Planning and Compulsory Purchase Reform:

The New Bill

The Neighbourhood Planning Bill has been published, proposing a modest series of changes to planning, compulsory purchase and compensation.

Neighbourhood planning

Several changes are proposed in respect of neighbourhood plans, firstly in respect of the status of draft plans when planning applications are being considered. From the point that the local planning authority decides to hold a referendum the draft neighbourhood development plan will be identified in the statute as a material consideration in the determination of planning applications (clause 1). A draft plan will be treated as part of the development plan from the time that a referendum decides that it should be made (clause 2). However a draft neighbourhood development plan which has passed examination will be material and will attract considerable weight since it will be in almost its final form and has a very high chance of being made (see NPPF, para 216). Whilst emphasising the importance attached by government to neighbourhood planning, the impact of the changes will therefore be limited.

Clause 3 introduces two changes. Firstly local planning authorities will be able to make non-material modifications to neighbourhood development orders by order at any time. At present they can only modify plans to correct errors (section 61M(4), Town and Country Planning Act 1990). Secondly a procedure for the modification of neighbourhood development plan is introduced along with a detailed schedule. In some circumstances the examiner's report on modifications will be binding on the local planning authority - a change from the present position.

Many neighbourhood areas have been established but issues will sometimes arise as to whether they are the right ones. The Bill proposes two changes. Designations will automatically cease if a new parish council is created or a parish’s area changes. Additionally powers to modify designations are widened to change boundaries and areas.

Statements of community involvement contain the local planning authority’s policies on the involvement of interested persons in making local plans and supplementary planning documents and in development management. Clause 5 proposes to extend SCIs to explain how the local planning authority will give advice or assistance in making neighbourhood plans and orders. It would not extend to how the parish council or neighbourhood forum goes about preparing such documents. Finally clause 6 allows the Secretary of State to make regulations requiring local planning authorities to review their SCIs. A review is not itself a change to the statement but a decision whether or not to promote a revision of the SCI. Given the likelihood of changes to development plan making following the Local Plans Expert Group report, SCIs can be expected to need revision in the near future in any event.

Planning conditions

Two changes are proposed with respect to planning conditions in a new section 100ZA of the Town and Country Planning Act 1990. Regulations may be made limiting the ability to impose planning conditions by prohibiting the imposition of conditions or allowing certain conditions to only be applied in prescribed circumstances. These regulations may only be made to ensure that conditions are necessary, relevant, sufficiently precise and reasonable. This does not envisage a

different usage of conditions: their scope is not widened and any restrictions will simply reflect current policy expectations on the use of conditions.

The second element is the proposed section 100ZA(5):

“Planning permission for the development of the land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition.”

Regulations may provide that this requirement does not apply in prescribed circumstances. The need for written agreement will not apply to outline planning permissions. Pre-commencement conditions are those which must be complied with before operational development or a material change of use take place. In such cases the local planning authority have to provide a list of pre-commencement conditions to the applicant before granting permission. The question in practice will be what happens next? If the applicant declines to agree the list it may be that revised conditions can be agreed. In those cases the authority could decide that some details are unnecessary or that they can be dealt with by a particular stage following commencement. However if the authority still insists on pre-commencement conditions which the applicant does not accept, then it will ultimately have to refuse permission. The applicant will know that if it holds out it could face a refusal on the basis that conditions have not been agreed. Both parties would have to decide whether they are prepared for the cost (and in the developer’s shoes, the delay) of an appeal.

The issues in an appeal would not be confined to the conditions. At that stage there would be no planning permission at all. Third parties could argue that permission should be refused for other reasons and the Inspector or Secretary of State will, at least formally, have to consider the entire merits of the scheme. An unreasonable insistence on particular conditions could lead to a costs award and the appeal system does work as a discipline on all participants in the process. How a written agreement would work in practice is to be seen. In some authorities it will promote better cooperation in drafting conditions, details being deferred to appropriate points and a quicker start on the ground. Other authorities may leave applicants, big and small, with an ultimatum: accept the proposed conditions or be refused. Conversely some developers might try to throw their weight around, threatening appeals and costs applications.

There is a curious element of the appeal process that whilst it is possible to appeal against the grant of permission subject to conditions, the whole merits of the application are then put in issue. The permission could be refused. One way of fast-tracking the resolution of conditions disputes would be to provide that where permission has been granted, any appeal would solely consider the conditions imposed. A developer would therefore have the permission banked and could then argue about conditions. Those conditions appeals could be dealt with quickly on the same basis as householder and minor commercial appeals. I discussed this in *Planning conditions, archaeology and the new Bill* *https://www.linkedin.com/pulse/planning-conditions-archaeology-new-bill-richard-harwood-qc?trkInfo=VSRPsearchId%3A1651454401473282800390%2CVSRPtargetId%3A6140768105393057793%2CVSRPcmpt%3Aprimary&trk=vsrp_influencer_content_res_name*

The planning register

Planning applications, permissions, reserved matters applications and the fact of approvals of details under conditions have to be put on the planning register. Prior approval applications and

notifications under the General Permitted Development Order do not have to be on the register. Many authorities are good at putting those online but their absence from the statutory register is increasingly anomalous given the greater use of prior approval, particularly for changes of use. The Bill proposes to have these added to the register.

There are also other lacunae in the registration system. Listed building consent applications and decisions are not on a statutory register despite their importance and the absence of any time limit for enforcing against breaches of those consents. It would also be sensible to follow the Welsh approach of putting the Historic Environment Record on a statutory basis, ensuring that local information on heritage matters remains available.

Compulsory purchase and compensation

Various of the proposals in the government's February 2016 *Consultation on further reform of the compulsory purchase system* are included in the Bill. The most important is to codify the assessment of compensation in the 'no scheme world'. When land is compulsorily acquired, the scheme underlying the acquisition is disregarded when assessing the value of the land taken. The compensation received is not reduced because the land has been blighted by the scheme but conversely the landowner does not receive a bonus because of the higher value caused by a project which relied on compulsory purchase powers. This approach, known in case law as the *Pointe Gourde* principle is easy to state but often very difficult to apply in practice. An attempt to supplement it in sections 6 to 9 of the Land Compensation Act 1961 has proved to be entirely useless.

Drawing on work by the Law Commission, the common law and statutory rules on the 'no scheme world' are to be replaced by the Bill. That is itself a good move and the detail can be pondered in due course.

The other major change is to introduce a power to compulsorily occupy land on a temporary basis. Temporary occupation is often required for big schemes, either as working areas or compounds, or for accommodation works. No power to compulsorily take possession on a temporary basis is presently available for compulsory purchase orders. Temporary powers are regularly included in hybrid Bills, such as High Speed 2, and sought in development consent orders for nationally significant infrastructure projects. Part 2 of the Bill includes a new regime for compulsory purchase orders to set out land which can be temporarily occupied for the project.

Other changes include improving compensation for businesses with short tenancies, interest being paid if advance (ie interim) payments of compensation are delayed and allowing the Greater London Authority and Transport for London to acquire land for joint purposes.

The compulsory purchase and compensation changes are a further stage in seeking to modernise the system. However they will reinforce the need to codify and consolidate the legislation, which will now be spread over more Acts, and to update the language which dates back to Sir Robert Peel's government.

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