



LPDF

LAND PROMOTERS & DEVELOPERS FEDERATION

Members Newsletter Q2 - May 2019

MEMBERSHIP

We have extended our membership offering to affiliate businesses that are active within the sector, and we are pleased to welcome:



Bidwells' planning team is among the largest planning consultancies in the UK and has a proven track record of providing problem solving advice to a range of clients.

www.bidwells.co.uk

Carter Jonas

Carter Jonas is a multi-disciplinary property consultancy, intent on helping clients realise their goals and aspirations by providing Simply Better Advice.

www.carterjonas.co.uk



Fisher German are a firm of chartered surveyors, planners and specialist property consultants offering professional services in all aspects of land and property management for over 180 years.

www.fishergerman.co.uk

Gateley Plc

Gateley has the largest entirely specialist housebuilder team in the UK, supported by specialist housebuilder lawyers in their planning, construction, housebuilder disputes, regulatory, corporate and tax teams.

www.gateleyplc.com



Kings Chambers is a multi-disciplinary set of Barristers' Chambers specialising in Planning, Real Estate, Highways and Construction.

www.kingschambers.com



Tetlow King Planning Ltd is a leading town planning and development consultancy operating nationwide.

www.tetlow-king.co.uk



Title & Covenant Brokers are independent insurance brokers that arrange indemnity policies for various title risks encountered on development sites.

www.titleandcovenant.co.uk

Turley

Turley is a full service national planning and development consultancy with a strong track record of strategic land promotion.

www.turley.co.uk

Find out more about our members [HERE](#):

CHAIRMAN'S UPDATE

The Federation continues to evolve, and we are pleased to welcome at the time of writing eight new affiliate members to the Federation.

Our inaugural members networking event in September is taking shape with new speakers confirmed and formal invites will be circulated in the coming weeks.

John Acres our Policy Director has been working on developing our policies further so that we have a strong authoritative voice on matters affecting the sector at both local and national levels. He will be circulating policy updates on a regular basis and I encourage you to contact John directly and use him as a valuable resource.

Having a robust database to support our policies will be key to strengthening our narrative and with this in mind we have been working on a data capture system to support our views on Land Value Capture. This is being finalised and will be circulated in the near future. An independent third party will be used to manage and interpret the data to ensure its validity.

We are in the process of reviewing membership fee levels for the new year (1st May onwards). Further details to follow.

As ever feedback is welcome as we continue to grow as a Federation.

*Paul Brocklehurst
Chairman of the LPDF*



www.lpdp.co.uk





Having recently completed my year as President of the Royal Town Planning Institute for 2018/9, I am delighted to have been appointed as the new part-time Policy Director for the Land Promoters and Developers' Federation. As someone who has been in the planning world for over 47 years, I tend to think of myself as an 'all-rounder', but in truth, my recent background has been mostly within the private sector.

With 10 years' experience at the Home Builders' Federation, a further 15 years as a planner within the housebuilding and development industry and another 7 years or so as a planning consultant, (both for Turley and now running my own consultancy), I am confident that I can bring added value to the LPDF and give the developers a much needed voice.

As Policy Director, I identified my first task to pinpoint the key policy issues, challenges and opportunities faced by the land promoters and developers. Above all, I felt we needed to distinguish where we 'part company' with the housebuilders to whom we offer a valuable service. With that in mind, I devised a Policy Paper which picked out the 10 key policy issues which I felt deserved more focus. This report was presented to the last LPDF Board meeting in April and will be picked up again in May. In future, we propose to open up these issues for wider consultation to give members a vital input to the LPDF's stance.

So what are the key concerns? In my view there are probably **three** major issues:

Firstly, the whole discussion about the scale and distribution of housing, to satisfy peoples' needs for housing of all types and tenures, including any backlog, to meet current pressures. The present Government has set an ambitious target of 300,000 new homes per year by the mid 2020's, and opposition parties broadly support this aim, but there are bound to be external challenges to counter this objective. The Land Promoters and Developers are an important vehicle to achieving delivery and this

contribution needs to be properly recognised.

Secondly, the big question of Land Value Capture. This issue has festered for decades with many politicians, academics and planners seeing a clear opportunity to exploit the proceeds of land value enhancement to either support infrastructure or recoup money for the public purse. The topic has recently been the subject of a Select Committee report and now the 'genie is out of the bottle' the topic will not go away. Most commentary on the subject tends to 'muddy the waters' rather than provide a balanced case, so the LPDF is trying to source valuable evidence from its members to measure the all-round income from contributions, planning gain and taxation which is captured from all sources to present a more considered view. We, as an industry, need to explain the contribution we make to creating that added value, and

Thirdly, the climate change debate is clearly 'taking off'. The powerful message from our 'national treasure', David Attenborough, coupled with recent demonstrations on the streets and especially the voice of the Swedish school-girl Greta Thunberg, is pricking the consciences of our politicians. It seems inevitable that policy changes are bound to emerge over the horizon. To what extent these will impact on the development industry remains to be seen, but we need to ensure that we remind the press and public that land is a vital ingredient for development. Change can provide a positive environmental input as well as making great places.

I look forward to serving the membership in the future and welcome your comments and contributions on the matters of concern to your business and our industry. We provide a vital role in facilitating development and bringing forward the homes and jobs society needs.

Please feel free to contact me directly at johna@lpdf.co.uk



TECHNICAL AND POLICY UPDATE

It has been relatively quiet on the national policy front, but on the 27th March ONS published the 2018 affordability ratios for England and Wales providing the most up to date affordability data for the calculation of the Standard Methodology.

The data shows a modest increase of 0.8% from the previous 2017 data, translating to an overall housing need figure for England of 267,000, up very modestly from 266,000, and clearly still some way short of the government's desire to see the country plan to deliver 300,000 homes per annum. The need for change to the calculation of the Standard Methodology outlined in previous government consultations therefore will remain at the fore front of government thinking for the next 12 months.

The government has also announced that it will be producing a green paper on accelerating planning, the paper is due to be published this autumn. The paper will look at resourcing and performance in Local Planning Authorities as well as drawing on the findings of the Rosewell Review into planning appeals.

There are also hints at consideration of further reform of CPO guidelines, whether this will widen to consider issues which interrelate to Land Value Capture we will have to wait and see.

A briefing note for the Secretary of State on Land Value Capture & Compulsory Purchase Orders was submitted in March. You can read the full submission [HERE](#).





Themes in planning law ebb and flow depending upon the prevailing policy climate and the make-up of the Planning Court and Court of Appeal. Inasmuch as it is possible to discern a pattern in higher court decisions in the early part of 2019, the previous deference given to decision takers (especially Planning Inspectors) appears to have been dialled back a notch.

Two decisions in the New Year (both involving Gladman Developments Limited ("GDL")) illustrate this point neatly. In the first, *GDL v SSHCLG* [2019] EWHC 128 (Admin)¹, the Inspector felt unable to reach a decision on the level of housing land supply given the 'huge gulf' (his words) between the parties and the fact that a local plan examination was ongoing. The Secretary of State argued that it was a matter of 'planning judgment' for the Inspector whether to make a formal finding on the issue. Dove J disagreed and held that where housing supply is at issue the Inspector must reach a conclusion on the level of supply, at least in broad terms. A failure to do so would prevent the Inspector from considering the weight to be attached to any conflict with local policies and the weight that the delivery of housing should attract in the planning balance. The Inspector's decision was therefore unlawful and was quashed. This judgment is also notable for the fact that the Judge made express reference to the Inspector's Training Manual². Although it may not be determinative, reference to the Manual may well be useful especially if an Inspector's decision appears to have gone against it.

A day later, Dove J handed down judgment in *GDL v SSHCLG* [2019] EWHC 127 (Admin) which concerned one of a series of appeal decisions in Central Bedfordshire where Inspectors had reached different and often

inconsistent conclusions on the application of a local policy central to housing development outside settlement boundaries. The Judge reiterated the approach in *North Wiltshire DC v Secretary of State for the Environment* [1993] 65 P&CR 137, which established that decisions of previous Inspectors were capable of being material considerations. Importantly, Dove J quashed the decision because the Inspector had singularly failed to grapple with and give reasons for departing from the approach of previous Inspectors. A simple cross reference to a number of previous appeals was not sufficient. As an aside, this second GDL case reveals the attitude of the Planning Court to the comments of the Court of Appeal in *Daventry BC v GDL* [2016] EWCA Civ 1146. *Daventry* is a case cited against land promoters regularly as a reason for keeping otherwise out-of-date settlement boundary/countryside protection policies on life support. Nonetheless, Dove J was keen to point out that the Court of Appeal's comments were *obiter* (not central to the decision) and that the weight attached to such local policies would very much be fact-specific. This is a useful commentary which should further dilute the apparent weight which some local authorities attribute to the *Daventry* judgment.

In a further case that may be of some interest to LPDF Members, the Court of Appeal has held that the Secretary of State is under no obligation to ensure that particular developments do not breach European air quality standards³. The Court held that the impact of proposals on air quality is a material consideration that may sometimes prove decisive, but there is no freestanding requirement to reject proposals that may breach the Air Quality Directive. Nonetheless, the provision of air quality monitoring, installation of electric vehicle charging points and the offer of an electric bike per household was plainly relevant to mitigation.

More recently still, the Court of Appeal gave judgment in *GDL v Canterbury CC* [2019] EWCA Civ 669⁴. One is faced regularly with ageing local plans where there is no explicit resistance to housing development in particular areas, nor explicit support. *E.g.* plans may use the expression 'will be supported if ...' without restricting market-led housing in terms. In this most recent GDL case the Court held that if a proposal did not fall within a particular 'closed list' then it would conflict with the housing policies of the development plan. *I.e.* if a scheme did not derive express policy support it would be contrary to the plan. This approach

has potentially undesirable consequences which sit uneasily with s.38(6) Planning and Compulsory Purchase Act 2004 and the traditional way of determining compliance with the development plan 'as a whole'. It has long been held that policies may pull in different directions but that does not prevent a conclusion that there is compliance with the development plan 'as a whole'⁵.

For the policy anorak *Bassetlaw v SSHCLG* [2019] EWHC 556 (Admin) is of note. The Planning Court concluded that whilst the stated aims or objectives in a neighbourhood plan might cast light on how the policies in that plan were to be interpreted, they were no substitute for the policies themselves; the mere fact that a proposed development was assessed as being contrary to the neighbourhood plan's stated objectives did not mean that it conflicted with the plan itself.

Members should also keep their eyes peeled for the judgment of the Court of Appeal in *Oyston Estates Limited v Fylde Borough Council*⁶ concerning the differential time limits for challenging different stages of a Neighbourhood Development Plan. There are strict time limits (6 weeks) for challenging a local authority's consideration of the Examiner's Report, the holding of a referendum or the making of the NDP which can present a procedural trap for the unwary.

It is perhaps too early to tell whether the higher courts consider that their deferential approach to the Planning Inspectorate has swung too far but a number of recent judgments reveal that the courts are prepared – in appropriate circumstances – to be highly critical of Inspectors' reasoning and to quash errant decisions.



¹ Jonathan acted for Gladman Developments Limited at the s.78 Inquiry and in the Planning Court.

² Dated March 2017 and released under a FOI request.

³ *R(Shirley) v SSHCLG* [2019] EWCA Civ 22

⁴ John Barrett from Kings Chambers acted for GDL in this particular case.

⁵ See *R. v Rochdale MBC Ex p. Milne* (No.2) [2001] Env. L.R. 22 and *In BDW Trading Ltd (t/a David Wilson Homes (Central, Mercia and West Midlands)) v Secretary of State* [2017] P.T.S.R. 1337 at [21].

⁶ Jonathan acted for the successful local authority in the High Court [2017] EWHC 3086 (Admin)

MARKETING

The updated LPDF website has gone live and includes more information on the Federation and its key messages, membership benefits and events.

Interviews for a part-time dedicated marketing resource have taken place. We hope to have this person in place later this summer and they will be responsible for recruiting both affiliate and full new members, organising events and raising the profile of the Federation with the trade and wider press.

Our social media presence continues to grow with LinkedIn performing particularly well.

	LinkedIn	Twitter
Number of Visitors	Up by 300%	Up by 40%
Post Impressions	Up by 361%	Up by 64%
Number of Followers	Up by 433%	Up by 6%

Please don't forget to engage with our social media channels:

LPDF LinkedIn:
Land Promoters And Developers Federation

Twitter Account:
@TheLPDF

#lpdf #landpromotion #housingcrisis #planning
#socialhousing #newhomes

Don't forget to continue to supply news stories for use on social media and the website, we are happy to include details of new sites acquired, planning application submissions/ grants and housebuilder partnerships. Please submit stories to info@lpdf.co.uk



Cratus
Our world is local

LOBBYING AND POLITICAL UPDATE

For all involved in land promotion and housebuilding, the government's long-awaited response to the Letwin Review was an important moment. It came in the form of a statement from James Brokenshire alongside the Spring Statement on 13th March. The Secretary of State highlighted the need to ensure faster decision making in the planning system – something to be welcomed by all parties – whilst stressing the importance of improving the existing system of developer contributions.

This came after the LPDF's meeting with the Secretary of State's team at MHCLG and, on balance, the land promotion sector should be encouraged by the government's approach. It was surprising that the government did not issue a full written response to Sir Oliver's review – perhaps a reflection of the enormous pressures civil servants in all departments are currently under.

Having John Acres on board will help the LPDF play a fuller part in the broader planning policy conversation. The often-lively but understated debate about planning in parliament frequently ignores the role that land promoters play – this is something we will seek to address this year.

Alex Dismore – Cratus Communications

Working with the LPDF to help shape national and local policy affecting land promoters and the wider sector.

UPCOMING EVENTS

LGA ANNUAL CONFERENCE

The LPDF are hosting a fringe panel event at this year's Local Government Association Annual Conference in Bournemouth in early July. This will be a good opportunity for the LPDF to engage with senior councillors around some of the most pressing issues for the development industry. Planning and development is, rightly, something that excites opinions, and an open and honest conversation between the private and public sectors is essential. A working party is currently being put together to represent the Federation at this event.

MEMBERS EVENT - Enhancing the planning process and helping to deliver sustainable new homes and communities

- Wednesday 11th September (registration from 9.15am)
- State Rooms and Rooftop Terrace, 30 Euston Square, London
- Closes with a buffet networking lunch
- We are still finalising the speakers but initial bookings include: Sasha White QC and Lucy Greenwood, Associate Director at Savills
- Formal invites will be circulated in the coming weeks

PARLIAMENTARY RECEPTION

- Tuesday 26th November from 7.00pm
- House of Lords
- Hosted in partnership with Planning Futures; a think tank dedicated to developing new ideas for planning in the UK - www.planningfutures.org
- More information to follow





HOUSEBUILDING AND PLANNING UPDATES PREPARED BY TETLOW KING PLANNING LTD



Brokenshire WMS responds to Letwin Review on build out rates

On 13 March 2019 a Written Ministerial Statement (WMS) by Secretary of State James Brokenshire provided the MHCLG's response to the Independent report on build out rates, chaired by Sir Oliver Letwin.

Published in October 2018 Letwin's report recommended a series of proposals relating to speeding up the rate at which planning permissions for new housing are implemented. This included statutory powers to purchase land designated for large sites at 10 times their existing use value, a new planning framework for large sites (over 1,500 units), requiring such sites to provide a diverse range of new homes to attract demand, and the establishment of a National Expert Committee to advise Councils and developers on these "diversity requirements".

In summary, Brokenshire stated that he will keep matters relating to housing diversification and faster build out rates "under review" – essentially placing Letwin's report into the office filing cabinet marked 'Increasing Housing Delivery'. Here are some of the key elements from the WMS which you need to know.

Brokenshire welcomed Letwin's support for greater emphasis on housing diversification, but then proceeded to outline the Government's existing and proposed programmes as to how it is addressing this issue – principally referring to the revised NPPF's requirements for a greater mix of housing sizes, types and tenures that reflects the diverse needs of local communities.

The WMS added that the MHCLG will shortly publish additional planning guidance on housing diversification – "to further encourage large sites to support this diverse range of housing needs", and to help build homes quicker.

On land value capture, Brokenshire agreed with the principle that the costs of increased diversification should be funded through reductions in residual land values, stating that the Government is "committed to improving the effectiveness of the existing mechanisms of land value

capture, making them more certain and transparent", this also includes the existing system of developer contributions.

It appears that following the Rosewell Review, Brokenshire and the MHCLG are turning their heads towards ensuring faster decision making, which is a "priority". An 'Accelerated Planning' Green Paper will be published later this year which will address "how greater capacity and capability, performance management and procedural improvements can accelerate the end-to-end planning process", drawing on the findings of the Rosewell Review.

We'll see how much of a shake-up this will make to local authority planning departments. Note however that last month the National Audit Office found that between 2010 and 2018 total spending by Councils on planning functions has fallen by an average of 15%, and staff numbers fell by 15% in the 10 year period to 2016.

The Planning Bill seeking to reform land compensation and fix the definition of affordable housing

At the end of February, Helen Hayes MP (Labour) introduced the Planning (Affordable Housing and Land Compensation) Bill, supported by Shelter, the TCPA and a cross-party group of MPs, which seeks to ensure that the planning system could (a) deliver 'genuinely' affordable housing and (b) amend the law relating to land valuation and compensation. With both issues inextricably linked to improving affordability in the housing market.

In specific regard to the latter, the bill proposes to limit the scope of so-called 'hope value' – meaning the landowners gain from the speculative value of land.

Hayes explained that: "too many of the current mechanisms designed to deliver fair outcomes from the planning and development process essentially amount to shutting the door after the horse has bolted. Local planning authorities are required to negotiate affordable housing contributions with a definition of "affordable" that has no relationship to income, and the price of land, which is a key determinant of how many affordable homes are considered "viable", can be hugely inflated by landowner expectations of a right to "hope value"—future speculative value based on planning permissions which the landowner does not own and has not realised, and which are not confirmed in law".

As such, Hayes' Bill "re-establishes the link between the definition of affordable and income", replacing the current definition of "up to 80% of market price" with "no more than 35% of net household income for lowest quartile income groups in each local authority area".

Hayes stated that “the cost of the land on which they are built” is just as important. “Despite reforms introduced last year...our planning system still affords landowners the right to the future value of development rights or planning permission, which are granted by and in the gift of the planning authority”. “This so-called hope value dramatically inflates the cost of land, and inflated land prices make it much more difficult for councils to buy land in order to deliver social housing.”

“Current viability rules were developed to encourage and stimulate building in a recession, but they have evolved to become something quite different: a quasi-scientific basis for negotiation between developers and councils, with the overt objective on the part of developers of reducing their obligation to build affordable housing. The current system enables this to happen, as viability arguments can justify an appeal against refusal, and cash-strapped councils are reluctant to risk having to pay the applicant’s appeal costs if they lose”.

The Bill proposes a new requirement in planning law for local planning authorities to have a duty to include a policy in their local plans to capture betterment values where they arise, formally establishing a legal duty in the planning system to capture land value to be used for the benefit of communities and creating a strong justification for councils to argue for the resources they need to engage in viability discussions on equal terms with applicants.

The Bill also seeks to specify in law further legal guidelines used for viability testing in relation to planning decisions, including placing limitations on the expectations of developer profit and land values, to provide greater certainty and transparency for landowners and communities. This would be through an amendment to Section 19 of the Planning and Compulsory Purchase Act 2004.

View the House of Commons Hansard [HERE](#)

Written Ministerial Statement on Call-In Procedure

The Secretary of State for the Ministry of Housing, Communities and Local Government announced in a Written Ministerial Statement (WMS) on 26 March 2019 that he will no longer provide reasons for his decision to call-in applications for his determination. The Minister explained:

“A decision on whether to call in a planning application, or not to do so, is inherently about process and not the merits of the application. I am concerned that to give reasons in either eventuality risks blurring this distinction and, as there is no duty in this respect, I will call in those applications where I conclude that such a decision needs to be taken by me and I will not call in applications where I conclude that the decision is best left with the local planning authority.”

The WMS formally revoked the policy introduced in 2001 to provide reasons, however the call-in policy of 26 October 2012, confirming that the Secretary of State will be ‘very selective’ about calling in applications, and only consider the use of his call-in power if planning issues of more than local importance are involved.

View the Written Ministerial Statement [HERE](#)

Only 3% of Councils have made use of Brownfield Register Permission in Principle

Research by Campaign to Protect Rural England (CPRE) has shown that only 10 out of 338 Local Planning Authorities (LPAs) have made use of a new ‘fast-track’ form of planning permission via their Brownfield Registers.

Brownfield Registers were first introduced in April 2017 and must be updated every year. Brownfield Registers are in two parts, Part 1 compromises all brownfield sites appropriate for residential development and Part 2 comprises those sites granted ‘permission in principle’ (PiP). PiP can provide a fast-track route through the planning process for housing-led developments. It splits the permission process in two, allowing residential proposals to secure PiP first and achieve full consent later through a further ‘technical details’ consent.

CPRE’s research found that only 10 LPAs had issued PiP to 58 brownfield sites on their Registers with a total capacity of just 1,590 homes. However, the study indicated that Brownfield Registers in England have identified land with capacity for 1,077,292 homes, across 18,000 sites, covering more than 26,000 hectares.

Read the State of Brownfield 2019 report [HERE](#)



- **Spring Statement:** On 13 March 2019, Chancellor of the Exchequer Philip Hammond issued his Spring Statement, which included an Affordable Homes Guarantee scheme, to support the delivery of around 30,000 affordable homes. This scheme will allow Housing Associations across England to borrow up to £3bn to delivery such housing. [HERE](#)
- **Oxford-Cambridge Arc:** The Spring Statement also confirmed that £717 million will be transferred from the Housing Infrastructure Fund to unlock up to 37,000 new homes on sites in West London, Cheshire, Didcot and Cambridge. In regard to Didcot and Cambridge, a new vision statement for the Oxford to Cambridge Arc was also published that day. [HERE](#)
- **Easements:** HM Land Registry has produced updated Practice Guidance on Easements, dealing with the registration of easements under the Land Registration Act 2002. [HERE](#)

- **East Midlands:** Plans aimed at boosting the future potential of the East Midlands economy have been announced. The Government has signed off £2 million in funds to go towards establishing an East Midlands Development Corporation. [HERE](#)
- **Construction:** PBC Today asks Tate Consulting to discuss the ‘Top 5’ challenges the construction and engineering sector currently faces, and how smart technology is evolving to help solve these issues. Tate’s ‘Top 5’ challenges in construction includes that of staff retention and shortages in construction. [HERE](#)

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