



Quarterly planning briefing

November 2012

Legislative update

Growth and Infrastructure Bill

The main aim of this Bill is to speed up the planning system and facilitate new development. It was introduced by the Government on 18 October 2012 and had its second reading on 5 November 2012. [more>](#)

Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012

From the week commencing 19 November 2012, local authority fees for planning applications, deemed applications (ie local authority enforcement action), requests and site visits will increase by 15%. [more>](#)

Recent planning decisions

Barton Farm, Winchester (Cala Group)

After a number of legal challenges and having promoted the Barton Farm site for 14 years, Cala Group's proposals to build 2,000 homes (including 800 affordable homes) were finally approved by Secretary of State (Eric Pickles) on 2 October 2012. [more>](#)

Shottery, Stratford-upon-Avon (Bloor Homes/Hallam Land Management)

The Secretary of State's decision to grant a consent for 800 new homes shows the Government's firm view that LPAs must be able to demonstrate and deliver a five year housing land supply based on objective need. [more>](#)

RPC update

[RPC/RPS Joint Breakfast Seminar – 20 November 2012](#) [more>](#)

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Any comments or queries

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Legislative update

Growth and Infrastructure Bill

Although not announced in the Queen's Speech, the Growth and Infrastructure Bill was introduced by the Government on 18 October 2012 and its second reading took place on 5 November 2012. It seeks to address concerns that the planning system hinders sustainable growth and to implement a number of recommendations from the *Penfold Review of non-planning consents*.

The Bill's main planning provisions are:

- To permit certain planning applications (or related listed building or hazardous substance consents) to be made directly to the Secretary of State if the Local Planning Authority (LPA) has been 'designated'. The Bill does not set out the circumstances in which an LPA would be 'designated' but Government statements suggest it would be those with a "*consistently poor performance in the speed or quality of its decisions*". The criteria to be applied in assessing which LPAs will be designated are to be issued "*in such a manner as the Secretary of State thinks fit*".
- To limit the powers of LPAs to require information to support planning applications so that only information which is "*reasonable given the nature and scale of the proposed development*" and is likely to be a "*material consideration*" in determining that the application is required.
- To allow developers with an affordable housing requirement to apply to the LPA for the modification or discharge of affordable housing provisions set out in section 106 agreements in order to make development viable. The term: 'not economically viable' is not defined. The developer may appeal to the Secretary of State if the LPA does not modify the affordable housing requirement as requested.
- To enable the procedure for the stopping up or diversion of highways and public paths under the Town and Country Planning Act 1990 to commence before planning permission has been granted.
- To amend the scope of the special planning regime for nationally significant infrastructure projects to include significant commercial and business development (excluding housing development) so that they may pass through the planning system quicker. The Bill enables the Secretary of State to make regulations (which would need parliamentary approval) setting out the prescribed projects.
- To put restrictions on the right to register land as a town or village green on the occurrence of 'trigger events' concerning development of land. Trigger events include where an application for planning permission is first advertised and where a draft or final development plan or neighbourhood development plan identifies the land for potential development.

Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012

From the week commencing 19 November 2012, local authority fees for planning applications, deemed applications (ie local authority enforcement action), requests and site visits will increase by 15%. This will provide local authorities with an additional £32 million per annum and will hopefully fund further resourcing and provide a faster and more efficient service for developers.

Planning applications and major applications have fallen 25% and 18% respectively since 2008 as a result of the economic climate. Although planning application fees will continue to be set centrally, Government will continue to support the development of fee benchmarking in order to understand costs at a local level and keep planning fees balanced.

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Recent planning decisions

Barton Farm, Winchester (Cala Group)

After a number of legal challenges and having promoted the Barton Farm site for 14 years, Cala Group's proposals to build 2,000 homes (including 800 affordable homes) were finally approved by the Secretary of State on 2 October 2012. This decision follows the Coalition's attempts to boost the housing and construction industries. The scheme was re-determined following the quashing (by consent) by the High Court of the Secretary of State's original rejection of the scheme. It was held that the Secretary of State had erred in law by rejecting the scheme, which had been recommended by an inspector for approval on the grounds of prematurity in advance of the emerging local development plan, without giving adequate reasons on how Winchester City Council's emerging core strategy impacted his decision.

Upon re-determination, Mr Pickles attached limited weight to the Local Planning Authority's (LPA) draft core strategy on the basis that there were a number of outstanding policy issues. In addition, the proposed scheme's high proportion of affordable homes (40%) and the fact that it was deemed to conform to the NPPF's "presumption in favour of sustainable development" helped push the scheme through. The LPA has, since the original planning appeal and due to its inability to demonstrate a five year land supply, allocated Barton Farm in its emerging core strategy as a 2,000 residential unit site.

Shottery, Stratford-upon-Avon (Bloor Homes/Hallam Land Management)

Following a lengthy battle between Stratford-upon-Avon Planning Authority and joint developers Bloor Homes and Hallam Land Management, the Secretary of State has approved plans to build 800 homes, a primary school and a health centre in Shottery near Stratford-upon-Avon.

This decision sends a strong message to all LPAs who try to refuse consent for housing schemes based on prematurity (in both emerging core strategies and neighbourhood plans) and the revocation of Regional Spatial Strategy housing targets.

Unless there is a reasonable prospect of the draft core strategy being submitted for examination, the LPA is unlikely to succeed with a refusal based on grounds of prematurity. In this case, nine months was not considered to amount to a “reasonable prospect” this would happen. Crucially, LPAs must show that they have a five year land supply (as well as sustained delivery of housing) based on an objective assessment of need. Massaging housing figures through various iterations of the core strategy and then seeking to rely on prematurity as a basis for refusal of consent will not work.

A shortfall in the five year housing land supply was also a decisive factor in other decisions announced by the Secretary of State who consented development in Tewkesbury and Salford.

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RPC update

- **RPC/RPS Joint Breakfast Seminar** – on **20 November 2012** we will host an event at RPC’s offices. Karen Howard will introduce: Steve Quartermain (Chief Planner in the Department for Communities and Local Government), Chris Simkins (RPS) and Anita Rivera (RPC) who will talk about life in the development world after the NPPF and how it has impacted UK housing delivery.
- **RPC Built Environment Blog** – follow RPC’s new Real Estate blog which will feature regular posts on developments in UK real estate law written by specialist lawyers at RPC. The blog examines changes to the law and guidance, contains analysis of important cases and gives general updates on other issues affecting the real estate landscape in the UK.
- **Twitter** – get the latest news on the built environment by following us on Twitter [@RPCBuiltEnvLaw](#)

RPC Real Estate department – new joiners

- **Anita Rivera** – Anita previously worked at Freshfields Bruckhaus Deringer LLP and SNR Denton before joining the planning team at RPC in September this year. She brings a wealth of experience acting on a range of complex deals for household names in both the public and private sectors.
- **Jo Cope** – Jo’s practice focuses on mixed-use development work. She has particular experience advising on large regeneration and redevelopment transactions and retail, hotel and leisure, housing association and industrial lettings.
- **Gervase Cox** – Gervase trained at RPC and qualified into the planning team in September 2012. His experience to date includes working on a major planning inquiry for one of our housebuilder clients and advising on a range of planning and redevelopment issues in the housing, hotel and leisure sectors.

Our next briefing will be in early February 2013.

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