

**PLANNING,
REGENERATION
AND DEVELOPMENT
NETWORK UPDATE**

August 2010

A snapshot summary:

In this post Election period a dizzying number of Government initiatives are underway. Some key developments to note are:

- **Revocation of Regional Strategies:** Concern remains that the revocation of Regional Strategies and other uncertainties surrounding planning policy are leading some local authorities to put consideration of LDFs and major planning applications on hold. Ministers are emphasising, however, that authorities should finalise their LDFs as quickly as possible, and have told us that they are keen to hear of examples of local authorities sitting on their hands.
- **Strategic Planning:** A coalition of bodies has written to Eric Pickles to make the case for the retention of some degree of strategic planning above the level of individual local authorities. Ministers are keen to stress that local authorities will still have a duty to co-operate with their neighbours.
- **Third Party Rights of Appeal:** There is growing feeling that the Government will not implement third party rights of appeal despite the support shown in the Conservative pre-Election Green Paper.
- **Community Infrastructure Levy:** It looks as though the Government will base its proposed Local Planning Tariffs fairly closely on the Community Infrastructure Levy. However, they are likely to give it a more local feel and may be receptive to other changes that the BPF and others have been pressing for.
- **Local Enterprise Partnerships:** Eric Pickles and Vince Cable have written to local authorities to invite local groups of councils and business leaders to come together to consider how they might form local enterprise partnerships. Outline proposals from partnerships of local authorities and businesses need to be submitted before 6th September.
- **Tax Increment Financing:** The Government has announced that it is going to consider the case for Tax Increment Financing in a White Paper to be published in the autumn. There will be intensive lobbying between now and the publication of that White Paper.
- **Parliamentary Inquiries:** Ahead of the Localism Bill due to be published at the end of the year, three separate Parliamentary Select Committee inquiries have been launched. These cover: the role of local enterprise partnerships; the implications of scrapping Regional Strategies and the future role of strategic planning and; the focus of the Government's localism agenda.
- **Incentivising Development:** The Government has said that it wants to use Council Tax and rating revenue to reward those local authorities that sanction house building and other development. The Council Tax incentive is likely to be sorted out in conjunction with the Local Government Finance Settlement. The Business Rate incentive is more complex and could take a little longer.
- **Presumption in favour of sustainable development:** Ministers have invited the BPF to suggest how a presumption in favour of sustainable development could be built into the planning system. The BPF is currently consulting planning lawyers about this.

Regeneration and development

Yet more OGC procurement guidance

Following the European Court of Justice (ECJ) judgment in *Helmut Müller* earlier this year, the Office of Government Commerce has brought out further [guidance](#) on public procurement rules relating to development agreements and s106 planning agreements. We've written a handy [brief](#) to make life a bit easier.

The guidance lists various characteristics that may suggest that a "development agreement" between a public body and a developer may be less likely to constitute a public works contract, but warns that it will be a question of fact in each case

The OGC note stresses that the law in this area remains subject to change in light of further information from the European Commission or new case law, therefore the updated guidance, although more detailed than its predecessor, should not be seen as definitive.

Social Infrastructure Guide launched

Earlier in the year, the BPF launched a new [Social Infrastructure Guide](#) written with helpful input from HCA-ATLAS, at an event attended by over 100 people and sponsored by Land Securities and Nathaniel Litchfield and Partners.

The guide addresses the issue of identifying and delivering social infrastructure as one of the biggest challenges that developers face, particularly those dealing with big schemes. A key problem is that many local authorities when faced with a big scheme simply don't have the resources to cope and so much of the onus for dealing with the social infrastructure element falls on the developer. The idea of this guide, therefore, is to try to provide both developers and others involved with advice and tips on steering their way through the process so that they are not constantly faced with reinventing the wheel.

Land agreements exclusion order

The Competition Act 1998 (Land Agreements Exclusion and Revocation) Order 2004¹ will be repealed with effect from 6 April 2011 with retrospective effect. This will mean that some current land agreements may have to be renegotiated to ensure compliance. We have produced a quick [brief](#) on the subject in order to save you some time and lengthy research.

In short, land agreements are currently excluded from (i.e. they are deemed to be compatible with the requirements of) the Competition Act 1998. However, such agreements are now to be brought within the remit of the Act as the exclusion is considered to be no longer necessary or appropriate. This will affect a wide range of property agreements and have particular impact on shopping centres, large scale developments and sales of commercial property.

Draft regulations and OFT guidance are expected to be published for comment from stakeholders (including the BPF) in autumn 2010, with the final publication of the guidance due in early 2011.

¹ http://www.opsi.gov.uk/si/si2010/uksi_20101709_en_1

The fight for TIF continues...

Following the change of Government, the current situation in relation to tax increment financing (TIF) is unclear. The Government has indicated that it will consider the case for TIF alongside other possible funding mechanisms, and announce its intentions in a White Paper later this year that will look more broadly at ways of funding economic regeneration in the regions.

The BPF is working very closely with the Core Cities Group and the Greater London Authority to ensure that the case for TIF is made effectively to Government over the next few months. The BPF has already raised TIF with new Ministers, made further submissions to the CLG and contributed to a high profile seminar on TIF held at Portcullis House.

Training in Development Economics

A new [report](#) commissioned by the BPF and an array of other planning and development bodies carried out by consultants Roger Tym & Partners calls for planners and others involved in the planning process to be given greater training in development economics. The need for planners and allied professionals to expand their understanding of the factors that influence development viability is seen as more important than ever given the challenging economic and development conditions that lie ahead. The strong consensus that has been achieved between the private and public sectors should help ensure that the report's recommendations are implemented.

The consortium backing the report, which received financial support from the Department for Communities and Local Government, believes that planners should receive more training in the economics surrounding the development process to enable them to make more informed decisions both when preparing local plans and in considering new housing and commercial development projects. A survey conducted as part of the work showed that 71 percent of planners thought their knowledge and skills in this area required improvement and were keen to improve their knowledge and understanding.

The report stresses that all planners need to understand the motivations for developing property as well as the commercial issues and criteria used by developers to assess projects. It also stresses that better training is needed not just by planners, but also by others who need to understand factors that can affect the viability of schemes. These include councillors who take final decisions and those who advise on affordable housing, education and health provision.

The consortium are now preparing a plan to implement the report's recommendations but many of the bodies involved are already taking forward new initiatives to improve skills in this area. These range from courses being rolled out around the country by the Planning Advisory Service and the Home and Communities Agency to CPD courses being developed by the RTPI and the Planning Officers Society and new guidance on viability issues in development being worked up by the RICS.

Planning

Like buses, parliamentary inquiries all come at once...

- **BIS Committee: the new local enterprise partnerships**

Following a joint [letter](#) from Eric Pickles and Vince Cable inviting local groups of councils and business leaders to come together to consider how to form local enterprise partnerships, the committee has instigated an [inquiry](#) to examine how the proposed new structures will work, alongside issues such as distribution of funding, value for money, accountability, timing, transitional arrangements and required legislation. Topics the Committee will consider include:

- The functions of the new Local Enterprise Partnerships and ensuring value for money;
- The Regional Growth Fund, and funding arrangements under the LEP system;
- Government proposals for ensuring co-ordination of roles between different LEPs;
- Arrangements for co-ordinating regional economic strategy;
- Structure and accountability of LEPs;
- The legislative framework and timetable for converting RDAs to LEPs, the transitional arrangements, and the arrangements for residual spending and liability of RDAs;
- Means of procuring funding from outside bodies (including EU funding) under the new arrangements.

The deadline for written submissions is **Friday 13th August 2010**. Do get in contact if you would like to provide comments for the BPF submission.

- **CLG Committee: abolition of regional spatial strategies**

The Committee has decided to undertake an [inquiry](#) into the revocation and abolition of regional spatial strategies. The Committee will focus on:

- the implications for house building, especially the implications of the abolition of regional house building targets for levels of housing development;
- and the likely effectiveness of the Government's plan to incentivise local communities to accept new housing development, and the nature and level of the incentives which will need to be put in place to ensure an adequate long-term supply of housing.
- the arrangements which should be put in place to ensure appropriate cooperation between local planning authorities on matters formerly covered by regional spatial strategies (eg. waste, minerals, flooding, the natural environment, renewable energy, &c.);
- the adequacy of proposals already put forward by the Government, including a proposed duty to co-operate and the suggestion that Local Enterprise Partnerships may fulfil a planning function;
- how the data and research collated by the now-abolished Regional Local Authority Leaders' Boards should be made available to local authorities, and what arrangements should be put in place to ensure effective updating of that research and collection of further research on matters crossing local authority boundaries.

The deadline for written submissions is **Wednesday 15th September 2010**. Do get in contact if you would like to provide comments for the BPF submission.

- **CLG Committee: localism**

The Committee has decided to conduct an [inquiry](#) into the Government's plans for localism and decentralisation of public services. The inquiry will focus on:

- the extent to which decentralisation leads to more effective public service delivery; and what the limits are, or should be, of localism.
- The lessons for decentralisation from Total Place, and the potential to build on the work done under that initiative, particularly through place-based budgeting;
- The role of local government in a decentralised model of local public service delivery, and the extent to which localism can and should extend to other local agents;
- The action which will be necessary on the part of Whitehall departments to achieve effective decentralised public service delivery;
- The impact of decentralisation on the achievement of savings in the cost of local public services and the effective targeting of cuts to those services;
- What, if any, arrangements for the oversight of local authority performance will be necessary to ensure effective local public service delivery.
- How effective and appropriate accountability can be achieved for expenditure on the delivery of local services, especially for that voted by Parliament rather than raised locally.

The Committee would be particularly interested to hear of examples, from the UK or overseas, of models of decentralised public service delivery from which lessons could be learnt for further decentralisation in England.

The deadline for written submissions is **Friday 1st October 2010**. Do get in contact if you would like to provide comment for the BPF submission.

Abolition of Regional Strategies

If Eric Pickles intended to set some cats among pigeons he certainly succeeded with his [letter](#) to local authorities of the 27th May confirming the Government's intention to abolish regional spatial strategies and telling them that they should treat his letter as a material consideration.

The letter was a recipe for confusion. Some local authorities took the opportunity to scupper housing schemes that they never wanted in the first place; others were simply unclear what they should now do about LDFs in preparation and planning applications currently under consideration. Fears were increasingly voiced that local authorities would simply put work on LDFs and major planning applications on hold.

Ministers attempted to retrieve the situation with a [letter](#) in early July to Chief Planning Officers that formally revoked regional strategies and provided some guidance for LPAs. Ministers have made it clear that they want LPAs to press on and complete their LDFs. However, there remains concern that LPAs may be reluctant to forge ahead in a climate of continuing uncertainty. Whilst Ministers are unlikely to be overly concerned by the abandonment of some housing schemes that aroused local opposition, they have asked for hard evidence of local authorities deliberately holding up other schemes, particularly those that could contribute to economic growth. The BPF would welcome any intelligence from members about what is happening on the ground.

Planning obligations and CIL

One of the final acts of the last government was to issue a consultation on a *new policy document for planning obligations*. This focussed on the new policy concerning planning obligations brought about by CIL. Following a very successful workshop, we submitted a [response](#) detailing our concerns.

The BPF continue to work with the Government to take CIL forwards and ensure that its implementation, in whatever form it may take, will assist continuing regeneration and development.

PPS1: Planning for a Low Carbon Future in a Changing Climate

The last gasps of the last government also produced a draft of a new planning policy statement for consultation. We submitted a [response](#) to the draft. The new government intends to replace PPSs with a National Planning Framework, but we have yet to find out the finer points of detail.

If you have any comments, observations or suggestions for future updates, please contact Ghislaine Trehearne on gtrehearne@bpf.org.uk or on 020 7802 0124.