

## CITY OF LONDON LAW SOCIETY

### PLANNING AND ENVIRONMENTAL LAW COMMITTEE

Minutes of meeting held on 27 September 2018 at the offices of Latham & Watkins, 99  
Bishopsgate, London EC2M 3XF

#### 1 ATTENDANCES AND DETAILS OF SUBSTITUTIONS

##### Members

Stephen Webb	Clyde & Co LLP (Chairman)
Helen Hutton	Charles Russell Speechlys LLP (Hon Sec)
Ian Ginbey	Clyde & Co LLP
Joshua Risso-Gill	CMS Cameron McKenna Nabarro Olswang LLP
Ashley Damiral	CMS Cameron McKenna Nabarro Olswang LLP
Claire Dutch	Hogan Lovells International LLP
Paul Davies	Latham & Watkins LLP
Louise Samuel	Linklaters LLP
Duncan Field	Norton Rose Fulbright LLP
Ben Stansfield	Stephenson Harwood LLP
Jacqueline Backhaus	Trowers & Hamlins LLP
Tim Pugh	

##### Substitutes and other Attendees

Lucy Dodds	Blake Morgan LLP
Lydia O'Hagan	Charles Russell Speechlys LLP
Amanda Brodie	DAC Beachcroft LLP
Alex Rhodes	Herbert Smith Freehills LLP

##### Additional team members joined the meeting for Steve Quartermain's talk

Sophie Willis	Charles Russell Speechlys LLP
Victoria Watson	Norton Rose Fulbright LLP

#### 2 APOLOGIES FOR ABSENCE

Gary Sector	Addleshaw Goddard LLP
Robert Share	Allen & Overy LLP
Lucy Thomas	Ashurst LLP
Sara Hanrahan	Blake Morgan LLP
Christian Drage	Bryan Cave Leighton Paisner LLP
Claire Fallows	Charles Russell Speechlys LLP
Kevin Hart	City of London Law Society
Nigel Howorth	Clifford Chance LLP
Brian Greenwood	Clyde & Co LLP

Christopher Stanwell	DAC Beachcroft LLP
John Bowman	FieldFisher LLP
Matthew Evans	Forsters LLP
Matthew White	Herbert Smith Freehills LLP
Richard Keczkcs	Slaughter and May
Valerie Fogleman	Stevens & Bolton LLP
Romola Parish	Travers Smith LLP
Rupert Jones	Weil Gotshal & Manges (London) LLP

### 3 **MINUTES APPROVED**

The minutes of the last meeting were approved, subject to Paul wishing to come back with some changes to the environmental update (subsequently inserted).

### 4 **ITEMS NOT ON THE AGENDA**

Stephen reported that he had attended the CLLS meeting of Committee chairmen. They had discussed how to engage more widely, such as encouraging other members of CLLS Committees to attend CLLS events.

He asked for invitations to various CLLS events to go to all on this Committee.

- The next dinner will be on [21] January. [*Kevin Hart to confirm details*]

It was noted that Rupert Jones is currently the Master of the Solicitors' Company.

The Committee asked if the note on mortgagees could now be circulated beyond this Committee. Alex Rhodes explained that it is still waiting for the approval of Allen & Overy to release. She will ask Rob what is happening in that respect.

### 5 **PLANNING ISSUES**

#### 5.1 **Draft revised NPPF consultation**

Those on the Committee who had contributed to the consultation responses were thanked.

#### 5.2 **Section 106 planning obligations and the community infrastructure levy consultation**

Again, those who had contributed to the consultation responses were thanked.

#### 5.3 **NPPF2**

The effect of the revised NPPF ("**NPPF2**") was discussed. Paragraph 49 – pre-maturity was considered to be safer than the drafting in the previous NPPF.

It is still too early for much practical application.

The challenge by Friends of the Earth ("**FoE**") is progressing. FoE is asserting that the Government should carry out an SEA of the new framework policies.

Councils are apparently still referring to the old paragraph references - from NPPF1.

For existing appeals and cases where no decision has been made, additional representations are being accepted. As an example, the Chiswick Curve appeal which had concluded on 6 July 2018, was reopened for additional representations to be made after the NPPF2 was published. The new comments related to issues such as air quality in NPPF2.

Generally the Committee considered that NPPF2 is more developer friendly than NPPF1 was.

#### 5.4 **NPPG2 – elements which have been published so far.**

The Chairman asked the Committee to review the new guidance by the next meeting (and more should be published by then).

A working group was formed to look at the new NPPG, comprising Ben Stansfield, Ian Ginbey and Stephen Webb.

#### 5.5 **New London Plan – EiP letter.**

The Chair mentioned that the date for examination of the new London Plan (issued on 13 August 2018) is in January 2019.

London First is running a series of round tables sessions on the draft Plan - dividing it up into smaller chunks.

It was noted that air quality policies in the new Plan are somewhat vague. There is a requirement that development must be air quality positive on opportunity sites. This will involve undertaking positive measures to create neutrality.

The Committee considered that the reference to WHO guideline targets for particulate matter would probably be ripe for challenge by FoE!

#### 5.6 At the Residential Viability & Planning seminar (earlier in the day on 27 September), it was admitted that there was no Parliamentary time for the CIL review.

Liz Peace's team's proposals would need primary, not just secondary, legislation to implement and there will be no time for that in the current Brexit-led regime.

### 6 **ENVIRONMENTAL ISSUES**

Paul Davies discussed four main environmental topics:

#### 6.1 There was an Environmental sub-group meeting at Slaughter and May recently. The Green Investment Group is the new name for Green Investment Bank. James Stacey of ERM discussed the sustainability and Equator principles, which are creeping into all aspects of what do – ie in the Regulatory sphere, as well as transactions, etc.

There is already a Government consultation proposing that a new environmental body is formed after Brexit occurs. The Environment sub-group had discussed

making a joint submission in response to this consultation with UKELA, but it was too complicated to organise. The Consultation closed in August 2018. UKELA considered a series of options in its response. This response is now being considered by others.

6.2 In the Courts, the parent/subsidiary relationship has come to the fore again.

Many of the cases being considered are in Africa. This issue is not about piercing the corporate veil, but that a parent company has a duty of care to the subsidiary.

Leigh Day is actively bringing different cases to the Courts. Paul said he is expecting the issue to go up to the Supreme Court soon. It will be significant if judgment is made on the parent/subsidiary relationship. The implications would be very wide, especially for companies with subsidiaries in Africa, etc.

6.3 Plastics – on 28 May 2018, the European Commission issued its draft Directive on reduction of plastics products. The breadth of the Directive is very wide. This is going to force a behavioural change which has already started to take place. Those clients who are in the plastics sector are concerned. There is currently lots of lobbying taking place in Brussels.

6.4 Landfill/mining sites

Many are starting to look at such sites differently. These may prove to be valuable revenue streams. Companies are currently identifying which ones should provide the best opportunities. The most interesting trial site is in Belgium.

6.5 The next meeting is scheduled for 28th November.

7 **AOB**

7.1 The Emily Shirley and Michael Rundell case relating to the air quality issue was in the Court of Appeal last week. This is a challenge to a 4,000 unit extension in Canterbury by two local residents. The Secretary of State had refused to call in the development plans on air quality directive grounds.

Leigh Day launched a challenge, with Robert McCracken QC as counsel. He stated that the Secretary of State had no discretion to refuse to call it in. He stated that where there is an exceedance of levels under the Directive, there is a duty to call it in. Surprisingly FoE did not intervene in this case itself, but it is now helping with it. Judgment is due before Christmas. (The Right Hon Lord Justice) Keith Lindblom heard the case in the Court of Appeal. If the appeal is allowed, there will be severe implications for all cases with air quality issues in the future.

The new cost protection rules have been applied in this case. A schedule of means has been submitted to the Court and the claimants' liability is capped.

7.2 The Committee discussed many ideas for future meetings/greater engagement by Committee Members:

- The Committee should share knowhow/experiences more than currently. We should be more proactive in public facing events, such as taking part in TCPA consultations;
- We should draft a back of Planning Magazine style feature – providing lessons learned by Committee members;
- Paul D suggested we should provide legal updates and we should invite controversial speakers in to address us/stir things up. To initiate this idea, Paul agreed to invite ClientEarth to the next meeting to address us;
- Tim Pugh discussed the Land Value Capture issue which is currently on the planning agenda. Should we engage proactively with that issue – such as contact someone in Treasury? There may be something in the autumn Budget on it. We should put that on the agenda for our next meeting. An expert group from the Committee should be formed to discuss this issue. Duncan Field suggested that a cross-Committee Group – our Committee joining with the tax committee should consider it together. Whichever party is in power in the future (post Brexit) will undoubtedly have to consider this issue;
- Under the educational element of Committee - barristers should be invited to our meetings to speak on topical issues/on a recent case;
- We should have more contact with PEBA and PINS in the future. All Members on the Committee are involved in appeals, so this should be useful for all of us;
- We should increase the visibility of the public face of the Committee, ie we should issue press releases etc, and reach out more to the planning world. This could for example be in a similar way to Simon Ricketts' weekly blog;
- Louise Samuel enjoyed the Historic England presentation and suggested that we should invite other similar organisations and societies to speak to us;
- The POS is keen to engage with our Committee. We should also invite the chairs of the planning teams in London to our meetings – for example John Walker of Westminster would probably be interested in attending; and
- A member of the EA spoke to the Environmental Sub-Committee recently, which involved a candid discussion. We should invite in organisations alongside which we are working. That would be helpful for both parties. We should set up a programme of such external speakers.

Best wishes were sent by the Committee to Valerie Fogleman after her accident and all are hoping for her swift recovery.

**8 DATE OF NEXT MEETING**

Next meeting to be at 5pm at Hogan Lovells International LLP, Atlantic House, Holborn Viaduct, London EC1A 2FT on 29 November 2018.

**Helen Hutton**

**Hon Secretary**