

## CITY OF LONDON LAW SOCIETY

### PLANNING AND ENVIRONMENTAL LAW COMMITTEE

Minutes of meeting held at 28 September 2017, at the offices of Clyde & Co

#### 1 ATTENDANCES AND DETAILS OF SUBSTITUTIONS

##### Members

Stephen Webb	Clyde & Co LLP (Chairman)
Jacqueline Backhaus	Trowers & Hamlins LLP
John Bowman	Fieldfisher LLP
Ashley Damiral	CMS Cameron McKenna Nabarro Olswang LLP
Christian Drage	BLP LLP
Duncan Field	Norton Rose Fulbright LLP
Ian Ginbey	Clyde & Co LLP
Brian Greenwood	Clyde & Co LLP
Helen Hutton	Charles Russell Speechlys LLP (Hon Sec)
Romola Parish	Travers Smith LLP
Louise Samuel	Linklaters LLP
Robert Share	Allen & Overy LLP
Ben Stansfield	Stephenson Harwood LLP
Christopher Stanwell	DAC Beachcroft LLP
Matthew White	Herbert Smith Freehills LLP

##### Substitutes and other Attendees

Roselle Bridge	Blake Morgan LLP
Michael Green	Latham & Watkins LLP
Alex Rhodes	Herbert Smith Freehills LLP

#### 2 APOLOGIES FOR ABSENCE

Paul Davies	Latham & Watkins LLP
Claire Dutch	Hogan Lovells International LLP
Claire Fallows	Charles Russell Speechlys LLP
Valerie Fogleman	Stevens & Bolton LLP
Sara Hanrahan	Blake Morgan LLP
Kevin Hart	City of London Law Society
Rupert Jones	Weil Gotshal & Manges
Richard Keczkes	Slaughter and May
Lucy Thomas	Ashurst LLP

#### 3 MINUTES APPROVED

The Minutes of the previous meeting were approved.

#### 4 PLANNING ISSUES

##### (a) Planning for the Right Homes in the Right Places - consultation

This consultation is so important that it was agreed that the Committee should do its own response, not just piggyback on the Law Society Committee's response. Duncan Field, Brian Greenwood, Gary Sector, Richard Keczkes, Jacqueline Backhaus and Stephen Webb are to meet to draft the response.

The Committee noted that there is nothing ground breaking in the consultation. Duncan Field however pointed out an issue of concern regarding the relationship between local and neighbourhood planning. While mention had been made of Ministers suggesting the scrapping of local plans altogether and the consequential increased importance of neighbourhood plans, it was however noted that DCLG etc is making it clear that both levels of plan are currently to stay. *[Please note – Steve Quartermain confirmed, in his talk immediately after our meeting, that DCLG’s intention is for local plans to continue, but that increased flexibility may be brought in, so communities themselves could perhaps decide to remove local plans in the future].*

Ministers are aspiring for complete coverage of England by neighbourhood plans next year, but only 350 have been adopted so far. Where neighbourhood plans are already in place, there are still frequently issues due to conflict between neighbourhood and local plans.

(b) Raynsford Review of Planning

Hugh Ellis had given a presentation on this and will be driving the review forward. This is a huge scale operation. Hugh Ellis spoke about looking into starting the planning system from scratch again. He has suggested using zoning instead of local plans etc.

William Upton’s legal review will feed into the Raynsford review and be a part of it.

The Committee will invite Hugh Ellis and William Upton to speak to us at the next meeting. Matthew White has been in touch with Hugh Ellis via email already.

(c) Mortgagee exclusion clauses in S.106s - update

Robert Share and Alex Rhodes discussed their work on drafting model clauses which are workable for mortgagees/receivers and which hopefully the Committee will then adopt. Once the model provision has been agreed by the Committee, the plan is then to take the drafting to a number of London Boroughs, to discuss their concerns/try to ensure they accept it.

The key mortgagee issues which have arisen since the 2010 model s.106 wording was agreed are:-

- All S.106s should cover future mortgagees and receivers, including where there are no mortgagees at the time the document is completed; and
- Ranking of charges.

Robert said the latter should be discussed with the Council of Mortgage Lenders.

The priority position is worsening now and, due to the amalgamation of the Borough legal teams for Westminster, RBKC and Hammersmith and Fulham, it is becoming a tricky issue for all three of those boroughs, depending on which lawyer is acting.

The concerns apparently result from an incident in Hammersmith where the receiver managed to disclaim liability and took free of the S.106. The Committee needs to try to find out more details of the issue, in order to address it properly.

In addition to the insistence for this wording when negotiating section 106s in the tri-borough set up above, Islington and some other London boroughs are sometimes also raising this issue. Louise Samuel has seen an example in Islington recently, where future mortgagees are covered.

This is only really an issue in five or so boroughs in London. Outside of London one generally includes a standard clause in the section 106 drafting and it is usually agreed.

The aim of the work carried out by Robert and Alex is to try to make developments happen, not to stop banks financing.

Details of issues in section 106s from banks would be helpful here. Banks' lawyers should offer two main points. A draft paper from Robert and Alex, with the suggested wording, will be available at the next meeting.

There was a call for an updated standard draft section 106 agreement generally. Pat Thomas was very involved in drafting the last standard section 106, with David Brock, but that document is now rather out of date. There seems to be no intention currently for the Law Society to stand behind another section 106 draft.

(d) Mayor's Affordable Housing and Viability SPG

Public land issues - 50% or 35% affordable housing rule – fast track system. It is becoming a very inflexible system.

Josh Risso-Gill was in a meeting (in week commencing 18 September) with the GLA, which is calling this change "streamlining" for affordable housing drafting in section 106s. But he and Matthew White are viewing this issue rather differently and so are to lead the charge on behalf of the Committee on this rise.

Some Committee Members are experiencing difficulty where the amount of affordable housing was previously agreed with the Council, but the Council has now suddenly had to change tack due to the Mayor's paper appearing and are now demanding more. Louise Samuel had a case where 18% had been agreed, but the Council then suddenly said 35% was essential.

Some local authorities have even higher percentage rates than the Mayor.

Is there support for Build to Rent? Councils seem to be more flexible about the type of accommodation being provided. But, as it does not meet all the affordable housing criteria, the developer cannot get consent quickly via the fast track route.

Duncan Field - GLA is being quite supportive of Build to Rent schemes, despite a smaller proportion of social housing being provided. Some Councils say they are "not expecting any Build to Rent" to be built out in their boroughs – how does that fit with housing projections?

(e) Air Quality Plans – Impacts on planning

The Committee noted the recent Air Quality Plan submitted by the Government to Europe in July and then the Mayor of London's plan circulated in August.

A new toolkit was produced by Defra in March 2017 to help local authorities to understand the obligations on them imposed.

Progress of the new plan will depend to a certain extent on whether there is an (expected) new JR challenge of the UK's plan by Client Earth.

How will the Government deal with air quality in its Heathrow expansion plans? The Canterbury Local Plan was challenged on Air quality grounds (results of that JR challenge are expected in November).

5 **ENVIRONMENTAL ISSUES**

Michael Green provided an update on behalf of Paul Davies. The Environmental Group had met in June at Herbert Smith's offices. A partner from BCL had spoken. BCL is a firm which focusses on criminal matters (including in the environmental sphere). The talk focussed on the overlap between criminal law and the environmental regime and health and safety matters.

Next talk is being planned – hopefully will be before Christmas. Details will be circulated.

6 **ANY OTHER BUSINESS**

William Upton and Hugh Ellis to be invited to the next meeting.

7 **DATES OF NEXT MEETINGS**

Tuesday, 12 December 2017.

**Helen Hutton**

**Hon Secretary**