



March 2014
By email only

PLANNING UPDATE NEWSLETTER

INTRODUCTION

Welcome to the latest version of the Planning Directorate newsletter which brings you up to date with the Government's programme of planning reform. There has been a significant amount of work undertaken since the last newsletter in August 2013 and we highlight the issues you should be aware of, together with an indication of what is coming up.

Steve Quartermain
Chief Planner

BUDGET 2014

The Chancellor announced the [Budget](#) on 19 March which included further permitted development measures and support for custom build.

The measures to promote custom build have the potential to increase the capacity and diversity of the house building industry and support the growing number of people who want to build their own home. A key constraint is the difficulty many custom builders experience in finding a suitable plot. The measures included in the Budget are designed to address this challenge:

- We will consult on a new 'Right to Build' which would give custom builders a right to a plot from councils. This proposal recognises the significant role that councils can – and in some cases already are – playing in securing land for custom build. Land for plots could come from local authorities' own landholdings or other land, with councils playing a facilitating role.
- We will seek to identify a number of councils to act as vanguards to test how the Right to Build model could work in practice.
- We will also create a new £150m fund to provide loans to support the delivery of up-to 10,000 serviced plots for custom builders.

The most recent Autumn Statement included a commitment to develop a pilot for testing a 'development benefits' model, in which a share of the benefits of development would be passed directly to households in the local area. The Budget announced that we will launch a government-funded pilot, including further research and evaluation of the approach.

The Budget also included further proposals to streamline the use classes order to significantly increase flexibility of the use classes to allow change of use between more high street uses. We will consult on excluding betting shops and pay day loan shops from these measures. We also intend to introduce greater flexibilities for businesses seeking to expand, including allowing changes to car parks, loading bays and non-retail facilities within existing boundaries and will also consult on liberalising changes of use from warehouse, light industrial and certain sui generis buildings to residential use, where suitable.

PLANNING GUIDANCE REVIEW

On the 6 March we [launched the streamlined planning guidance](#) – with the guidance reduced from over 7,000 pages to a simple accessible online guide.

This is the first time planning guidance has been available entirely online in an up-to-date, usable and accessible way. This web-based resource has been developed following the recommendations of the [External Review of Planning Practice Guidance](#) which the Government previously consulted on. Lord Taylor of Goss Moor chaired this review, and you can read the [Government's response to the consultation](#), or find background information on the review [here](#).

We also on 6 March [cancelled the previous planning guidance documents replaced by the new guidance](#).

The planning practice guidance will be updated as needed and users can sign up for email alerts on any changes, or view these revisions directly on the site. The online resource can be found at: planningguidance.planningportal.gov.uk

Following publication of this guidance, I would also strongly encourage continued momentum on Local Plan examinations. The guidance supports the National Planning Policy Framework and provides useful clarity on the practical application of policy. It should provide helpful support for Inspectors and should not normally be considered a reason for extending examinations

PERMITTED DEVELOPMENT

New permitted development rights for change of use will come into force on 6 April 2014. We consulted on these last year in the *Greater flexibilities for change of use* Consultation.

The new permitted development rights allow change of use:

- from retail (A1) or financial and professional services (A2) to residential (C3) with some associated physical works. Up to 150m² can change use. This right is subject to prior approval of matters including its impact on the sustainability of a key shopping area and the adequate provision of services where there is a likelihood of the building being used a retail purpose. It does not apply in article 1(5) land;
- from retail (A1) to banks, building societies, credit unions and friendly societies, but do not allow subsequent change to other A2 uses. This right applies to listed buildings;
- from buildings in agricultural use to residential (C3) with some associated physical works to enable conversion to take place. Up to 450m² can change use on an agricultural unit to provide up to three homes. This right is subject to prior approval on a number of matters and will not apply on article 1(5). However Ministers are clear that they expect planning authorities in protected areas to take a positive and proactive approach to sustainable development, balancing the protection of the landscape with the social and economic wellbeing of the area;
- from buildings in agricultural use to state-funded schools and registered nurseries providing childcare. This measure does apply in article 1(5) land; and

- from offices, hotels, residential, and non-residential institutions and leisure and assembly (B1, C1, C2, C2A and D2) to nurseries providing childcare.

An amendment has also been made to Part 1, Class B of GPDO, following a High Court decision in June 2013, to clarify the policy intention that when enlarging a roof, a key measurement from the eaves should be taken from the outside edge of the eaves, measured along the roof line. We have also taken the opportunity to clarify that retaining the eaves of the original roof should allow for their reinstatement if works have necessitated their temporary removal, and that a roof enlargement cannot extend out beyond the original wall of the dwelling house.

The regulations and explanatory memorandum can be found at:

<http://www.legislation.gov.uk/uksi/2014/564/contents/made>

<http://www.legislation.gov.uk/uksi/2014/565/contents/made>

<http://www.legislation.gov.uk/uksi/2014/564/memorandum/contents>

Prior approval application forms will be available on the Planning Portal shortly.

Permitted development rights for wind turbines and air source heat pumps on domestic properties were introduced in December 2011. They include a requirement to comply with the Microgeneration Certification Scheme Planning Standards which specifies a noise limit of 42 decibels. The Government response to the consultation made a commitment to review the appropriateness of this noise limit after one year. In Spring 2013 the Department completed this review. The outcome of this review can be found at the Microgeneration Certification Scheme website <http://www.microgenerationcertification.org>

PLANNING STATISTICS DATA COLLECTION FORMS (PS1-2, CPS1-2)

These forms have been reviewed following informal consultation and we will be writing soon to confirm some changes to the form that will be released in July, to collect information on the April to June quarter. The main additional information will be on the new permitted development rights which will be balanced by reduction in the data collected most notably on 'fees' which are covered in separate Local Government Finance returns. We will also issue a new edition of the guidance notes.

COMMUNITY INFRASTRUCTURE LEVY AND SECTION 106

Regulations amending the levy to make it fairer and more flexible came into force on 24 February 2014. The amendments include measures to make it easier to build or extend your home and bring empty properties back into use. We published revised guidance with the regulations which can be found [here](#)

A reminder for those authorities with a Charging Schedule in place that the neighbourhood proportion of the levy should be paid, unless otherwise agreed with the payee, at either the end of April or October each year depending on when the levy payment was received.

A consultation proposing the introduction of a 10-unit and 1,000 square metres gross floor space threshold for affordable housing contributions for section 106 planning obligations commenced on 23 March. This forms part of a wider consultation package on planning performance and planning contributions, which concludes on 4 May. The consultation document can be found at: <https://www.gov.uk/government/consultations/planning-performance-and-planning-contributions>

THE TOWN AND COUNTRY PLANNING (DEMOLITION – DESCRIPTION OF BUILDINGS) DIRECTION 2014

As part of the wider planning guidance review work, we have cancelled Circular 10/95 Planning Controls over Demolition and taken the opportunity to issue an updated demolition direction. The Town and Country Planning (Demolition – Description of Buildings) Direction 2014 which replaces the partially quashed Town and Country Planning (Demolition – Description of Buildings) Direction 1995 has now been published. The new Direction does not change the law it simply clarifies the current position following a Court of Appeal judgement in 2011. It can be found [here](#)

ENTERPRISE AND REGULATORY REFORM ACT 2013: HERITAGE PROVISIONS

The following provisions aimed at simplifying the listed building consent regime were included in the Act:

- Powers to allow local planning authorities to enter into a statutory Heritage Partnership Agreement with the owner of a listed building
- Introduction of a system of local listed building consent orders
- Introduction of certificates of lawfulness of proposed works to listed buildings

The secondary legislation setting out the procedures to be followed in relation to these measures was laid before Parliament on 13 March and will come into force on 6 April 2014. The secondary legislation can be found at: www.legislation.gov.uk (the relevant SI numbers are 550 -553).

The Act also introduced a system of national listed building consent orders. We are currently working with DCMS, English Heritage and the Canal and River Trust on a pilot Order. Further details will be available in due course.

NEIGHBOURHOOD PLANNING

To date we have seen over 980 applications for neighbourhood planning designation, with 780 of those neighbourhood areas designated and 80 full draft plans published, 40 of which have been submitted to examination. Nine neighbourhood plans have been successfully through referendum and seven are now in force. The process of producing a plan seems to be taking most communities in the region of 18 months to two years, including the various consultation and publicity periods required by legislation. Our figures also include eleven designated neighbourhood business areas.

Over half of all local planning authorities in England have now designated at least one area for neighbourhood planning. If you are in one of those authorities that has yet to designate an area or is just getting going, the neighbourhood planning team in DCLG would be happy to talk through different aspects of the process. Additionally there are also now 50 neighbourhood planning "champions" around the country, to find out more about neighbourhood planning, please get in touch with william.roden@communities.gsi.gov.uk.

We know that local planning authorities have been helping one another by swapping ideas and experiences. To find out which authorities and communities have embarked on neighbourhood planning, you can use this interactive map displaying information on activity across the country: http://dclgexamples.mywebcommunity.org/npf/npanodes_osm.html

LOCAL PLANS

Getting up-to-date Local Plans in place remains a key priority. Progress is being made with 53 per cent of local planning authorities now having adopted a plan. Three-quarters of all councils have at least published a plan and a record number of plans are with the Planning Inspectorate for examination. With the Planning Advisory Service and Planning Inspectorate, we continue to provide support for councils moving towards publication of their Plan and would encourage those councils to take advantage of the support on offer.

Recent correspondence between Nick Boles and the Planning Inspectorate about Local Plans is available on the Government's website:

<https://www.gov.uk/government/publications/inspectors-reports-on-local-plans--2>

These letters relate to the representation of the Government's policy in Inspectors' reports, which could have invited misinterpretation of Government policy. The letters make clear that there is no change of national planning or approach. Inspectors in Local Plan examinations should continue to determine whether local planning authorities have followed the National Planning Policy Framework in seeking to meet the objectively assessed development needs of their area.

MAJOR INFRASTRUCTURE

The legislation establishing the nationally significant infrastructure planning regime has been in place for 5 years. Government is now reviewing how the regime is working in order to make practical improvements which will have real benefits for users of the regime.

The review was launched with a discussion document on 4 December which sought views on:

- improvements to the speed and efficiency during the pre-application phase
- greater efficiency and flexibility during the examination phases;
- streamlining consultation and environmental information requirements;
- more flexibility to make changes to development consent orders post decision;
- guidance on better engagement between the developer, statutory consultees, local authorities and communities.

The consultation closed on 24 January 2014 and a final report will be published in Spring 2014. You can find the discussion document [here](#)

A new category of business and commercial development has been added to the major infrastructure planning regime by the Growth and Infrastructure Act. Business and commercial schemes are now able to benefit from the fast track application and aligned consents process for major infrastructure projects.

The Secretary of State has set out in a policy statement factors that he will take into account when considering whether a business or commercial project is nationally significant and can use this regime. This statement was published alongside the regulations which came into force in December. A copy of this statement can be found [here](#)

The 'light touch' review of Planning Act guidance has been completed and all of the guidance notes have now been revised. This guidance consists of six documents covering the pre-application process; associated development; examinations; application forms;

fees, and the compulsory acquisition of land. These documents now reflect changes to the legislation in the Localism Act and the Growth and Infrastructure Act.

NATIONAL POLICY STATEMENT FOR ROADS AND RAIL

The National Networks (roads and rail) National Policy Statement (NPS) has now been published for consultation <https://www.gov.uk/government/consultations/national-road-and-rail-networks-draft-national-policy-statement>. The National Policy Statement will provide clarity and certainty to project applicants on the Government's priorities for the development of road and rail networks and the criteria against which developments will be assessed. High Speed 2 falls outside the scope of this National Policy Statement as it will be considered under a separate hybrid bill process.

PLANNING PERFORMANCE

The Autumn Statement 2013 announced that we will consult on changing the threshold for designating authorities whose performance has fallen below an acceptable level – from 30% of decisions made on time to 40%. This change would affect designations made in October this year, based on performance in the two years to the end of June 2014. The consultation was published on 23 March and can be [found here](#).

The assessment of 'county matter' authorities was deferred by six months to provide time to clarify the definition of 'major development' used to assess performance, and to give authorities an opportunity to check the data that they had supplied previously. Any designations of county matter authorities will now take place by the end of April this year.

Where a designation has been made, applicants now have the option of submitting proposals for major development directly to the Secretary of State. The legislation governing this process came into force on 1 October 2013: a [procedure and consequential amendments order](#), regulations governing [written representations](#) and procedural rules for [hearings](#).

COMMUNICATIONS TECHNOLOGY

In August 2013, we implemented significant relaxations for mobile telecommunications to support 4G (generation) mobile superfast broadband services. This builds on the changes introduced in May which for a period of 5 years implements relaxations to support the roll out of fixed provider superfast broadband in protected areas.

Both changes to the General Permitted Development Order were implemented following the publication of sector-led and owned new codes of best practice:

<http://tinyurl.com/fixed-code> and <http://tinyurl.com/mobile-telecomms>

Communications providers remain under a statutory duty to minimise the impact of their equipment on the visual amenity and to consult with local planning authorities on the siting of apparatus.

COMPULSORY PRE-APPLICATION FOR ONSHORE WIND

In the previous edition of the Planning Directorate newsletter, we mentioned that we would be introducing regulations that will make pre-application consultation with local communities compulsory for onshore wind development later in 2013. These regulations have now been introduced and came into force on 17 December 2013.

This new measure will apply to applications for onshore wind development (under Part 3 of the Town and Country Planning Act) of more than two turbines or where the hub height of any turbine exceeds 15 metres. A copy of the order is available at <http://www.legislation.gov.uk/id/uksi/2013/2932>.

SHALE GAS

New regulations came into effect on 13 January which introduced a standard application form for oil and gas applications, and amended the way in which landowners are notified of any potential drilling for onshore oil and gas under their land. Furthermore, on 19 February, new Regulations came into effect which clarified that the level of fees payable for onshore oil and gas applications should be limited to the surface area affected by their operations.

The [Planning Practice Guidance for Onshore Oil and Gas](#), published last July to provide advice on how shale gas (and other onshore oil and gas) developments should proceed through England's planning system, has been integrated with the Planning Practice Guidance published on 6 March.

HAZARDOUS SUBSTANCES

An amendment to the list of substances subject to the requirement for Hazardous Substances Consent has been made. This implements an amendment to existing requirements introduced by the Seveso III Directive. [The amendment](#) means that Heavy Fuel Oil is now classified as a petroleum product and the threshold at which it is subject to consent requirements has increased from 100 to 2,500 tonnes. More detail is available on the [HSE website](#) and the [National Planning Practice Guidance website](#). We will also be consulting on transposition of the wider land-use planning requirements of the new Directive this summer, for new regulations to come into force in mid-2015.

TOWN AND VILLAGE GREEN ORDER 2014

On 12 February new legislation in relation to restrictions on registering land as a Town and Village Green came into force. For full details of The Order, you can view the Statutory Instrument [here](#).

The Order builds on the new section 15C of and Schedule 1A to the Commons Act 2006, which were inserted by the Growth and Infrastructure Act 2013. The effect of the changes made by the Growth and Infrastructure Act is that the right to apply to register land as a town or village green ceases to apply where a 'trigger' event related to the development of the land occurs, and becomes exercisable again if a corresponding 'terminating' event occurs.

This Order adds additional trigger and terminating events to section 15C as follows:

- An additional terminating event in respect of Local Plans and Neighbourhood Development Plans that occurs two years after the day on which a draft plan is published for consultation by the local planning authority.
- Additional trigger and terminating events in respect of Local Development Orders, Neighbourhood Development Orders and requests for a direction of deemed planning permission in respect of an application under the Transport and Works Act 1992.

GYPSIES AND TRAVELLERS

Ministers [announced](#) in January that they wanted to consider the case for changes to the planning definition of “travellers” to reflect whether it should only refer to those who actually travel and have a mobile and transitory lifestyle. Ministers are also considering the case for further improvements to both planning policy and practice guidance to strengthen green belt protection. We will issue a consultation paper on the subject in due course.

PLANNING PORTAL

In the autumn last year we carried out a pre-market engagement exercise which confirmed that a number of private sector companies are interested in a commercial option for the Planning Portal service. We engaged with a range of partners in exploring the best way forward for the Portal, holding workshops with local planning authorities and private sector planning professionals. This evidence was helpful in our analysis of the future options. Ministers have considered potential options and have decided to enter into a procurement process for a Joint Venture partnership with a private entity to provide the Portal service.

The Government will be a minority shareholder in the Joint Venture, retaining influence to ensure continued delivery of Government’s objectives.

We are now developing the Prospectus and the Invitation to Tender documents. These will be issued shortly along with a notice on Gov.uk and the Planning Portal website

RED TAPE CHALLENGE

Last October, the Department announced the outcome of the Planning Administration theme of the Red Tape Challenge:

<https://www.redtapechallenge.cabinetoffice.gov.uk/themehome/planning-administration/>

By April 2015, we are aiming to have scrapped or improved 50 Planning regulations.

NATIONAL PLANNING CASEWORK UNIT

The National Planning Casework Unit would like to encourage more contact from partners through electronic means.

The Unit is embracing Government’s Digital agenda in a quest to improve overall effectiveness and efficiency. We are currently exploring a range of options and tools. We aim to speed up our decision making processes and provide clearer links to case officers.

This will lead to a more transparent system where you can find out information on volumes of cases and specifically where cases are in the overall system. It will take time to realise this ambition.

To assist us with this, it would be helpful for local authorities to submit cases to us electronically where possible. I know a number of local authorities already do this and we can all benefit from the resource savings this would deliver. All we ask is that the documents we need to consider are attached or clear links are provided.

Our email address is: npcu@communities.gsi.gov.uk

ALLOTMENTS

Allotments are valuable community spaces providing people with the opportunity to enjoy an active and healthy lifestyle. Councils are required to obtain the Secretary of State's consent if they want to sell or lease them or use the land for an alternative purpose.

We will be publishing new guidance for local councils that manage allotment sites in their area to help them understand what they need to demonstrate when making an application.

Any questions about this guidance should be sent to the National Planning Casework Unit, at npcu@communities.gsi.gov.uk.

PLANNING CASEWORK

Since the last newsletter 65 decisions on either recovered appeals or called-in applications have been issued on by the casework team in Eland House. Additionally, three written Ministerial statements (WMS) regarding the recovery of certain case types have been made in Parliament since the WMS of 30 June 2008. The decision letters and Inspector's reports together with the WMS can be found at:

<https://www.gov.uk/government/collections/planning-applications-called-in-decisions-and-recovered-appeals>