

20 December 2018

Well, this year has certainly been eventful in planning terms. New national policy; cabinet reshuffles; and a formal land banking review to name a few. And all at a time when the country is battling with failing high streets, a housing crisis and of course, Brexit...

As the year draws to an end, we look back on some of the key planning highlights and wonder how they will bed in next year.

1. **The draft London Plan**– Published at the end of last year, the start of 2018 saw a flurry of responses to the draft London Plan. Some of the key concerns were about how the Plan's ambitious housing targets could possibly be achieved, with doubts being raised as to the potential contribution of small sites. The draft Plan was criticised for being too detailed and not strategic enough. Others were disappointed that there were no real surprises and that it was not as radical as promised. The next step is the Examination in Public, which is due to start on 15 January 2019.
2. **The Parkhurst case** – This affordable housing viability case caused a bit of a commotion back in May. Dealing with the controversial issue of viability assessments, the court was clear that developers should not be allowed to avoid policy compliant provision of affordable housing if they have paid too much for the land. Developers who do this were put firmly on the naughty list.
3. **The new NPPF** - Published in July, this revised version of the national planning policy framework is thought to be an early Christmas present for developers, especially when it comes to housing. Support for higher density development; a flexible approach to daylight and sunlight and the housing delivery test are all positive additions. Beware, though, of the potential for shorter implementation periods being imposed (which we have already seen happening) and of the "developer track record" principle, which may catch a few people out.
4. **New planning conditions regime** – More of a stocking-filler for developers, the new regime for dealing with pre-commencement conditions came into effect on 1 October 2018. Introduced to cut down the number of pre-commencement conditions, the new system requires the applicant's written approval before such conditions can be imposed. This doesn't mean that planning permission will be granted without the pre-commencement condition(s), more that there is an increased risk of refusal if the applicant's approval is not given in time.

5. **Sir Oliver Letwin's Review** – A bittersweet result for developers in some respects, Sir Oliver did not find any evidence that land banking is to blame for slow build out rates. Instead, he suggested that new planning rules be introduced requiring a "diversity of offering" in large housing schemes. This would ensure that homes of different shapes, sizes and tenures are built so that market saturation is not a threat to delivery. Bespoke allocation of large sites in local plans; development control powers and increased funding were also suggested. The Government's response is due in February 2019.

6. **Developer contributions reform** - It was back in Spring 2018 that the consultation on reforming the Community Infrastructure Levy (CIL) and Section 106 obligations was launched. Looking to simplify the system and add more certainty for developers, the Government said it might go as far as setting non-negotiable national levels of Section 106 contributions. It hasn't done so yet. In fact, it hasn't done much on this topic. Land value capture – a 2018 buzz phrase - has almost been dropped, with an announcement in Budget 2018 that it will be dealt with under the existing CIL regime by giving councils greater guidance. Whilst some tidying up of the CIL system has been undertaken this year, it looks as though the draft regulations which will set out the detail on the proposed changes won't be published until the New Year. Sufficient time for further consultation has been promised.

7. **Potential planning shortcuts** – In October, the Government launched a consultation which looks at making it easier for permission to be granted without a formal planning application. Mainly aimed at helping the high street, the proposals include: making it easier to change use; permitting upwards extensions; and allowing certain commercial premises to be demolished and replaced with new homes. The consultation closes on 14 January 2019.

8. **The Planning Appeal Bill** – Just sneaking onto the parliamentary timetable before Christmas, this private members bill is a real concern for many. The draft Bill proposes the removal of planning appeal rights, in certain circumstances, if the council decides that the application is inconsistent with the local or neighbourhood plan. The second reading of the draft Bill is due on 25 January 2019 and we will be monitoring it closely. Scrooge would be proud of this one!

9. **A star is born: Daylight and Sunlight**– We were thrilled with the Whitechapel Estate planning appeal decision, which we acted on (and our client won!) this year. A large part of the case concerned D&S issues. The inspector agreed that a "*blanket application*" of the BRE standards was not appropriate and that D&S levels should be judged by what is appropriate for the context. Two significant court cases later drew back from this somewhat, stressing the importance of compliance with the BRE standards, but of course each case must be decided on its own facts. The new NPPF is also helpful in requiring councils to apply D&S policies flexibly where they would otherwise hinder development.

10. **Brexit** – We couldn't review the year without mentioning Brexit. It has dominated the news, but what does it mean for planning? At the moment, not very much. The message is that things should (in the short term) continue as normal. A swathe of legislation is being drafted to ensure a smooth transition when we leave the EU in March 2019. So far, the legislation simply tidies up the drafting

of existing laws so that they do not cause confusion come 29 March 2019. What happens next depends upon the deal that is reached – or whether one is reached at all. What is very clear is that there a number of loose ends to be tied up in the New Year. Consultation closings; draft legislation; Government responses and an important Examination in Public are all going to keep things interesting in 2019. The Hogan Lovells Planning Team wishes you all the best for the festive season and a very happy New Year.

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