at any sites as small as 500 sqm m such as car parks, building rooftops, or vacant units; business or retail parks not completed or land that may be banked for medium to longer term developments on greenfield sites. In return we may be able to match you up with our developer clients to get your project moving along. Please contact neil.gray@colliers.com for more details.

10th Biennial of European Towns and Town Planners

Jonathan Manns, one of our London Planning team, was part of the UK working group which presented and took part in the 10th Biennial of European Towns and Town Planners in Lisbon last month. The UK group which included planners in both the private and public sectors set out the British approach to 'Bridging the Funding Gap: Urban Regeneration in Age of Austerity'. This report and the reports from the other European countries will be published later this year.

Midsummer Retail Report – 2013

Colliers Midsummer Retail Report for 2013 can be downloaded here <http://www.colliers.com/en-gb/uk/services/retail/midsummer-retail-report-2013>. It provides an invaluable insight into the current retail market.

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