

Hogan Lovells

If you are having difficulty reading this email, [view it online](#).

Hogan
Lovells

Government in a pickle over regional planning

8 July 2010

This is a commercial communication from Hogan Lovells. See note below.

On 6 July Eric Pickles as Secretary of State for Communities and Local Government demolished, in one short statement, the entire regional planning regime outside London. Relying on section 79 of the Local Democracy, Economic Development and Construction Act 2009 - a provision plainly designed for an entirely different purpose - he thus removed, in a single controversial stroke, the framework within which the industry has been investing and operating in recent times. The result? An end to months of anxious uncertainty over whether, when and how it would happen and, at the same time, the creation of a policy vacuum in which the vague notion of "incentives" is intended to result in the delivery of much needed housing and other development.

A summary of the Government's announcement and its accompanying guidance is as follows.

- All Regional Spatial Strategies (excluding the London Plan) were revoked as of 6 July. In due course legislation will be introduced to bring about their formal abolition. In the meantime, they cease to form part of development plans. In future "local spatial plans drawn up in conformity with national policy" will be the basis for decision-making.
- Similarly, RSS targets "will be replaced with powerful incentives so that people see the benefits of building." Those authorities which "take action now to consent and support the construction of new homes will receive direct and substantial benefit from their actions." The Government will consult on the detail of this later in the year.
- In the meantime decision-makers will need to have regard to material considerations, including national policy and, potentially, evidence that helped to inform the preparation of revoked RSSs.
- As a result (and this is where these developments introduce significant further uncertainty into the system) authorities are encouraged to consider whether to review adopted DPDs and saved policies, and to do so as quickly as possible. Similarly, emerging policies may need revision.



Contacts

Michael Gallimore
Partner - Head of Planning
michael.gallimore@hoganlovells.com
+44 (20) 7296 2253

Claire Dutch
Partner
claire.dutch@hoganlovells.com
+44 (20) 7296 2951

Visit us at
www.hoganlovells.com

EiPs will remain part of the process of plan preparation and review.

- Responsibility for establishing the right level of housing provision will now lie with local authorities. Some may decide to retain the revoked RSS targets; others may prefer to base revised targets on the 'option 1' figures - those proposed originally by authorities at the start of the RSS process - "supplemented by more recent information as appropriate." Where a review is to take place, this should be signalled as soon as possible.
- Authorities will still be expected to comply with PPS 3 requirements to provide a 5 year land supply, and to identify sufficient sites and broad areas for development to deliver housing ambitions for at least 15 years (suggesting that the battleground of future housing appeals - assuming that the right to appeal survives - will be whether local need is matched by allocated land.)
- As to minerals planning, authorities should work from the apportionment set out in the Proposed Changes to the revision of Policy M3 published in March, but may use alternative figures if the evidence supports it.
- Similarly, waste planning should continue to be based on data currently collated by the Regional Waste Technical Advisory Bodies.

Although not unexpected, Mr Pickles' statement will nevertheless be received to widespread hostility by an industry that many feel is still waiting to be consulted. There is a serious concern that the Government has embarked on a series of ad hoc reforms without a longer-term replacement framework having been put in place. A number of issues arise. We set out below three of the most pressing.

First, many in the industry contend that it requires a leap of faith to accept the suggestion that the vague notion of "incentives" will be sufficient to deliver new homes. The concept is entirely uncertain at the moment - what these incentives will comprise, how they will operate, and whether they will be capable of overcoming the nimbyism that many expect to encounter all remain unanswered. Furthermore, the prospect of housing delivery being most successful in those areas where the incentives most appeal, rather than those where the homes are most needed, is a clear danger.

Second, developers will now need to take positive steps to engage with authorities as the process of review begins. The uncertainty surrounding the proper approach to housing numbers represents both a threat and an opportunity. The promotion of unrealistic, politically-motivated targets is a real prospect in the debates that will no doubt take place, and it will be essential that the development industry makes the most of its opportunities

to influence matters as the process moves forward. Vigilance and engagement will be essential if the industry is to protect its long-term interests.

Third, the debate is at the moment polarised around housing numbers. Despite cursory reference in the new guidance to minerals and waste planning, essentially the reforms appear to ignore entirely the wider importance of spatial planning strategy at a regional level. For example, the delivery of regional-level infrastructure crossing borough boundaries, currently endorsed in RSSs, simply does not merit reference, let alone support. This begs the question how economic growth, which depends on essential infrastructure, will be delivered in the absence of a policy framework for the provision of such infrastructure.

Ultimately, many fear that these changes will lead to a further brake on development, at a time when the Government ought to be promoting economic growth, investment and housing delivery. On a more general level there is alarm at the sight of the planning system being dismantled on a piecemeal basis without any clear idea of what will come next. Mr Pickles' statement indicates that "it is important to avoid a period of uncertainty over planning policy" but that, sadly, is exactly what many in the industry are saying he has just created.

Note

"Hogan Lovells" or the "firm" refers to the international legal practice comprising Hogan Lovells International LLP, Hogan Lovells US LLP, Hogan Lovells Worldwide Group (a Swiss Verein), and their affiliated businesses, each of which is a separate legal entity. Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639. Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG. Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia with offices at 555 13th Street, NW, Washington, DC 20004, USA.

Disclaimer

This publication is for information only. It is not intended to create, and receipt of it does not constitute, a lawyer-client relationship.

So that we can send you this email and other marketing material we believe may interest you, we keep your email address and other information supplied by you on a database. The database is accessible by all Hogan Lovells' offices, which includes offices both inside and outside the European Economic Area (EEA). The level of protection for personal data outside the EEA may not be as comprehensive as within the EEA. To stop receiving email communications from us please [click here](#).

The word "partner" is used to refer to a member of Hogan Lovells International LLP or a partner of Hogan Lovells US LLP, or an employee or consultant with equivalent standing and qualifications, and to a partner, member, employee or consultant in any of their affiliated businesses who has equivalent standing. Rankings and quotes from legal directories and other sources may refer to the former firms of Hogan & Hartson LLP and Lovells LLP. Where case studies are included, results achieved do not guarantee similar outcomes for other clients.

New York State Notice: Attorney Advertising.

© Hogan Lovells 2010. All rights reserved.