

Introduction

Welcome to the first issue of Melia Kesh Planning News. This newsletter provides an update of changes in planning law and policy and our views on some of the likely impacts on the development community.

Melia Kesh Ltd is a planning consultancy based in Melksham and dedicated to serving the local area. We have over 15 years experience providing highly professional and commercial planning advice to a wide range of

developers and corporate clients, gained whilst working for CB Richard Ellis (Bristol) and GVA Grimley (London).

We hope you find the following articles useful.

If you have any questions or would like advice, please do give us a call on 01225 870432 or by email at: madeleine.palmer@meliakesh.co.uk

Viability Now

Comment

- *The Government's Chief Planning Officer in May 2009 advised local authorities to review their S106 expectations given current economic downturn.*
- *This has been further underpinned by several recent planning appeal cases where the Inspector has ruled in favour of the developer, to reduce, or even remove, the affordable housing contribution. For example, at Badnells Pit in Berkshire, no affordable housing was required on appeal due to the extent of other abnormal costs.*
- *Given that there has been a recent hike in construction costs, it is well worth de-*

velopers revisiting their extant consents with a view to reigning in the expectations of the planning authority – a clear viability argument has been proven grounds to achieve this.

- *There is also some evidence to suggest that council officers are ready to accept much lower contributions than their adopted targets would suggest.*
- *Developers can achieve a far better result at present if a clear viability argument is provided. Viability need only be considered in terms of the present, and not the former or likely future value of the development.*

Simplified Planning Application Renewals

New regulations were introduced on 1st October 2009 to enable the simpler and faster renewal and extension of extant planning applications.

Instead of requiring a completely new application, the new system will utilise a shorter and simpler form and require only very limited supporting information. Decisions should be issued within 28 days.

Significantly lower fees will be introduced, but not until 26th November 2009 at the earliest. In the interim, normal application fees will apply.

Comment

- *These regulations will only apply for a year.*
- *Those applications which need to be renewed prior to 26th November 2009*

will fall foul of the lag time in introducing the revised fees: a small commercial development might require a £1500 fee now, but only £170 under the new fee regime. Clearly, if possible it is best to hold off applying for a renewal until the new fees are in place.

- *There may be other issue, eg where the Council seeks to renegotiate an associated S106;*
- *Applications which were acceptable under the prevailing policy of the time but now fall foul of new local or national policy may be refused. There will also be the risk that applications that were granted despite being against policy may not be granted, particularly where there has been a change in the planning authority regime.*

Simplified Non-Material Amendments

It is often necessary to make small amendments to a planning permission, eg, to change a finish or move a window. From 1st October, where these are non-material, new procedures will apply.

There will be no fee for such applications until the new fee regulations are published in November 2009.

A consent will effectively amend the original permission – no new application consent will be created.

Comment

- *There is no proper definition of “Non-material amendments provided in the regulations and ample opportunity for confusion between “non-material” and “minor material” amendments.*
- *The lack of a clear definition leaves the process open to the Council’s interpretation, and thus what is possible in one authority may require a full application in another.*

South West RSS delayed

There will be a further delay in the publication of the final version of the Regional Spatial Strategy (RSS) for the South West. There will be a sustainability appraisal carried out on proposed strategic housing, business and other development allocations.

This reappraisal of the RSS is expected to take until early in the New Year.

Originally, the Government had expected to issue the final version of the RSS at the end of June 2009.

Comment

- *This will bring further uncertainty to the region in terms of the development allo-*

cations of emerging Local Development Frameworks.

- *The problem has been exacerbated by the Conservative recommendation that local authorities should delay significant strategic housing developments until after the general election next year, as their intention is to abolish regional spatial strategies within a week of entering government.*
- *Nobody now knows what regionally-set targets will be, or if they will ever be adopted. There is clearly scope for arguing the case for development, whatever the Council's assertions on need/capacity are.*

Proposed Competition Test

The Competition Commission has made formal recommendations on the Groceries market following the challenge earlier in the year by Tesco's.

The Office of Fair Trading (OFT) will be responsible for advising whether a particular retailer's development passes the 'Test'.

The test will assess an operator's proposal in terms of the resulting total market share it enjoys in the designated area (eg 10 minute's drive time).

Comment

- *As well as the likely delay to Central Government Planning Policy (PPS4), the recommendations will have a significant impact on both stand-alone food retail developments and retail-led mixed-use schemes.*
- *Be aware some retail & mixed use developments may fall foul of this test – either because of the test itself, or because of a delay in decisions while Councils await the Government's policy.*

Streamlining Information Requirements for Planning Applications

The Government is proposing to

- remove the 'national local list' of information requirements;
- introduce new criteria-based requirements to ensure only relevant, necessary and proportionate information is sought;
- require a concise summary from applicants (no longer than twenty pages).

The new Local Authority lists should be updated by December 2010.

Changes proposed to design and access statements (DAS) will

- require a simpler explanation of how these factors influence the design; and

- remove the requirement for applications below 100 m² and those amending or removing conditions to include a DAS.

Comment:

- *These regulations aren't due to be in place until December 2010 and undoubtedly, there will be many local authorities who are late producing their revised local lists*
- *As most existing lists simply reflect the requirements imposed by Central Government policy and guidance, it is difficult to see how they can be changed significantly.*

Improving Permitted Development

Public consultation is under way on proposed changes to permitted development rights and Article 4 directions. Permitted development rights will be extended as follows:

- Shops & B1 offices: alterations and extensions up to 50m² to a maximum 25% of existing floor space.
- Universities & colleges: extensions and/or one new building per existing building: 100 m².
- Schools: extensions and/or one new building per existing building: 50 m².
- Industry & warehousing (including R&D): extensions to existing buildings by up to 1,000 m², construction of one new building per existing building up to 100 m².

- Air conditioning units: subject various criteria.

Comment

- *There is scope for significant problems where universities and are concerned: These often occupy an undefined campus that has spread in to neighbouring residential areas – an educational building may be sandwiched between residential buildings and uncontrolled new building will cause friction.*
- *School extensions must not effect an increase in pupil numbers. In reality this will be very difficult to control.*

Community Infrastructure Levy (CIL)

The CIL regulations will come in to force on 6 April 2010. Authorities with an up to date development plan and infrastructure plan can establish a CIL, levied on all applications for developments greater than 100m² (including change of use). It will be charged per m² and paid within 28 days of commencement on site; consideration is being given to phased payments for large schemes.

Authorities may vary the charge according to use class and area (to allow for viability).

The Government is considering whether allowance should be made for exceptional cases unable to pay the full CIL. Charities will be exempt from CIL and it is likely that affordable housing will pay a substantially reduced rate.

S106 will be scaled back through making the relevant Circular's tests statutory and possibly refining them.

Comment

- *The CIL criteria must go through the same consultation procedures as other LDF document, so most authorities are a long way from formally adopting CIL .*
- *There are unlikely to be any CIL adopted before the summer of 2011.*
- *Plymouth Council is likely to be one of the first past the post in the SW, if they decide to proceed with CIL*

Draft PPS15: Planning for the historic environment (30/10/09)

The draft unifies planning policy on the historic environment (PPG15 and 16) and will be accompanied by a practice note.

Comment

- *Much of the redrafting is refinement.*

- *There is more reference to environmental considerations (carbon footprints etc)*
- *It will be necessary to look at how the new policy is interpreted and applied before assessing the true effects of the new PPS.*

HCA & English Heritage Guidance on Master Planning (13/10/09)

This guidance has been released to encourage developers to undertake an historic character assessment of a site at the commencement of a project.

Comment

This introduces a further layer of information in to the development process, and in doing so increase the time and money involved in planning applications. It is likely that it will

be adopted as “best practice” and that many local authorities will insist on a detailed and complex assessment of sites when in reality the benefit of such an historic review will only be of benefit in a few cases. In truth, where the historic context is of any note, it should be taken in to account by the project’s master planners and architects as a matter of course anyway.

Draft PPS25 –Development and Flood Risk

Proposed amendments seek to clarify policy application rather than to change policy itself, reflecting current practice and in experience of implementation. The amendments relate to essential infrastructure, emergency services facilities, hazardous installations and wind turbines; and to the identification of the functional floodplain. The definition of flood zone 3b should take account of local circumstances and the 1 in 20 flooding probability should be the starting point for consideration.

Comment

- *The influence of flood implications continues to grow, alongside the powers and influence of the Environment Agency.*
- *It has become imperative to employ a well-informed and commercially savvy flood advisor where these issues arise. There remain inaccuracies in national flood data and site specific appraisals are necessary to ensure the appropriate level of flood risk is identified.*