

The planning environment is changing all around us. The effects may well be radical, but the difficulty we are all facing is that we can not be sure what the impacts are likely to be. It is therefore difficult to know how to prepare.

A first and important step is to be aware of the nature of the changes and how the approach is changing as policy and legislation develops. This article aims, very briefly, to outline some of the major areas of interest.

The changes come from three main sources, the Community Infrastructure Levy, the National Planning Policy Framework and the Localism Act. The overriding driver for change is political; the government's plan for the Big Society and the compelling need to encourage economic growth. These two are not always wholly compatible.

Community Infrastructure Levy ('CIL')

CIL legislation is fully in force, but the effect has not been felt in all areas yet. CIL is a levy that can be charged by a local authority on development in its area and used to fund infrastructure in its area. The Localism Act makes provision, sensibly, for it to be used not only for the provision of infrastructure but also for its maintenance and improvement.

CIL can only be charged by local authorities that have adopted an up to date charging schedule. To date only a few have done so, but many more intend to within the next few years. In the meantime, however, the existence of CIL has immediate impacts for developers and land owners. The introduction of CIL between the purchase of the land and the grant of planning permission would have a very significant effect on the amount of the contributions that have to be paid for the development when compared with what would have been payable under a section 106 agreement.

It is also very likely to bring forward the time at which payment has to be made. This means that when land deals are negotiated the possibility that CIL will in fact be chargeable on the development has to be taken into account.

The CIL regulations also impose restrictions on the nature of obligation under a section 106 agreement that can now be taken into account in deciding whether or not to grant permission.

National Planning Policy Framework

As this is currently drafted it represents a major change to the government's approach to planning policy. It reduces central government policy from 1000 pages to around 50 in which the guidance is necessarily much less specific. The intention was that policy would be much more locally driven, with local people determining what happens in their area. There is also a desire to allow or require the planning system to drive the economy, rather than allegedly hold it back. There is however an obvious conflict between the likely wish of local people to protect their own environment and the clear priority given in the NPPF to economic growth and development. It is one of the areas where the cracks in the aspiration of localism show most clearly. The NPPF is widely (but not universally, of course!) criticised for tipping the balance too much in favour of economic development.

The NPPF is drafted in a way that is intended to encourage Councils to bring their Local Plans up to date by including a provision that, if the Local Plan is out of date, or is silent or indeterminate on a particular point, then the default answer to a planning application will be "yes". This led to significant concern from many quarters and there have been numerous comments in the consultation period. Recently, a parliamentary select committee has commented on some very fundamental aspects

of the NPPF and it seems likely that it will be amended in a significant way before it is finally adopted. It is very likely that this simplistic default to “yes” will be removed and also that the drafting will be tightened up significantly. As the NPPF stands it contains many poorly defined phrases and would be very likely to lead to a return to the days of planning by appeal and judicial review as the meanings of those phrases have to be thrashed out between the parties.

Localism Act

This was passed in November 2011 and is the primary legislative vehicle by which the government is bringing into effect its localism agenda. The main parts of it are likely to come into effect in April of this year. During the Bill’s passage through Parliament some important changes have been made to it and the finished Act is certainly an improvement on the Bill.

The Bill proposed that Regional Strategies should be immediately abolished on the relevant section coming into force. This threatened to undermine the whole of the planning system because other planning policy documents in the Local Development Framework are based on the RS and reliant on its evidence base for their contents. The Act allows for the gradual repealing of Regional Strategies which would be much more manageable in practice. Unfortunately it is not apparent that the Government in fact intends to take a staged approach.

Like the Bill, the Act proposes that Parish Councils and a new type of body called a “neighbourhood forum” should be empowered to make “neighbourhood plans” – broadly similar to a Local Plan but dealing with issues on a neighbourhood level. This means they are likely to deal with matters of detail rather than strategy. As far as strategy is concerned, they will have to accord with the Local Plan, but the relationship between the two types of plan is not yet clearly set out.

In the Bill it was alarmingly proposed that a neighbourhood forum could be composed of only three people. This raised the spectre of a small special interest group or family being able to control

the development of a whole neighbourhood. Thankfully, in the Act the number of people required to form a neighbourhood group has been increased to 21 and provisions have been made to ensure that the group is representative of the population of the area.

It is unclear how far neighbourhood plans will be successful in handing planning power to local people. There are many questions around whether in practice neighbourhoods will have the will or resources to make these plans. Also, because the plans have to accord with the Local Plan, their scope to have much impact will be limited.

There may be more impact for developers from the requirements to consult with local people on development proposals and also from the changes to rules on predetermination which are made by the Act. Many developers do already consult on major applications but there will now not only be an obligation to consult but an obligation to take into account the outcome of those consultations. Changes to the rules on predetermination also mean that Councillors will be free to take part in the consultation process. This is likely to mean that local people have a greatly increased expectation as to how much they can influence applications and so may well lead to greater discontent and more challenge to decisions to grant permission. Consider, for example, a case in which the developer goes out to consultation and there is widespread and fundamental objection to the application but permission is nonetheless granted – possibly even under a default to “yes” under the NPPF. Where does consultation and localism stand then?

Conclusion

It is my personal view that the provisions of the Localism Bill and of the NPPF were born in an idealistic wish to hand real power to local people but that, in its inexperience, the government initially overlooked some important realities and practical points. Many communities may join forces to oppose development but not many to encourage it. Without guidance from above – government or District and County Councils - planning would become an exercise in herding cats with small groups in different neighbourhoods having very

different ideas as to what should be done and none of it would be likely to deliver more housing quickly.

Changes have been and will continue to be made to address those issues but they have been and will be at the expense of the original intention of the legislation.

The intention was to change the planning climate radically but in reality when everything settles down there will still be guidance from the government that has to be followed in making Local Plans and neighbourhood plans are likely to be only about the detail. Local Plans will probably return to a degree of simplicity and clarity that was lost when Development Frameworks were introduced.

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