

LEGAL ALERT

NOVEMBER 2002

PLANNING & DEVELOPMENT BULLETIN

PLANNING GREEN PAPER - UPDATE

In December 2001, the Government issued the Green Paper "Planning: Delivering a Fundamental Change", the key proposals of which were summarised in our May 2002 bulletin.

The consultation period for the Green Paper ended on 18 March 2002 and produced over 16,000 responses.

In July 2002, the Deputy Prime Minister issued a policy statement in response to the consultation process, entitled "Sustainable Communities - Delivering through Planning". This sets out the following key decisions on how the planning system should be reformed:

- The Green Paper proposed a package of measures designed to speed up the processing of major infrastructure projects, including a procedure whereby the principle of a project would be assessed by Parliament prior to the detail being considered at a public inquiry. Accepting concerns that such a procedure would not result in a quicker process, the Government no longer intends to pursue the concept of Parliamentary involvement. However it does still intend to issue clear statements of national policy, and to consider ways in which public inquiries might be made more efficient. In this regard it has already introduced the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002.

- The Green Paper put forward a number of options for reforming the system of planning obligations, the main one being the introduction of tariffs. This was to address criticisms that the current system is not open, and can result in delay and disparity for developers. Although the Government states that the objectives of the proposed tariffs were welcomed by the majority of those who responded to the Green Paper, it believes it can meet these objectives without amending current legislation. Many now believe that the Government has ruled out a tariff system altogether, although it has been reported that the Government has commissioned research into the possibility of a different form of tariff. The Government will also be revising existing policy guidance, to try and create a more streamlined system.

- Regional Planning Guidance is to be replaced by statutory Regional Spatial Strategies, which will have comparable status to the local development plan in the determination of planning applications. Structure Plans are to be abolished, but sub-regional issues will be addressed in the Regional Spatial Strategies. There will be a single tier of Local Development Frameworks, in place of structure plans, local plans and unitary development plans. The Government also proposes to improve procedures for considering and adopting plans. A further paper ("Making the System Work Better - Planning at Regional and Local levels") has been published, setting out the new arrangements in more detail.

- The existing Planning Policy Guidance Notes are to be replaced, over time, with improved national Planning

Policy Statements. The aim is to reduce the volume, but increase the clarity, of policy guidance. The Government intends to review existing policy guidance over the next three years.

- Reform of the Compulsory Purchase and Compensation system is proposed, with the aim of strengthening the statutory powers of local authorities, improving compensation arrangements, and speeding up the process. A separate paper ("Compulsory Purchase Powers, Procedure and Compensation: the way forward") has been published, setting out the proposed changes in more detail. The Law Commission has also published proposals for legislative reform of the compensation code.

- The Government intends to reduce the life of a standard planning permission from 5 to 3 years. Planning authorities will have discretion to grant longer permissions where appropriate, for example in relation to major development projects which have long lead times. It is also proposed to cut the time for an appeal against a refusal or non-determination from 6 to 3 months. In addition, planning authorities will be required to give reasons for approving as well as refusing planning applications.

- Statutory powers are to be sought to enable the Secretary of State to prescribe a timetable for decisions on applications and appeals which have been either called in or recovered. The Government's target is that, by March 2004, at least 80% of cases will be decided within 16 weeks of the close of the inquiry.

- The Government has abandoned proposals to allow statutory consultees to charge applicants. However it does intend to introduce a deadline of 21 days for statutory consultees to respond to both pre and post application requests for information. Regional Development Agencies are to be made statutory consultees.

- The Government has not yet taken a decision on the proposal that local planning authorities might levy a charge for pre-application discussions with developers:

it is undertaking a wide ranging review of fees which is due to report early in 2003, and the proposal will be considered as part of this.

- The Government intends to proceed with the proposals for Business Planning Zones.

As for the next steps: the Government intends to develop a major programme of action to implement the proposed changes, and will seek to introduce the necessary legislation and regulations as soon as possible. Policy and procedural guidance will be revised.

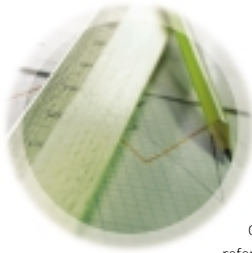
A vertical photograph of a golfer in a red shirt and white pants, captured in the middle of a golf swing on a green field. The background is a blurred landscape.

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IN THIS ISSUE

- PLANNING GREEN PAPER - UPDATE
- ENVIRONMENTAL IMPACT ASSESSMENT
- ENFORCEMENT REVIEW
- NEW PPG17
- RECOGNITION FOR PLANNING GROUP



ENVIRONMENTAL IMPACT ASSESSMENT - THE IMPORTANCE OF GETTING IT RIGHT

In recent years, there have been a number of court decisions which have established that the requirements and procedures set out in the Environmental Impact Assessment Regulations must be correctly followed in order to avoid planning permissions being successfully challenged. The recent case of **R (on the application of Lebus) v South Cambridgeshire District Council** reinforces this message.

A developer had applied for planning permission to erect an egg production unit. The claimant in this case, who was opposed to the proposal, had contended that the development was such as to require the carrying out of an Environmental Impact Assessment. Under the Regulations, the Council were obliged to provide a screening opinion, in writing, to determine whether the proposal was EIA development, and to place a copy of such opinion on the public register. The matter went before planning committee a number of times, and the reports to committee made reference to a screening opinion; however, although a screening summary table was placed on the register, it did not state categorically that a screening opinion had been made, or what such opinion was. The Council had taken the view that, although the proposal would have a significant environmental impact,

this impact could be reduced to an insignificant level by the implementation of mitigation measures, and therefore that an EIA was not required. Accordingly it had granted planning permission for the development.

The judge, Mr Justice Sullivan, allowed the objector's claim. He took the view that, although the Council had given consideration to the question of whether the development was EIA development, it had failed to comply with the procedural requirements set down in the Regulations, and to appreciate the importance of its decision being recorded and made publicly available. Furthermore, in considering whether or not an EIA was required, it was not correct to proceed on the basis that, although a proposal would have a significant effect, this could be mitigated so as to obviate the need for an EIA. Neither was it correct to conclude that an EIA was not necessary because environmental information had been provided in sufficient detail in the planning application.

ENFORCEMENT REVIEW

In the Planning Green Paper the Government announced that it would be reviewing the current system of planning enforcement, with a view to making it simpler and more efficient. On 27 September 2002 a consultation paper, "Review of the Planning Enforcement System in England" was published. It seeks views on a number of issues, including:

- Whether local authorities should continue to have the discretion to decide whether or not to take enforcement action. The Government believes that they should.
- Whether carrying out unauthorised development should be an immediate criminal offence. The Government's view is that this would be inappropriate and disproportionate.
- Whether retrospective planning applications made to regularise unauthorised development still have a role to play. The Government believes that they do.
- Whether local authorities require greater, or different, enforcement powers. The Government believes that the current range is sufficient.
- Whether to introduce a right of appeal against a breach of condition notice. The Government's view is that this is not necessary.
- Whether the 10 year time limit for the taking of enforcement action should be abolished.
- Whether there should be any changes to the right of appeal against an enforcement notice. The Government believes that the right should remain in its current form.
- Whether a formal mediation process for enforcement should be introduced.

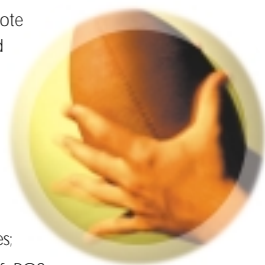
The consultation period runs until 31 December 2002. Copies of the paper can be obtained from www.planning.odpm.co.uk.

NEW PPG17

A revised version of Planning Policy Guidance Note 17 (Planning for Open Space Sport and Recreation) was published on 24 July.

The key provisions are:

- LPAs are to undertake thorough assessments of existing and future needs for POS, sports and recreational facilities in their areas. It is envisaged that this will lead to clear provision strategies supported by effective planning policies;
- LPAs will have the freedom to set levels of POS provision and quality standards at a local level. The Government recognises that it is unrealistic to set national targets;
- Local standards should include detail of how much additional POS is required, a quality benchmark (against which to measure the need to enhance existing facilities), and details of accessibility;
- LPAs are to maintain an adequate supply of open space and sports/recreational facilities;
- The general principles to be applied by LPAs when identifying potential new provision of POS, sports and recreational facilities include: accessibility by travel methods other than the car; recreational facilities to be situated in urban areas and town centres use of brownfield instead of greenfield land; improvements in the quality of public realm through good design.



RECOGNITION FOR PLANNING GROUP

A survey of the country's leading law practices has once again acknowledged Rollits as one of the top law firms in the region.

The 2002 edition of 'The UK Legal 500' this year recommends the firm for its work in 13 areas of law - corporate and commercial, commercial litigation, commercial property, planning, employment, charities, housing associations, intellectual property, licensing, health and safety, personal tax, trusts and probate, personal injury (defendant) and agriculture and estates.

The firm is one of only two practices outside Leeds and Sheffield to be recommended for its work in the area of planning law with partners Steve Hawkins and Jocelyn Denton singled out for special mention. The editors say:- "Rollits has a long history of providing bespoke planning advice. Steve Hawkins and Jocelyn Denton are the best-known practitioners. Keynote projects include ongoing advice on the Millennium Quarter development in London, and the Kingswood development in Hull. The firm also advises a major oil refinery on planning matters."

INFORMATION

If you have any queries on any planning & development matters please contact:

**Steve Hawkins at Hull on 01482 323239
or Jocelyn Denton at York on 01904 625790**

This bulletin is for the use of clients and will be supplied to others on request.

It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to

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The law is stated as at 1 November 2002

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