

Specialist legal advice & solutions, for whatever life brings - at home or at work



Planning Newsletter May 2017 Update

The decision to call a general election now makes uncertain proposed further reforms to the planning system in the Housing White Paper (see newsletter of March).

However the Government has introduced legislation implementing provisions in the Housing and Planning Act 2016- permissions in principle and the Neighbourhood and Planning Bill has now received Royal Assent- though much of it still has to come into force.

We report on this new legislation here but firstly....

The Supreme Court has handed down its judgement in the Hopkins Homes case on the interpretation of paragraphs 14 and 49 of the NPPF where there is no five year land supply. We will report on this decision shortly. In another case -Keith Langmead Limited v Secretary of State and Arun District Council April 2017 - the High Court has upheld the Secretary of State's decision in which he gave considerable weight to the conflict of a proposed development for 100 dwellings with an adopted neighbourhood plan even though the local plan was out of date in terms of housing land supply.

The decision is another sign of the Courts reluctance to interpret paragraph 14 of the NPPF as meaning decision makers can put aside the development plan where it is found to be out of date because of a shortfall in the five year land supply. Ultimately it is for the decision maker to carry out a balancing exercise between competing considerations (which include policies in the local plan and the provisions in the Framework) the weight given to different considerations is a matter for the decision maker. The "presumption in favour of sustainable development" in paragraph 14 of the NPPF only applies after the assessment required by paragraph 14 has been carried out.

The Neighbourhood Planning Act 2017

The Bill received Royal Assent on the 27 April. However many of its provisions (including the provisions reported on below) are not in force and it is unlikely the provisions will come into force prior to the election.

Planning Conditions

The Act gives the power to the Secretary of State to introduce regulations curtailing the use of planning conditions. The same section in the Act makes clear that planning permission may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition but the requirement for the applicant to agree does not apply in circumstances as may be prescribed by regulation.

Neighbourhood Planning

The Act amends existing legislation to strengthen neighbourhood planning. The amendments are numerous and include:

- Amending the Town and Country Planning Act 1990 to impose a duty on local authorities to take into account "a post-examination draft neighbourhood development plan" in the determination of planning applications;
- Amending the Planning and Compulsory Purchase Act 2004 to make clear that a neighbourhood plan forms part of the development plan if there has been a referendum in relation to the plan and more than half of those voting have voted in favour of the plan but the local authority has not made the plan.

Joint Plan Making

At present local authorities **may** make a joint development plan, in future the making of a joint plan may well be forced upon authorities.

The Act amends the Planning and Compulsory Purchase Act to allow the Secretary of State to direct two or more planning authorities to prepare a joint development plan where he considers that to do so will facilitate the more effective planning of the development and use of land. The direction may specify the matters to be covered by the plan and the timetable for preparation.

Permissions in Principle

The Government has finally made the following secondary legislation giving effect to provisions in the Housing and Planning Act 2016 allowing permissions in principle to be granted ahead of any planning application being made:

The Planning Brownfield Land Register Regulations 2017 requires local authorities to maintain a register in two parts of previously developed land in their area. Local authorities must publish their register by the end of this year.

The Permission in Principle Order 2017 grants permission in principle for land allocated in **Part 2** of the register.

The PIP Order relates to land entered onto the brownfield register for housing development and non housing development. But under the regulations, to be entered onto Part 2 of the register, the land must meet the following criteria:

- Has an area of at least .25 hectares or is capable of supporting at least 5 dwellings
- Is suitable for residential development
- Is available for residential development
- Residential development of the land is achievable

So in effect PIP can only be granted for housing led development.

The land can only be entered on Part 2 of the register if the local authority has decided to allocate the land for residential development after following procedures relating to publicity and notification and consultation. The local authority can decide to register land not meeting the minimum area requirement.

Permission in principle does not allow the development of the land but where PIP is granted an applicant may obtain planning permission by applying for technical details consent.

Comment: Whilst the Order appears to streamline the process for obtaining planning consent (by doing away with the need for outline consent) it does not circumvent completely planning controls. In particular in deciding whether land (which has not been allocated in a development plan) is "suitable" the local authority is to take into account impact on amenity and impact on the environment and any representations received. Also sites cannot be placed on the register if development of the site would be EIA development or development would be prohibited under the habitats legislation.

For more information please visit our website page www.battens.co.uk/planning

The Planning Team



David Stephens
Director, Team Leader

01935 846040
david.stephens@battens.co.uk



Laila Jhaveri
Associate Solicitor

01935 846065
laila.jhaveri@battens.co.uk



Ceri Stephens
Senior Associate Solicitor

01935 846039
ceri.stephens@battens.co.uk



RTPI

mediation of space · making of place



Yeovil: 01935 846000 Sherborne: 01935 814811

Dorchester: 01305 250560 Weymouth: 01305 774666

Wareham: 01929 768720 Bath: 01225 562581 London: 0207 7817750