



Progressive Planning

Hot on the heels of white papers on heritage protection (see Real Estate Bulletin May 2007) and energy comes the publication of “Planning for a Sustainable Future”, a white paper on reform to the planning system. Rhetoric aside, and not forgetting the Climate Change Bill, the trilogy leaves little room for doubt about the government’s determination to be seen as a front runner in the challenge to address climate change and the environment.

The reforms proposed in “Planning for a Sustainable Future” are significantly more radical than the changes introduced by the Planning and Compulsory Purchase Act 2004. The purpose of the planning system in all its guises will be to deliver development that is both economically and environmentally sustainable, in an efficient, fair, accountable and responsive way.

Major infrastructure projects

The essence of Planning for a Sustainable Future is to convert the planning system into two tiers by creating a largely separate regime for national infrastructure projects which is distinct from more general town and country planning.

National policy statements

It is proposed to introduce national policy statements in respect of the development of major infrastructure projects of national significance, such as airports, power generating facilities, waste water plants, reservoirs and the strategic road network. These policy statements will form the primary consideration in determining relevant applications, so could effectively be regarded as in principle consent. There will be consultation on draft policy statements prior to their adoption, including local consultation where the policy is location specific. Depending upon the sector to which it relates a policy statement will be valid for 10 to 25 years, with at least five yearly consideration as to whether it requires review.

By clarifying national policy and giving advance consideration to need, national policy statements should help make the outcome of an application for major development more predictable. It is also hoped that the clarification of national policy will assist with local decisions, as regional spatial strategies and local development plans will be expected to reflect the content of national policy statements in a way that is appropriate to their particular area. However, as this is a one way process it seems national policy statements will effectively reduce the influence of local planning authorities.

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Infrastructure planning commission

Acting upon the recommendation of both Kate Barker¹ and Rod Eddington² the government proposes setting up an independent infrastructure planning commission to take the decision on development applications for nationally significant infrastructure projects. In reaching decisions the commission would be required to take account of the national policy statements referred to above, although this would not stop the commission from rejecting an application that was consistent with a national policy statement if it considered there was justification for doing so. The commission will also have an advisory role, with responsibility for issuing guidance for scheme promoters on the application process and identifying best practice.

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A statutory nine months for the decision making process is proposed: six months for the consultation and examination stage and then three months for the commission to deliberate and reach its final decision. Although the commission would have the power to test evidence by direct questioning, written evidence would be preferred to augment a move away from the current lengthy adversarial system. There is concern that this may be seen as resulting in a less transparent and thus accountable regime.

Town and country planning

A comprehensive review of all planning policy statements and guidance is proposed not so as to produce new policy, but rather to give a clearer, more focussed and consistent direction to existing policy and reduce the volume of central guidance. There will be a more marked delineation between policy and guidance. So far as appropriate, decision making will be devolved to local level. A timetable for the proposed changes will be published this summer, with all changes to be in place by the end of summer 2009.

A sustainable supply of land

There is already a national target for 60% of new housing to be provided on previously used land. Prioritising the use of previously developed land should continue, particularly the re-use of derelict or vacant land. The modernisation of empty property rate relief announced in the Budget is seen as important to this goal.

Sustainable economic development

The government would like to see a fundamental cultural change to a bias which favours development unless there is demonstrable harm. A new planning policy statement *Planning for Economic Development* will help local authorities to formulate their approach. Although the government favours a plan-led system, applications that do not accord with a plan but are accompanied by evidence that they will bring economic or social benefit should be considered and only if the harm outweighs the benefits should an application be refused.

1 *Review of Land Use Planning*

2 *The Eddington Transport Study*

Town centre planning policy

An increasing proportion of new development is in or around town centres. This is a trend that the government would like to see continued by local authorities proactively managing the role and function of their town centre. The need test is identified as being counterproductive in this respect, since it has unintentionally restricted competition and consumer choice; it is therefore proposed to replace the need test by a new test with a strong “town centre first” bias.

Minor amendments to permissions

As part of the streamlining of the planning process it is proposed to give local authorities discretion to approve minor non-material amendments to be made to a planning permission without the need for an entirely new planning application. There is a concern to see that transparency of the decision making process is maintained, and so guidance will be issued to local authorities advising in what circumstances they may wish to consult before exercising their discretion.

Minor developments

To reduce the burden on planning departments generated by the high volume of domestic applications the government proposes reducing the need for planning permission for certain minor developments. An impact test would be used. Developments with no or low impact on the surrounding area would constitute permitted development, but developments with anything more than a low impact would need planning permission. This proposal is the subject of a specific consultation, *Permitted Development Rights for Householders*. A similar extension for occupiers of commercial premises is also proposed.

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Permitted development rights

Linked to the need to address climate change and provide renewable energy, the government proposes that all residential microgeneration should be allowed without the need to make a planning application. This would be subject to protective limitations regarding noise, visual amenity and vibration so as to control the impact.

Planning-gain supplement

Planning-gain supplement is noteworthy for its virtual absence. The white paper does no more than affirm the government’s wish to see section 106 agreements curtailed and a planning-gain supplement introduced if it is deemed workable. This will not be before 2009.

Comment

The shortcomings of the current planning system are well documented. Introducing a one consent regime for major projects ought to alleviate some of the current difficulties scheme promoters face. However, the infrastructure commission is to have an advisory as well as an executive role, and notwithstanding proposed safeguards, it is not difficult to foresee that aggrieved parties will use this as a basis for challenging the legality of its decisions. With the consultation requirements, the promise of an “open floor” at inquiry stage and devolving decision making to the right level, the public ought to feel reassured that the new system will offer adequate protection and opportunity for involvement. There is no one panacea for all the ills of the present planning regime nor quick solutions to the serious issue of climate change. This white paper is laudable for a bold attempt to address the issues within the planning regime whilst simultaneously tackling bigger environmental issues.

If you have any questions or require specific advice on any matter discussed in this publication, please contact Suzanne Dray (sdray@mayerbrownrowe.com), Charles Leach (cleach@mayerbrownrowe.com) or your regular contact in the Real Estate Group.

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London Office: 11 Pilgrim Street, London EC4V 6RW Tel:+44(0)20 7248 4282 Fax:+44(0)20 7248 2009

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