

**CITY OF LONDON LAW SOCIETY PLANNING AND
ENVIRONMENTAL LAW COMMITTEE**

**Minutes of meeting held on 9 October 2019 at CMS Cameron McKenna Nabarro
Olswang LLP, Cannon Place, 78 Cannon Street, London**

1 ATTENDANCES AND DETAILS OF SUBSTITUTIONS

Members

Stephen Webb	Clyde & Co LLP (Chairman)
Helen Hutton	Charles Russell Speechlys LLP (Hon Sec)
Ashley Damiral	CMS Cameron McKenna Nabarro Olswang LLP
Joshua Risso-Gill	CMS Cameron McKenna Nabarro Olswang LLP
Christopher Stanwell	DAC Beachcroft LLP
Matthew White	Herbert Smith Freehills LLP
Claire Dutch	Hogan Lovells International LLP
Louise Samuel	Town Legal
Richard Keczkas	Slaughter and May
Duncan Field	Town Legal LLP
Romola Parish	Travers Smith
Rupert Jones	Weil Gotshal & Manges (London) LLP
Tim Pugh	-

Substitutes and other Attendees

Dan Murphy	Charles Russell Speechlys LLP
James Bee	Latham Watkins
Tim Brown	Trowers & Hamblins LLP

2 APOLOGIES FOR ABSENCE

Robert Share	Allen & Overy LLP
Sarah Hanrahan	Blake Morgan LLP
Claire Fallows	Charles Russell Speechlys LLP
Kevin Hart	City of London Law Society
Ian Ginbey	Clyde & Co LLP
Ben Stansfield	Gowling WLG LLP
Valerie Fogleman	Stevens & Bolton LLP
Jacqueline Backhaus	Trowers & Hamblins LLP

3 MINUTES OF THE LAST MEETING

The minutes of the last meeting on 2 July 2019 were approved.

4 PLANNING ISSUES

Discussions on:

- (a) Proposed planning reforms;
- (b) New national design guide; and
- (c) Update on the City of London Law Society Construction Law Committee and also about Chairmen of other Committees.

4.1 Proposed Planning Reforms

Dan Murphy (CRS) summarised the key proposals announced at the Conservative party conference, for the reform of the planning system. Proposals included:

- Simplifying the planning process;
- Amending PD rights to permit upward extensions – quite a lot of criticism already, especially regarding design quality;
- No mention yet of whether the above right would be subject to prior approval or not;
- Application fees – if the Local Authority does not perform, should take money away again;
- Design Green Paper – to be released in November;
- Proposal to reduce conditions on planning permission by one third – but no details have been provided on how; and
- Views are to be sought on PD rights to demolish commercial units and replace them with residential dwellings.

4.2 National Design Guide

Discussion on the Launch of a new National Design Guide Code, issued by MHCLG, as part of the Planning Practice Guidance (and should be read alongside the separate PPG on design process and tools):

- It attempts to deal with substandard housing and the need to review minimum design standards;
- Exemption for conservation areas for upward extensions;
- Design guide – how important is this? Views to be taken at the House Builders' conference;
- Concerns that we will have slums of tomorrow as result of PD rights being exercised;
- Alongside the review of town centre use classes and whether to introduce flexibility of uses, the aim is to help address the dying high streets and prompt regeneration; and
- Impending National Model Design Code

4.3 Financial viability in planning

Discussion on RICS long-awaited update to its 2012 practice guidance on assessing financial viability in planning:

- The new guidance has now been published in draft and the consultation period ends on 9 February 2020. The consultation states:

“We are not seeking comments contrasting the government framework with a market-based appraisal. Comments should focus on whether our draft guidance gives effect to government policy and practice guidance, in an administratively efficient way, in order to deliver the objectives of the NPPF”;

- The guidance is distinct from the RICS professional statement published in May 2019 on viability conduct and reporting, which prescribes certain matters which should be included within financial viability assessments and how the process should be conducted;
- The new guidance aims to align itself with amendments to the NPPF (which emphasises the role of viability assessment at plan-making stage), the PPG and Holgate J.’s comments in the *Parkhurst* case about fixing a site’s benchmark land value (“BLV”) for assessment purposes;
- It states that the “primary” approach for identifying BLV is EUV+ (existing use value plus a premium for the landowner) or where appropriate, AUV (alternative use value). However, it recognises that there are two other approaches for fixing the BLV which should be used as cross-checks – the residual valuation approach and the market comparison approach.
- Notably, the guidance concludes that:

“The decision-maker will establish a reasonable premium to the landowner and determine the BLV informed by the professional judgement of the assessor, using the best evidence as set out in the PPG”.

4.4 Claim for costs for the reconvened inquiry Wavedon in January – have been told that the developer should be able to reclaim its costs there, regardless of how the appeal is determined by the Secretary of State.

4.5 PINS guidance. Currently there are six months’ worth of outstanding determinations to clear through the system.

5 ENVIRONMENTAL ISSUES

James Bee (Latham & Watkins) provided the Environmental update to the Committee:

5.1 UK Net Zero Target

The new legislation (laid out by the Government in June) increases the UK’s net emissions reduction target to 100% by 2050 (ie net zero target for 2050) which in broad terms has been positively received.

This however does not include any emissions from international aviation and shipping and allows international carbon credits to be included.

UK is the 1st major economy to propose this.

Opposition and protestors do not think this is tight enough or early enough. Labour wants the target to be reduced by 2030 and Extinction Rebellion wants it to be reduced by 2025. Airport policy statement – opposition has called for a review of that.

Friends of the Earth Court of Appeal case next week - arguing that the Government's decision to allow the expansion of Heathrow was unlawful, as it breached the Department for Transport's sustainable development duties, in failing to mitigate climate change for future generations. The case is being argued on the basis that the Government was not considering the Paris Agreement, let alone assessing airport expansion in the light of it; that there is an absence of any climate policy beyond the 2050 target, under the Climate Change Act; and a failure to factor in any impact from the non-CO2 contribution of aviation in the climate breakdown.

5.2 Principles of Responsible Banking

In September, the UN Environmental Programme together with 130 banks launched the UN Principles (6 Principles) for Responsible Banking.

Signatory banks to demonstrate compliance with them.

Principles are broadly to align business strategy to Sustainable Development Goals and the Paris climate Agreement commitment.

Key steps document (produced by the UN Environment Programme Finance Initiative) set targets as to how banks can do better, in order to demonstrate compliance.

After signing up, banks have four years to demonstrate compliance, but reporting requirements will kick in earlier.

In the next 18 months or so, will need to show progress.

5.3 Environment Bill – 25 year plan

In July, the 2nd policy paper was produced, regarding the Environment Bill.

The July paper expands on part 1 of the draft Bill from December 2018, but is not a draft of the remainder of the Bill. The Bill is due to be published later in October – but it is not expected to appear at the promised time.

The paper did contain more concrete policy proposals re: air/waste etc.

Michael Gove has decided to give the Office for Environmental Protection – the body to be set up as the independent environmental watchdog – powers to enforce climate change laws (these were previously excluded from scope and the draft Bill from December 2018 was criticised because of their absence).

If UK does leave on 31 October, OEP may not be functional at that point. If this happens, Reports could be sent to OEP, to be processed later once set up, but it is not ideal.

It does not appear, from what has been gleaned from the Government so far, that Brexit is likely to lead to major environmental deregulation in the short term.

5.4 Other matters

UKELA Taskforce meeting was held in July, before the second policy paper was published, so was not able to comment on the second paper.

Environmental Sub-committee is due to meet on 7th November at Macfarlanes.

REACH Chemicals:

- State of preparedness – In the event of no deal, the EU REACH Regulation would be brought into UK law by the European Union (Withdrawal) Act 2018.

- That Regulation, and related legislation, would be retained in the UK with the changes necessary to make it work in the domestic context. The UK would therefore retain the key principles of the EU REACH Regulation, including its fundamental principle of ‘no data, no market’, and its provision for Only Representatives.

Hornsey 3 DCO been deferred – in relation to 6(4) derogation. If so, will be first derogation in offshore wind/capacity issues. Impact expected especially regarding birds. Compensatory measures for dismembered birds are being considered.

6 MATTERS ARISING

- 6.1 Discussion on the Committee membership and CLLS members.
- 6.2 Next speaker possibly from the GLA – Julie to be invited.
- 6.3 Construction Law CLLS event 1, 8 and 15 November. Stephen to circulate details.

7 AOB

4 February – committee members at Cutlers’ Hall.

2 March – Banquet at Mansion House. All members can attend, if they or their firms are members of the City of London Law Society.

8 DATE OF NEXT MEETING

5 December 2019 at Slaughter and May.

Helen Hutton
Hon Secretary