

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

**Minutes of meeting held at the offices of Slaughter and May on 13 February 2020**

**1 ATTENDANCES AND DETAILS OF SUBSTITUTIONS**

**Members**

Stephen Webb	Clyde & Co LLP (Chairman)
Helen Hutton	Charles Russell Speechlys LLP (Hon Sec)
Kevin Hart	City of London Law Society
Nigel Howorth	Clifford Chance
Ashley Damiral	CMS Cameron McKenna Nabarro Olswang LLP
John Bowman	FieldFisher LLP
Matthew White	Herbert Smith Freehills LLP
Paul Davies	Latham Watkins
Sara Hanrahan	Lewis Silkin LLP
Richard Keczkcs	Slaughter and May
Valerie Fogleman	Stevens & Bolton LLP
Duncan Field	Town Legal LLP
Louise Samuel	Town Legal LLP
Romola Parish	Travers Smith
Rupert Jones	-
Tim Pugh	-

**Substitutes and other Attendees**

Charlie Reid	Ashurst LLP
George Bull	Charles Russell Speechlys LLP
Samantha Brady	Slaughter and May
Tim Brown	Trowers & Hamblins LLP

**2 APOLOGIES FOR ABSENCE**

Gary Sector	Addleshaw Goddard LLP
Claire Dutch	Ashurst LLP
Christian Drage	BCLP LLP
Claire Fallows	Charles Russell Speechlys LLP
Joshua Risso-Gill	CMS Cameron McKenna Nabarro Olswang LLP
Ian Ginbey	Clyde & Co LLP
Brian Greenwood	Clyde & Co LLP
Christopher Stanwell	DAC Beachcroft LLP
Ben Stansfield	Gowling WLG LLP
Jacqueline Backhaus	Trowers & Hamblins LLP

### 3 MINUTES OF THE LAST MEETING

The minutes of the last meeting on 5 December 2019 were approved.

### 4 PLANNING ISSUES

4.1 The Committee considered three recent important cases

4.1.1 Supreme Court decision looking at Green Belt Openness - *Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council and Dorrington Quarries* [2020]

The decision considered whether it was necessary (rather than just permissible) to take landscape and visual impacts into account in deciding whether openness was preserved.

It was not a requirement to take into account visual quality of landscape, as it is not itself an essential part of the “openness” for which the Green Belt is protected. Judgment says concept of “openness” in para 90 NPPF is a broad policy concept. “It is naturally read as referring back to the underlying aim of Green Belt policy stating at the beginning of this section to prevent urban sprawl by keeping land permanently open...”. Openness is the counterpart of urban sprawl and is also linked to the purpose to be served by the Green Belt.

4.1.2 Court of Appeal decision - *R on the application of East Bergholt Parish Council v Babergh District Council* [2019] – deliverability of sites. Power is with the decision maker. Deliverability is for the decision maker, within bounds of reasonable planning judgment – but ... 2019 is wider than 2012. Site is available now, it offers suitable location now and reasonable prospect that housing will be delivered within five years. Also emphasised that decision makers should not take into account the potential costs associated with those decisions.

4.1.3 Court of Appeal decision - *Finney v Welsh Ministers* [2019] – s 73 cannot be used to vary description of development. Impacts post Court of Appeal decision and note that application has been made for leave to appeal to the Supreme Court [*note – permission to appeal refused in May 2020*].

#### **S. 96a/s. 73 issues post Finney v Welsh Ministers**

POS/London First had held meetings with both GLA and DHCLG to discuss issues in practice – could guidance be issued to assist? Some Boroughs are working flexibly, others are not, which is (for example) affecting housing numbers.

Some Boroughs are refusing to determine 96a/s.73 decisions at all at the moment. Some are allowing s.96 applications to strip out details from descriptions, then s. 73 to make the actual changes to the conditions.

Some are saying the above combination is allowed, but are then not accepting the applications.

Nothing has changed in practice at time of the alteration of the description, so inherently there is no material change. Local authorities should not consider the fact that the s. 96a application is being made in order to clear the way for a s.73 application to proceed later.

In applications we should now say we do not want detailed descriptions. Where height restrictions and limited unit numbers are applied, then the development is tied for later on and it has no flexibility.

The hope is that MHCLG will help with some guidance for local authorities on this issue.

The committee considered that the consultation for an application should be able to take place with more detail in the summary - ie more than is in the actual description. Some officers are however even nervous about that. The GLA is nervous where the description includes unit numbers.

4.2 Jack Airey has just been hired by Downing Street, as Boris Johnson's housing and planning special advisor. He was formally head of housing for the think tank Policy Exchange. He has been involved in improving housebuilding standards and in the creation of the Building Better, Building Beautiful Commission. He was also involved in drafting the report by the Policy Exchange, as considered in the paragraph below.

4.3 Rethinking the Planning System in the 21st century – 27 January 2020

There was a mixed view amongst the committee of the prospect of zoning being brought in to the English planning system, as set out in the Policy Exchange's report. There was concern that it might be an overly simplified system. We have an overly democratised planning system now. We should not de-demoralise it too quickly. A balanced version of the possible zoning system would be needed here, if it were to be adopted in England – including a clearer vision of what should be allowed in terms of development than the one considered in Planning for the Future. It seems that there was a lack of experience of a zoning system in those who wrote the paper.

The committee considered the system proposed would be too mechanical – ie as if a computer programmer had written the system proposal. It would not work for as varied a system as ours, where a whole raft of issues need to be taken into account. Will need to retain protected areas of many different varieties – the proposal falls down as it is too black and white, without considering the numerous nuances which our system currently includes. A command and control approach would not work for our planning system.

It was considered that the approach to Permission in Principle should be loosened, but recognised that there would be EIA issues if it were expanded too much. Similarly there would be EIA issues if England were to adopt a 21st century zonal approach to planning.

This would not be that different to what is being proposed – could deal with 90% or so of development in the future and the remaining 10% could be subject to other rules.

We could perhaps ask Jack Airey to speak to the Committee. Sue Chadwick at Pinsent Masons is also one of other authors – she might speak to us. Matthew will invite her along to a future meeting.

#### 4.4 RICS consultation on land value capture – the consultation period has ended.

RICS has fudged the difficult measure of land value.

EUV+ basis or comparable mechanisms - confusion there. Viability is a confusing issue generally.

#### 4.5 HS2 Bill was announced in the Queen’s Speech – how much will it cost to deliver? How much would it cost to delay it? A significant delay would have a huge impact on the construction industry.

Crossrail 2 – commitment to proceed. Hybrid bill expected to be introduced into Parliament in 2022.

Euston – (just about) has sufficient capacity until Crossrail 2 works begin. Euston station often gets blocked now. Plans are to reduce capacity for trains into Euston - 14 not 18 trains, so all will be packed.

#### 4.6 Richard discussed an interesting ICO decision from January - what constitutes a public authority under Environmental Information Regulations. The entity here was a private body, EON, proposing an offshore windfarm. Interesting comments in the case here. EON would be a public authority if it had held electricity/gas licence. Under the DCO – was that sufficient to trigger EIR? Fortunately did not apply here as EON was still not the licence holder – but, as a general issue, it was a dangerous case. Not clear if case had been appealed yet or not.

### 5 **ENVIRONMENTAL ISSUES – PAUL DAVIES’ UPDATE**

Climate Change – like air quality, is likely to increase in importance in planning decisions.

Climate emergency – cannot tolerate net increases in pollution. Even if does not then stand up on appeal – it will be important at the stage of the primary decision. Members will **have** to consider it carefully.

Lindblom – Heathrow decision expected in a couple of weeks’ time – will be interesting to find out what he says.

Drax Power challenge in High Court by ClientEarth against gas fired power station decision – climate change issue. Andrea Leadsom’s decision letter from October last year – have considered climate change and will be fine. Climate Change was not a ground for refusal in 2011. Watch this in the future.

Paul highlighted the giant policy vacuum currently re climate change. NPPF must make climate change of greater importance there.

Trade Agreement negotiations with Brussels – adherence to environmental standards is vital.

Green Deal publication at end of last year. Sets out road map for European continent to be carbon neutral by 2050. Work involved in achieving that is staggering. Disclosure obligations. Serious private finance will be needed to move to a zero carbon economy. Disadvantaged communities need help with compensation.

Environment Bill 2020 – there are two new elements of note since last year’s version:

- Ban on exporting waste; and
- Key takeaway – not to be bound by future EU Green rules, but will make our own strong environmental protection regime.

## **COP 26**

Madrid – failure at COP25.

Were high hopes for COP26 in November. PM however dismissed Claire O’Neill as the leader of the UN Climate talks at the end of January (Alok Sharma appointed to take over the role).

Will COP26 achieve what it needs to? It needs the right leader. UK needs to progress in the right way. Big review of infrastructure needs to take place. Net zero type projects need to be brought into the mix, such as carbon capture etc. Sustainable development goals/rules need to become much more central in UK.

GB must be seen to be taking lead in climate change issues.

Business increasing embracing ESG.

## **6 MATTERS ARISING**

### **7 AOB**

Banquet at Mansion House - 2 March. Tony Juniper is the speaker.

At the Chairmen’s meeting it was recognised that the work of the individual committees is invaluable.

## **8 DATE OF NEXT MEETING**

29 September 2020 – virtually.

**Helen Hutton**  
**Hon Secretary**