

PLANNING PROSPECTS

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There's only one way to find out.....

The new Government has moved swiftly to target the planning system as part of its agenda for reform.¹ The basis for reform is the Conservatives' **Policy Green Paper No. 14: "Open Source Planning" (OSP)** which aims to "return decision-making powers on housing and planning to local councils." Announcements so far include:

- Reissuing PPS3 (Housing) to exclude private residential gardens from the definition of previously developed land to stop 'garden grabbing'. The national minimum density requirement of 30 dwellings per hectare has also been deleted.²
- Proposals to abolish:
 - local authority leaders' boards.³
 - Regional Development Agencies.⁴
 - the Infrastructure Planning Commission (IPC) and its replacement with a Major Infrastructure Planning Unit (MIPU) within the Planning Inspectorate which will report to Ministers who will make the final decisions.⁵
 - the Government Offices.⁶
- The "Big Society" drive to "...radically reform the planning system to give neighbourhoods far more ability to determine the shape of the places in which their inhabitants live".⁷
- The proposed establishment of "Right to Build" organisations in the "Localism Bill" to deliver new homes, shops and facilities without the need for planning permission if there is "overwhelming community support".
- The immediate revocation of RSSs.

As much of the above has yet to proceed beyond a declaration of intent to make the reform(s) in the future, it is the revocation of RSS that has had the most immediate impact.

Revocation of RSSs

The revocation of RSS was preceded on 27th May by a letter from the Secretary of State to all Council Leaders stating his commitment to "rapidly abolish" RSS. The letter, he stated, should be taken into account as a material planning consideration in any decisions made.

However, many felt the Secretary of State had jumped the gun. The Planning Inspectorate issued guidance to Inspectors which stated that notwithstanding the letter being a material consideration, RSS remained part of the development plan until legislation was implemented to the contrary. Peter Village QC stated that the Pickles letter could not be given any material weight "because the law says there will be a regional strategy and that is what Parliament intends".⁸

On 30th June there was a debate in Parliament on the proposal to abolish RSS. Shadow Housing Minister John Healey acknowledged that the RSS approach was "too top-down" but warned that the abolition of RSS would be "a charter for nimby resistance to new homes". The Parliamentary Under-Secretary of State at CLG was urged and to "close the window of ambiguity" and confirm when RSS would be abolished.

¹ "The Coalition: our programme for government" published on 20th May - <http://programmeforgovernment.hm.gov.uk/>

² <http://www.communities.gov.uk/publications/planningandbuilding/lettergardengrabbing?view=Standard>

³ <http://www.communities.gov.uk/news/localgovernment/1617981>

⁴ <http://www.communities.gov.uk/localgovernment/performanceframeworkpartnerships/localenterprisepartnerships/?view=Standard>

⁵ <http://www.communities.gov.uk/newsstories/planningandbuilding/1626163>

⁶ <http://www.communities.gov.uk/news/corporate/1646834>

⁷ http://www.conservatives.com/News/Speeches/2010/07/David_Cameron_Our_Big_Society_Agenda.aspx

⁸ Regeneration & Renewal, 14 June 2010 <http://www.regen.net/bulletins/Regen-Daily-Bulletin/News/1009441/QC-warns-ministers-advice/?DCMP=EMC-Regen%20Daily%20Bulletin>

In fact, the Secretary of State had already written to the Chair of the Economic Affairs Committee on 25th June to seek clearance for the revocation of RSS and by 6th July, it was announced that RSS would be formally abolished through the "Localism Bill". In the meantime, RSS had been revoked with immediate effect under section 79(6) of the Local Democracy, Economic Development and Construction Act 2009. Guidance was issued to Chief Planning Officers by CLG's Chief Planner the same day.⁹ However no transitional arrangements were put in place.

Housing Targets

One of the main drivers behind the revocation of RSS was the desire to do away with the housing targets which RSS imposed on local authorities. RSS housing targets, when combined with the PPS3 requirement for a continuous five year supply of deliverable housing sites,¹⁰ and for LPAs who cannot demonstrate such a supply to "consider favourably" applications for housing¹¹, had resulted in LPAs without a five year supply struggling to resist applications for greenfield housing development despite (in some cases at least) significant local opposition. RSS housing targets were therefore regarded by the Government as undemocratic, "...pitting people against development instead of encouraging people to build in their local area".¹²

Here in Leeds we have seen a good example of the effect of RSS housing targets over the past year:

- RSS imposed a requirement of 4,300 new houses p.a. net upon Leeds City Council (4740 gross).
- Between December 2009 and March 2010, Leeds City Council lost five planning appeals¹³ against the refusal of planning permission for the residential development of a mix of "Phase 2" and "Phase 3"

housing sites. The Phase 2 and Phase 3 sites were greenfield sites allocated for housing in the Leeds UDP for release between 2008 to 2012 and 2012 to 2016 respectively but only "when and if existing housing land supply was demonstrably short" (Policy H3).

- At the appeals, Leeds City Council had argued *inter alia* (1) that it was entitled (initially as a result of a Local Area Agreement with the Secretary of State and subsequently as a result of the publication of its Core Strategy Preferred Approach document) to take a 'stepping-up' approach from below the 4,300 units net average RSS requirement in the early years to above it in later years; and (2) that the release of Phase 2 and Phase 3 greenfield sites would be at the expense of the regeneration of more difficult to develop brownfield sites in urban areas.
- Leeds City Council's arguments were rejected and all five appeals were allowed. In one case¹⁴, costs were also awarded against the Council.
- The Council challenged the first three appeal decisions in the High Court. The majority of the grounds of challenge related to the way in which the Inspectors had interpreted UDP and RSS policies (as well as PPS3) and come to their conclusions on the existence or otherwise of a five year supply of housing in Leeds.
- On 17 June, judgment was handed down in relation to the first appeal decision challenged and the Inspector's decision was upheld.¹⁵ The Council has since resolved to withdraw its remaining High Court challenges and the various planning permissions will stand.

What next?

There is general agreement that the country needs

⁹ <http://www.communities.gov.uk/publications/planningandbuilding/letterregionalstrategies>

¹⁰ Planning Policy Statement 3 (Housing) (PPS3), paragraphs 52 to 57

¹¹ PPS3, paragraph 71

¹² <http://www.communities.gov.uk/statements/corporate/regionalstrategies>

¹³ APP/N4720/A/09/2100709; APP/N4720/A/09/2108224; APP/N4720/A/09/2108888; APP/N4720/A/09/2100097; APP/N4720/A/09/2111698

¹⁴ APP/N4720/A/09/2111698

¹⁵ Leeds City Council v Secretary of State for Communities and Local Government (1) and Libra Demolition (2) [2010] EWHC 1412 (Admin)

more housing. So will localism deliver this much needed housing or will it, as John Healey MP has suggested, be “a charter for nimby resistance to new homes”?

CLG’s guidance states that it will be for LPAs to determine the correct level of housing provision in their area but they will need to justify the housing numbers put forward in their plans by reference to reliable information which can be defended during the LDF process. In addition, the requirement upon LPAs to provide a five year housing land supply will remain.

It was previously predicted that reverting to local authority “option one figures”¹⁶ for housing targets would result in drops in housing outputs in all but one region.¹⁷ However the Government believes the new approach will deliver the required level of housing and intends to offer “real incentives to build new homes” and to “ensure that those local authorities which take action now to consent and support the construction of new homes will receive direct and substantial benefit from their actions”. These incentives will be centred upon a “new homes bonus scheme” incentive to encourage house building.

Depending on housing land availability in their areas, some local authorities may be faced with a politically difficult choice of allowing unpopular developments in order to generate extra funding from central government to provide services, or continuing to resist such development and facing the financial consequences of doing so in difficult economic times. Whilst some authorities may jump at the chance of the extra income incentives (particularly in a climate where public funding is at a premium) others may look to adopt figures which enable them to resist Greenfield development. Whether or not the incentives will be enough to ensure that enough houses are built to serve the needs of a country coming out of recession with rising numbers of households therefore remains to be seen.



Here in Leeds, more appeals are in the pipeline but post RSS, the housing numbers position has changed. For now at least, imposing a lower housing target seems to be winning the day over higher targets and greater financial gain and Leeds City Council has resolved to adopt a replacement annual target in the absence of RSS of 2,260 units net per annum pending a more detailed review. The new figure is over 2,000 units per annum shy of the RSS target upon which recent appeals were lost but, as the Council has pointed out, it was previously being required to have a 5 year land supply for 20,000 dwellings at a time when new starts (and then only because of HCA subsidy) were running at fewer than 1,000 per annum. There will, therefore, be much to be tested in evidence at forthcoming inquiries and examinations in public.

In the meantime:

- CLG has issued a draft Structural Reform Plan.¹⁸ This envisages a Localism Bill being passed by

November 2011, with Regional Development Agencies dissolved by April 2012. New national planning policies based on OSP should be in place by April 2012 by which point the IPC will have been abolished and MIPU established.

- Parliament’s Communities and Local Government Committee has launched an inquiry into the abolition of RSS and is inviting interested parties to submit evidence by Wednesday 15 September 2010. The Committee will be focusing on matters such as the implications of the abolition of RSS, the likely effectiveness of the financial incentives scheme on the delivery of new housing and the arrangements required to ensure cooperation between local authorities on matters previously covered by the RSS.

The coming months and years will be interesting (as ever!) in the world of planning and local government.....

¹⁶ “Option one figures” were the housing projection targets local authorities proposed for inclusion in RSS. In many cases these were much lower than the actual RSS targets adopted.

¹⁷ “Numbers game”, Inside Housing, 19th February 2010

¹⁸ <http://www.communities.gov.uk/publications/corporate/structuralreformplan>

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Paul Rogerson CBE

Paul Rogerson CBE, who stepped down in the summer as the Chief Executive of Leeds City Council and Chief Officer to the Leeds City Region Partnership, has recently joined the Walton & Co team. Before being appointed to the top job at Leeds, Paul, who is a barrister, taught at English and American universities and then practised for many years as a successful development and employment lawyer.

Below, Paul offers some brief observations on the new Coalition Government's Local Enterprise Partnership initiative and urges those advising authorities and developers, to be alive to the importance of this emerging area of law and practice.

Councils and their local economies

At the time of writing, it is not known which local groups of council and business leaders will have roused themselves to submit proposals (to the Secretaries of State for BIS and CLG) for the establishment of Local Enterprise Partnerships (LEPs) for their areas.

What is known, however, is that the new Government has come firmly to the view that the existing Regional Development Agencies do not (or do not necessarily) operate within boundaries that make economic or business sense, and, in this connection, it must be

conceded that when the new agencies were established, Schedule 1 to the Regional Development Agencies Act 1998 did little more than graft them onto the Regional Government Office network that had been set up by John Major's Government (for quite different purposes) in 1994. Accordingly, Ministers say they are now inviting business and civic leaders to work together to develop proposals for partnerships that 'better reflect the natural economic geography of the areas they serve and hence to cover real functional economic and travel to work areas'.

Is the exercise, then, primarily about the promotion of existing city region partnerships? It would appear not, as there is nothing in the Ministers' letter of 29th June to suggest that, in honing the Government's new sub-national arrangements for the promotion of sustainable economic growth across England, the country's big city regions can expect to be afforded any sort of primacy. It would be surprising, however, if the Government's initiative was not being quietly welcomed in places like Manchester and Leeds, where relevant city region authorities and their business partners have now been working collaboratively for some years - and, it should be said, with fluctuating levels of cross-Whitehall support - to secure the better alignment of key economic and transport strategies across their very sizeable functional economic areas.

But, for now at least, Ministers say they fully recognise that, if the right environment for business and growth is to be created, the new LEPs will need to be enabled (and indeed committed) to 'tackling issues such as planning and housing, local transport and infrastructure priorities'. A White Paper is promised for the autumn.

Should any of this be of interest to practitioners? Well, as the country moves towards a planning system in which there is to be a single consolidated national planning framework sitting alongside a multiplicity of local plans, there can be no doubting the potential significance of the arrangements that are being proposed for LEP areas. Here, a functional economy's leading elected members and business representatives will be coming together in a local partnership mandated to set strategic priorities for development and investment across all of the area's authorities. So, as the arrangements are taken forward, at the very least stay in touch and where the opportunity presents itself, get on board.