

CITY OF LONDON LAW SOCIETY

PLANNING AND ENVIRONMENTAL LAW COMMITTEE

Minutes of meeting held at 23 March 2017, at the offices of Stephenson Harwood

1 ATTENDANCES AND DETAILS OF SUBSTITUTIONS

Members

Stephen Webb	Clyde & Co LLP (Chairman)
Nigel Howorth	Clifford Chance LLP
Ian Ginbey	Clyde & Co LLP
Helen Hutton	Charles Russell Speechlys LLP (Hon Sec)
Ashley Damiral	CMS Cameron McKenna LLP
Christopher Stanwell	DAC Beachcroft LLP
John Bowman	Fieldfisher
Matthew White	Herbert Smith Freehills LLP
Paul Davies	Latham & Watkins LLP
Louise Samuel	Linklaters LLP
Richard Keczkes	Slaughter and May
Ben Stansfield	Stephenson Harwood LLP
Rupert Jones	Weil Gotshal & Manges

Substitutes and other Attendees

Roselle Bridge	Blake Morgan LLP
Victoria Watson	Norton Rose Fulbright LLP
Lorrae Hendry	Stephenson Harwood LLP
Lucy Thomas	Travers Smith LLP
Tom Barton	Trowers & Hamblins LLP

2 APOLOGIES FOR ABSENCE

Marnix Elsenaar	Addleshaw Goddard LLP
Robert Share	Allen & Overy LLP
Lucy Thomas	Ashurst LLP
Kevin Hart	City of London Law Society
Brian Greenwood	Clyde & Co LLP
Claire Dutch	Hogan Lovells International LLP
Duncan Field	Norton Rose Fulbright LLP
Valerie Fogleman	Stevens & Bolton LLP
Romola Parish	Travers Smith LLP

3 MINUTES APPROVED

The Minutes of the previous meeting were approved.

4 MATTERS ARISING

No other matters arising.

5 PLANNING ISSUES

(a) Housing White Paper – Fixing our Broken Housing Market

The overall view of the Committee on the White Paper was that, although the Government is trying to do something positive to deliver housing, there are disappointingly few new innovative solutions in this publication. Much of the White Paper is recycled from previous publications.

The Committee questioned whether such changes would be appropriate for national planning policy or whether these issues should be dealt with by changes to the NPPG only. The NPPF was seen as concise (and deliberately so) when it was first produced. The DCLG's trend is now to expand core policy and to include more guidance / encouragement in it. The Committee considered that many of these proposed changes would not be appropriate for the NPPF.

The Committee briefly considered if the proposals would be workable. It was recognised that several of the initiatives proposed would place severe resource demands on local authorities. There was a view at the National Law Society Committee that it was doubtful that many of these proposals could be delivered unless there was an increase in funding for local authorities. The permission in principle initiative, which comes into force in April, will put a strain on local authority resources.

Fees being considered for planning appeals – this is an old chestnut which has been debated previously. There is no guarantee that PINS would use the money to guarantee quicker delivery.

Generally the view is that the proposed initiatives would require a lot of extra work in order to deliver the extra housing.

The Committee considered some of the points of concern:-

- The amendments suggested for the test for soundness of local plans – the White Paper does not say how this will be carried out.
- Spatial development policies – surprise appearance of strategic policies while the Government is also encouraging localism. This is an admission that the duty to co-operate is not working properly.
- Potential compulsory purchase of stalled development sites – there is great concern about this proposal and the timings of likely intervention by Councils.
- Life of permissions being reduced from three years to two years – this would mean that implementation may well not be achievable in many cases.

There was support for the proposed new affordable housing definition, which would provide developers with more flexibility. Putting policy / guidance into one bucket is helpful to our clients.

The National Committee Law Society PELC is working with PEBA on a joint response. The National Committee is to present its proposed response paper to PEBA fairly soon, for consideration by the latter. It would be good for this Committee to put its name on the final note, if we agree with its contents or we could perhaps consider the National Committee's comments and add our own to those.

(b) CIL amendment proposal paper

The CIL paper met with a much more enthusiastic reaction from the Committee. The paper had adopted all of this Committee's suggestions which were made in the consultation process.

The paper is well thought through and has sensible recommendations. It provides a useful evidence base for workable changes to be made to the system.

The Government will "explore" the new approach proposed by the Panel. There was much concern in the Committee regarding the timings of potential reform of CIL by the Government. Reforms should be brought in much faster.

The BPF understands that the Government is currently considering Planning Gain, on top of these CIL reform proposals.

The Committee recognised that the Department is severely resource constrained and so will have trouble finding time for implementing these CIL reforms too.

(c) Helen Hutton mentioned the four Defra reforms to ecological issues which were approved in December last year. These have already resulted in Natural England licences being altered and mark a refreshingly sensible and practical approach to some of the ecological issues, which, up to now, have caused such delays to the planning process.

(d) The Supreme Court decision in the Richborough / Hopkins Homes case is still awaited.

(e) Historic England's – Good Practice Guidance Note No. 4

This had been circulated when it was released by Historic England.

Louise Samuel, Richard Keczkcs and Helen Hutton to review before 14 May.

(f) Heathrow Expansion: draft Airports National Policy Statement - published in February, consultation closes on 25 May 2017

Christopher Stanwell is a member of the National Infrastructure Planning Association, which is convening a meeting on 5th April 2017 to discuss this NPS. Christopher will feed back to us the comments on the document from that group.

It was decided that there was no need for us to respond separately.

(g) Planning and Affordable Housing for Build to Rent

Consultation response is due before 1st May. The Committee decided that there was little to say on this document.

6 ENVIRONMENTAL UPDATE BY PAUL DAVIES

On 9 March, Latham & Watkins had hosted an event by Client Earth – now the most active of NGOs. 35 people attended the event.

Client Earth wanted to explain its current modus operandi, so far as the legal profession is concerned:

- Engage with lawyers and other professionals to encourage behavioural change; and
- make lawyers aware of issues, especially those relating to climate change.

Herbert Smith Freehills is hosting the next Client Earth meeting (date to be confirmed).

Paul predicted that a big topic for future environmental concern will be corporate separateness - i.e. Issues re: parent and subsidiary liability. There have been three cases on this recently, in which the High Court has had to consider whether a duty of care could be imposed on a parent, for the acts or omissions of its subsidiary. It is important for companies to observe corporate separateness in practice, as well as on paper.

Paul also encouraged the Committee to read the recent Japanese Knotweed case of *Waistell v Network Rail [2017]*. This established that as well as compensation being payable for damage actually caused to property, Japanese Knotweed near someone's property could also result in a successful damages claim.

7 ANY OTHER BUSINESS

- (a) Robert Share had sent a message saying he and Alex Rhodes are working on a note on the section 106/mortgagee in possession issue and he would provide an update on it at the next Committee meeting.
- (b) Richard Keczkcs mentioned the Bloor Homes decision on compulsory purchase – how to apply the Pointe Gourde decision and how to discount relevant policies.

8 DATES OF NEXT MEETINGS

The Committee agreed that a 5pm start time works well for our meetings.

25 May – Clyde & Co.

5 July – Weil Gotshal & Manges.

Helen Hutton

Hon Secretary