

CITY OF LONDON LAW SOCIETY

PLANNING AND ENVIRONMENTAL LAW COMMITTEE

Minutes of meeting held at 12 December 2017, at the offices of Travers Smith LLP, 10
Snow Hill, London EC1A 2AL

1 ATTENDANCES AND DETAILS OF SUBSTITUTIONS

Members

Stephen Webb	Clyde & Co LLP (Chairman)
John Bowman	Fieldfisher LLP
Paul Davies	Latham & Watkins LLP
Ian Ginbey	Clyde & Co LLP
Kevin Hart	City of London Law Society
Helen Hutton	Charles Russell Speechlys LLP (Hon Sec)
Rupert Jones	Weil Gotshal & Manges
Richard Keczkas	Slaughter and May
Romola Parish	Travers Smith LLP
Louise Samuel	Linklaters LLP
Lucy Thomas	Ashurst LLP
Matthew White	Herbert Smith Freehills LLP

Substitutes and other Attendees

Roselle Bridge	Blake Morgan LLP
Nicola Insley	CMS Cameron McKenna Nabarro Olswang LLP
Alex Rhodes	Herbert Smith Freehills LLP
Katie Whicher	Norton Rose Fulbright LLP

2 APOLOGIES FOR ABSENCE

Jacqueline Backhaus	Trowers & Hamlins LLP
Ashley Damiral	CMS Cameron McKenna Nabarro Olswang LLP
Christian Drage	BLP LLP
Claire Dutch	Hogan Lovells International LLP
Claire Fallows	Charles Russell Speechlys LLP
Duncan Field	Norton Rose Fulbright LLP
Valerie Fogleman	Stevens & Bolton LLP
Sara Hanrahan	Blake Morgan LLP
Nigel Howarth	Clifford Chance LLP
Tim Pugh	
Josh Risso-Gill	CMS Cameron McKenna Nabarro Olswang LLP
Gary Sector	Addleshaw Goddard LLP
Ben Stansfield	Stephenson Harwood LLP
Christopher Stanwell	DAC Beachcroft LLP

3 MINUTES APPROVED

The Minutes of the previous meeting were approved, subject to a small amendment.

4 PLANNING ISSUES

- *Note on mortgagees and section 106 agreements*

Alex Rhodes spoke about the note (distributed to the meeting in hard copy form) which she and Robert Share had been working on for the last year or so, relating to mortgagees and section 106 agreements. The aim is to come to a consensus as to

1. an acceptable position for receivers
2. protect the LPA sufficiently
3. what is commercially sensible for lenders and
4. adequate protection for future mortgagees

and to come up with some model clauses.

Receivers are never going to build out – it took local authorities a long time to agree that they would not be liable.

Most local authorities generally do not resist the issue of banks only being liable when they take possession - the standard form wording in section 106s has become so established, that it helps Councils to accept the position for mortgagees in possession.

Some Councils however push back on the future mortgagee issue, as it is not in their standard terms. They often just say that other firms do not raise this as an issue. The suggestion was made that section 106(3) is the answer to this issue, as a future bank will be “deriving title” to the land. Banks usually exercise their power of sale, rather than taking possession of the site.

Richard K asked where the problem with bank liability is coming from and what are the size of the banks which are raising concerns? An issue is that there is not a small group of banks involved in relation to this drafting, but a wide range of them. Overseas banks seem to be more concerned about the drafting.

As an example of recent issues, a bank had signed up to the standard clause in Westminster two years previously, but then it was not acceptable to it just two years later. Some banks now have their own standard clauses on which they insist for section 106s. The standard wording would only allow current, not future, banks to make use of the mortgagees in possession clause. It is going to become more frequent that the owner will be refinancing soon, so this generally needs to be considered in section 106s. It used to be possible to explain that a bank would not be a successor in title.

Any comments on the note are to be sent to Alex Rhodes before the next meeting. Alex and Robert hope that we can have further discussion on their note at the next meeting. The note will then be taken to LGA/other organisations representing Council lawyers.

- *Housing proposals in Autumn Budget*

The way that housing proposals had been dealt with in the Autumn Budget was disappointing. There only ended up being SDLT changes.

- *CIL review*

The announcement that the Government would be consulting again on it is surprising.

If the Government would remove pooling restrictions this would act as a disincentive to local authorities without CIL in place, to get on with getting their charging schedules adopted. Some Councils outside London are dragging their heels about bringing in CIL.

Stephen Webb stated that for larger sites the Committee had pushed hard to remove CIL, so only section 106 would apply. There had been a comprehensive response to the call for evidence. A frequent concern is that often CIL is too complex. The Committee supported the well-considered report of the CIL review panel.

Matthew White was of the view that the Government should remove the Reg 123 pooling restriction, but keep the Reg 122 requirements, so a S.106 is related to the development. This issue was highlighted in an Aberdeen case recently – the CIL Regs do not apply in Scotland, but removing pooling restriction would help to protect developers. It is logical for local authorities to be able to collect from several developments – eg in order to deliver schools.

Regulation 123 is not sufficient to ensure that local authorities without CIL in place do engage with it. Will there be another stick to encourage local authorities without CIL, to adopt it?

- *Planning Court User Group*

Matthew White explained that the User Group was set up by Keith Lindblom. It designates cases as significant/non-significant and a batch of cases is so classified every couple of weeks. Cases can be reclassified later on, once the main documents have been served. Only 14 judges can hear significant planning cases. The 39 other judges hear the non-significant ones. They are generally doing well at keeping to timings in the Planning Court.

In the Court of Appeal, it takes up to a year to get a permission hearing. Court of Appeal is deluged at the moment. There are only 3 or 4 judges who can sit on planning cases there. It is, however, better to have a judge hearing a planning case who understands planning issues. In the Court of Appeal planning cases are not seen as a priority. Immigration cases take precedence.

Totally without merit – very few cases are given that classification. Judges tend to give people the benefit of the doubt, especially litigants in person. The Courts would like people not to try to resist planning permission. In London things happen faster than in the regions. 7 days to issue a case at Court – watch out for timings. S.288s

need to be issued straight away. Mondays are judges' reading days. In order to assist paper reduction, a core bundle of standard documents is not required to be submitted. The JPL practice note to help prepare for cases is recommended.

Ian Ginbey's advice is that unless one is up against timescale then the case papers can be served by putting them in the Court drop box. Sometimes then the case is issued after the 6 weeks. This process can therefore sometimes buy the claimant a little more time.

- *Planning for the Right Homes in the Right Places*

Consultation - Stephen has already agreed with the National Committee to do a joint response which will also represent the Committee's views – submission date is 9 November 2017.

5 ENVIRONMENTAL ISSUES

Paul Davies summarised recent environmental issues:-

The UKELA Brexit Conference in October entitled "Brexit, the Repeal Bill and the Environment", was chaired by Lord Carnwath. He set out the likely framework of environmental law going forward and how it would be enforced in the future.

Paul also discussed the changes occurring in the environmental consultancy market. There are now only a handful of consultants able to offer a global service like, for example, ERM and Ramboll Environ. However, we are seeing new entrants into the market like Anthesis.

Lastly, Paul discussed the increasing focus on environmental, social and governance issues (EDG). In particular, he mentioned a new risk screening product – Risk Horizon. This is being rolled out for use in due diligence process.

Next environmental sub-group session – Sam Brady of Slaughters is to host.

6 ANY OTHER BUSINESS

On 15 November 2017 the first meeting of the chairs of CLLS sub-committees was held.

The work of all specialist committees is highly regarded by CLLS, firms and stakeholders. We must get that message across to member firms. The CLLS is trying to engage more with firms. The ability to bring in specialist speakers etc is a very important function of each Committee. The Planning and Environmental Law Committee is one of the largest committees. Stephen reminded the Committee of the ongoing aim to move on Committee members who do not attend meetings. Advertisement of vacancies is on the CLLS website.

An issue raised at the above meeting is that the Government was often has made up its mind before it goes to consultation, such as for the SI on receivables. Four committee responses were sent in – if the committee of experts working in that field

had been consulted before the SI was launched, the Committee could have steered the Government not to submit.

The Government often does not respond to issues raised in consultation responses.

A new Data Law Committee is being setup by CLLS early next year.

If we know of any relevant colleagues in our respective firms who might join the committee, we are to send details to Kevin.

International Law Committee connects with International Law Societies – again we are to think of any lawyers we might know in New York.

Regulatory work – The Regulatory Committee cannot cover all areas which it wants to cover, so in September it may need to set up a new (additional) committee to take some of the expanded role. The Chair of that Committee will come along to a meeting with us some time to discuss that committee's brief.

CLLS Diary Dates

29 January 2018 – annual dinner for members of specialist committees.

14 May 2018 – service at St Peter Ad Vincula, followed by dinner and reception.

18 June 2018 – evening reception (after the AGM).

7 DATES OF 2018 MEETINGS

Tuesday, 10 April 2018

Thursday, 21 June 2018

Thursday, 27 September 2018 and

Thursday, 29 November 2018

Helen Hutton

Hon Secretary