

Headline news

May revives plan to pay residents to support development

Prime Minister Theresa May indicated on 7 August that community infrastructure levy (CIL) receipts could be paid directly to local residents.

The indication was made as she announced proposals for monies from a scheme to share the proceeds of shale gas revenues to be passed direct to households. The No. 10 statement includes the following:

'The government will also be looking at whether this approach to the Shale Wealth Fund can be a model for other community benefit schemes with the aim of putting more control and more resource in the hands of local households. Examples of where the principle could be extended include the community infrastructure levy, which is currently being reviewed.'

The Government's reference to CIL is made in the context of a new consultation on the Shale Wealth Fund (launched the next day), stating that it would:

'...include the option of money being paid directly to local residents in host areas.'

The Fund, first announced at last year's Autumn Statement, was previously expected to share proceeds from shale revenues only with community trusts and local authorities. But Number 10 has now said:

'The new government has changed the consultation to ensure a greater focus on control for local communities - including insisting on proposals to transfer funds directly to households rather than local authorities.'

Communities could receive up to 10% of tax revenues derived from shale exploration in their area to spend on priorities such as local infrastructure and skills training.

Consultation responses must be submitted by 26 October.

Law

In the courts

Richborough to be heard in Supreme Court in February

Cheshire East Council and Suffolk Coastal District Council were granted leave to appeal to the Supreme Court the Court of Appeal judgement in Suffolk Coastal DC v Hopkins Homes & SSCLG and Richborough Estates v Cheshire East BC & SSCLG.

The cases each considered the relationship between paras. 14 and 49 of the National Planning Policy Framework, and Jenny Nye's NLP blog explains the implications of the judgement.

It is now understood that the case will be heard in the Supreme Court on 23 and 24 February, 2017.

Court of Appeal rejects SAVE's call to save Liverpool's 1912 Futurist Cinema

In R (on the application of Save Britain's Heritage) v Liverpool City Council and Regeneration Liverpool & Neptune in Partnership, the Court of Appeal ruled on the meaning of planning guidance and whether a local planning authority (LPA) should consult the Department for Culture Media and Sport (DCMS) and/ or Historic England about proposals that might affect the 'Outstanding Universal Value' of a World Heritage Site.

The Court of Appeal expressly rejected the concept that the effect of a new development on the setting of a World Heritage Site must necessarily be an adverse impact, or indeed an impact of any kind, on its Outstanding Universal Value. It was stated that in national Planning Practice Guidance (PPG), the phrase 'may affect the Outstanding Universal Value' means, 'may have an adverse impact on the Outstanding Natural Value'.

SAVE were considering appealing the decision to the Supreme Court but before such action could be taken, the building was demolished.



Quote of the month:

This announcement is an example of putting those principles into action. It's about making sure people personally benefit from economic decisions that are taken – not just councils – and putting them back in control over their lives. We'll be looking at applying this approach to other government programmes in the future too, as we press on with the work of building a country that works for everyone.

Prime Minister Theresa May referring to the Shale Wealth Fund and whether its community benefit schemes could be extended to include the community infrastructure levy, 7 August

NLP's take on this month's news

In proposing that the community infrastructure levy might be used to provide direct funds to local people, the Prime Minister has resurrected ideas behind the Coalition's abandoned 2014 'Development benefits pilots: invitation for expressions of interest' – but also perhaps failed to recognise that a not insubstantial (25%) portion of the levy is already paid to the local communities that have a neighbourhood plan in place. Even 15% of the levy is passed in to parish councils without a plan. Direct community funding from levy receipts is forming part of the current review therefore if new infrastructure provision is not to suffer, it looks like the Government will be considering a full scale recasting of the levy.

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Court of Appeal to hear case on attaching reasons for grant of planning permission

It has been reported that the Court of Appeal has agreed to hear *Oakley v South Cambridgeshire DC*, a case regarding whether or not a LPA should give reasons for the grant of planning permission in certain circumstances (in this case where the application was approved against officer recommendation). This is the first case to examine whether a duty to give reasons for a grant of planning permission might arise following the abolition of the statutory requirement to do so in 2013.

Court of Appeal quashes grant of planning permission over council mistake on consultation

In *Loader, R (On the Application Of) v Rother District Council & Anor*, the Court of Appeal quashed the grant of planning permission for a development on the site of a bowling club, on the basis of the local authority's failure to consult the Victorian Society and an officer's misleading advice (the officer's report had said that there was no comment from the Victorian Society, but at least one officer knew that the Victorian Society had not been consulted).

Is a garden outside the built-up area 'previously developed land'?

The Court of Appeal will consider whether gardens outside the built-up area may be considered previously developed or brownfield land, as Dartford Borough Council has been granted leave to appeal against the judgement in *Dartford Borough Council v SSCLG (2016)*. In that judgement, it was held that only 'private residential gardens' in 'built-up areas' are excluded from the definition of 'previously developed land' within the National Planning Policy Framework.

Amalgamating dwellings

Heard in the High Court, *R on the application of RB Kensington and Chelsea v (1) Secretary of State for Communities and Local Government (2) David Reis (3) Gianna Tong* develops the principles in *Richmond upon Thames LBC v Secretary of State for the Environment, Transport and the Regions*, for considering whether the amalgamation of dwellings constitutes a material change of use and thereby development requiring planning permission.

In the s195 appeal subject of the challenge, the LPA's position was that the amalgamation of two residential units into one constituted a material change of use regardless of the

size of the units being lost. The Inspector on appeal had however agreed with the owners of the two properties that the proposed change of use was in accordance with the development plan and that the change of use was not material in terms of s55 of the Town and Country Planning Act 1990. This view was reached, in spite of the Inspector recognising the Council's position that the number of amalgamations in the Borough was having a material effect on a matter of public interest, i.e. a significant reduction in housing stock. In his decision letter, the Inspector referred to the Richmond case, in which the High Court had quashed an Inspector's decision that a conversion from seven flats to one dwelling did not amount to a material change of use, because that Inspector had disregarded the effect of the loss on the local authority area of a particular type of accommodation.

Now in the High Court, the Secretary of State has conceded that this amounted to an error of law: the Richmond case had shown that a planning policy may or may not support the need for housing, or refer to any other planning consideration relevant to a determination of whether a material change has arisen. In this latest case, the LPA was entitled to rely on their analysis leading to the conclusion that the proposal should be treated as a material change of use and the Inspector had to then consider whether it meant that the proposal fell within s55(1).

The decision therefore was quashed and the appeal will be re-determined by the Secretary of State.

Policy

Guidance and advice

Updated guidance on planning appeals

On 5 August, the Planning Inspectorate (PINS) published an updated version of its procedural guide on planning appeals for England.

The updated version contains revised guidance on the additional information which may be required by the Inspectorate to be submitted with the appellant's and local planning authority's full statement of case (for the latter, where it has not been provided with the appeal questionnaire) for appeals concerned with:

- use of land for the stationing of caravans for occupation by Gypsies or Travellers;
- removal of an agricultural occupancy condition attached to an earlier permission;

- the erection of a dwelling for an agricultural or, where applicable, other type of rural worker; and
- telecommunications' installations.

PINS changes to processing planning appeals

PINS announced via email on 4 August that as of 14 November this year, the Inspectorate will be making changes to how the processing of planning appeals is managed.

The changes will apply to around 90% of PINS' appeal casework, including householder and commercial appeals, written representations and hearings.

The main changes will be as follows:

- A new Casework Assessment Team will check and validate all new appeals at the start of the process, with a single Case Officer being assigned who together with an Inspector will jointly manage the appeal from start to finish. Changes to the Appeals Casework Portal (ACP) will enable documents to be automatically placed within the Inspectors' electronic files, for increasing the speed and accuracy of information sharing (increasing the amount of information that is sent via this channel is therefore important - a single document can be attached/ submitted of up to 15MB in size);
- To manage expectations and provide more certainty, appellants will be informed if PINS is unable to immediately allocate an Inspector to start a case; information will be given in terms of the appeal being found valid and the Inspectorate will provide an anticipated date for starting the appeal, based on current wait times; and
- Appeals will have to be submitted with all of the supporting information (in line with current Guidance) - currently, around 30% of cases are submitted with documents missing. PINS will be removing the 'to follow' option from appeal forms.

The Inspectorate is also proposing to make similar changes to enforcement procedures at a later date.

Government policy

New ministerial local growth champions appointed by Business and Energy Secretary

Business and Energy Secretary Greg Clark emphasised the vital role of local growth and the importance of 'place' in developing and delivering the Government's 'comprehensive industrial strategy'.

On a visit to Belfast on 11 August, he announced that all ministers in the newly formed Department for Business, Energy and Industrial Strategy will act as 'local growth champions' across the United Kingdom. Ministers will engage with businesses and local leaders in the devolved administrations in Wales, Scotland and Northern Ireland, and will be the first point of contact within the Department for local enterprise partnerships in England.

Green Belt land lost in England during last five years

Lord Bourne of Aberystwyth (DCLG Under Secretary) has given his written response in the House of Lords to the question, 'which are the 24 local authorities that have adopted new green belt boundaries and what is their estimate of (1) the subsequent loss of greenbelt land, and (2) how much greenbelt land has been lost in England during the last five years'.

The details of the 24 councils that have adopted new Green Belt boundaries have been provided (which include an estimate of the increase/ decrease in Green Belt area in each case). In giving the answer, he added the comment:

'Over the last five years the area of Green Belt nationally decreased by 0.2 per cent.'

Yorkshire Dales and Lake District National Park areas extended

On 1 August, two of Britain's 'most iconic' National Parks – the Yorkshire Dales and Lake District – extended their boundaries. The extensions amount to 24% and 3% of additional land respectively and cover around 188 square miles.

The Lake District has also been nominated as a World Heritage Site for designation in 2017.

Devolution update

DCLG Under Secretary's letter on Combined Authorities in West and East Midlands

A letter has been made public that was sent by Lord Bourne of Aberystwyth to Lord Beecham and others regarding points raised during a Lords' debate on 18 July on the West Midlands Combined Authority (Election of Mayor) Order 2016 and the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) Order 2016.

The letter addresses: the geographical configurations of existing combined authorities; Devolution Deals; overview and scrutiny; and mayoral veto.

Labour Party selects city region mayoral candidates

The Labour Party on 9 August announced its selected candidates for city mayors of Greater Manchester, the West Midlands and Liverpool.

Andy Burnham, a former Cabinet Minister and now Shadow Home Secretary, is the Party's candidate for Greater Manchester mayor; under its devolution arrangements, this combined authority will have the greatest planning powers outside London, including powers for locally determined compulsory purchase orders and mayoral development corporations.

For the West Midlands mayor, former Labour MP and now MEP Sion Simon was selected but here under devolution, there will be fewer planning-related powers.

The current Walton MP, Steve Rotherham, has been selected as candidate for Liverpool city region mayor (he is also parliamentary private secretary to Labour leader Jeremy Corbyn). For this city region, there is to be a 'single statutory framework' to support the delivery of strategic housing and employment sites. The new mayor would also have consultation rights and call-in powers on planning applications of strategic importance. There would also be a new development corporation to create mayoral development zones and a land commission charged with releasing public sector assets.

The city region mayoral elections will all take place on 4 May 2017.

Derbyshire launches High Court challenge to Sheffield City Region plans

Derbyshire County Council announced on 10 August a judicial review challenge over a consultation on proposals to put a Sheffield City Region Mayor in charge of certain council services in Chesterfield.

The proposals being challenged were put forward by the Sheffield City Region Combined Authority in a public consultation and engagement exercise that closed on 12 August.

The County Council warned that if the plans go ahead, responsibility would pass to a Sheffield City Region Mayor and combined authority for key services in Chesterfield, including 'major planning and investment projects'.

Draft guidance and advice

Historic England Advice Note 8: Sustainability Appraisal/Strategic Environmental Assessment and the Historic Environment

Historic England has published a draft Advice Note 8: Sustainability Appraisal/ Strategic Environmental Assessment and the Historic Environment. When finalised, this document will supersede the previous document on the subject, published by English Heritage in 2013.

Historic England is inviting comments on all aspects of the draft; these must be submitted by 26 September 2016.

Garden villages update

Expression of interest for West Oxfordshire garden village submitted to Government

In a statement made on 23 August, West Oxfordshire DC has confirmed that an Expression of Interest for a garden village had been submitted to DCLG, in response to the Department's prospectus inviting expressions of interest from local authorities wanting 'to create new communities based on garden city principles'. The Expression of Interest was submitted at the end of July, for an area of land just off the A40 and to the north of Eynsham.

According to the District Council, there is no planning permission for the site and it is not included in the Council's previously submitted local plan. The Council's intention is to identify the land as part of the main local plan changes to be published for consultation in October.

According to the Council, the Government's garden village funding would 'help deliver' some 2,200 homes in the period up to 2031.

Parliamentary Committee inquiries

Disability and the built environment inquiry launched

The Parliamentary Women and Equalities Select Committee launched an inquiry into disability and the built environment on 10 August.

The inquiry will consider the extent to which the UK built environment accommodates the needs of people who are disabled or have reduced mobility, as well as mental health needs. Topics to be considered include:

- government policy and legislation, including planning and buildings regulations;
- design and management of the public realm;
- the role of private specialists; and
- local involvement in decision-making.

The deadline for written submissions is 12 October, 2016.

Homelessness Reduction Bill inquiry

Following the publication of its report into homelessness, the parliamentary Communities and Local Government Committee has announced a pre-legislative inquiry into the Homelessness Reduction Bill - Committee Member Bob Blackman MP's Private Member's Bill.

The Bill, which is scheduled to have its Second Reading on 28 October, includes provisions (inter alia) to intervene earlier to seek to prevent homelessness.

House of Commons Library briefing papers

This month's topics

The House of Commons library has published briefing papers on the following topics:

- comparing private rented sector policy in England, Scotland, Wales and Northern Ireland;
- the Government's industrial strategy;
- the Regional Growth Fund;
- Brexit: impact across policy areas; and
- City Deals.