Planning Update October 2017

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PEAK DISTRICT NATIONAL PARK

Programme for today

- Introduction by Brian Taylor– what are the key issues and changes in Planning in the last 12 months
- Isabel Cogings – rural housing enabler
- Coffee Break
- Minerals Planning by Jane Newman
- Monitoring and Enforcement by Julian Hawley
- Lunch
- Our Landscape Strategy and how we assess landscape impact by Garrie Tiedeman and Sue Fletcher

- An introduction to the Local Government Ombudsman Guide to Planning
- What is major development? A summary of the legal position and policy position; CNP study on major development in National Parks
- Government Planning Performance measures – what does it mean for the Peak District National Park? Planning performance measured by speed of determination and quality of decisions
- How are we performing? Major applications and appeals
- Recent planning legislation: Neighbourhood Planning Act and telecommunications permitted development
- Brownfield land: the current position

Major Development in National Parks

Study by Sheffield Hallam University for the Campaign for National Parks, published Dec. 2016 on the Major Development Test` (MDT)

- The articulation and use of a national park's local special qualities in relation to the MDT in Local Plan policy is valuable.
- The only statutory definition of major development in both the English and Welsh planning systems is through the Town and Country Planning (Development Management Procedure) Orders. These set out specific types and scales of development (e.g. so many dwellings and a certain hectarage of land affected) which constitute 'major'.
- This is significantly different from major development in the context of national parks and the so-called major development test(MDT), which has effectively been in place since the National Parks and Access to the Countryside Act 1949.

Major Development: *National Planning Policy Framework*.

116. Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of:

- *i. the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*
- *ii. the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and*
- *iii. any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated."*

The national policy position is reinforced in Defra's '*English National Parks and the Broads: UK Government Vision and Circular*' (2010) which is specifically referred to in the NPPF (footnote 25).

Major Development in National Parks (contd.)

James Maurici QC provided legal opinion for South Downs National Park (2011, revised 2014).

He concluded that determination is a "*matter of planning judgment to be decided by the decision maker*", taking into account whether "*the development has the potential to have a serious adverse impact on the natural beauty and recreational opportunities provided by a national park…by reason of its scale, character or nature*". Concluded that it would be wrong in law to "*apply the definition of major development contained in the 2010 Order to paragraph 116 of the NPPF".*

Planning Practice Guidance now states "*Whether a proposed development in these designated areas should be treated as a major development, to which the policy in paragraph 116 of the Framework applies, will be a matter for the relevant decision taker, taking into account the proposal in question and the local context*" (Ref ID: 8-005-20140306).

Major/Minor Development: Under performing LPAs.

From 2017-18 there will therefore be four separate assessments:

- The speed of determining applications for major development;
- The speed of determining applications for non-major development;
- The quality of decisions made by the authority on applications for major development;
- The quality of decisions made by the authority on applications for non-major development.

Major Development: Under performing LPAs.

Speed of Major Development :

50% (October 2014 to September 2016)

60% (October 2015 to September 2017)

Speed of Non-major Development :

65% (October 2014 to September 2016)

70% (October 2015 to September 2017)

Quality of Major Development decisions:

More than 10% of applications lost on appeal (April 2015 - March 2017)

(PDNPA – lost 2 out of 8 decisions - what will this mean?)

Quality of Non-major Development decisions:

More than 10% of applications lost on appeal (April 2015 - March 2017)

Policy Monitoring of lost appeals

Year	No. of Appeals Determined	No. of Appeals Allowed or Part Allowed, Part Dismissed / % of Total		No. of Appeals Dismissed / % of Total		No. of Issues Raised with Compliance with NPPF	
2011 (from CS Adopted)	8	3	37.50%	5	62.50%	0	0%
2012	32	7	22%	25	78%	0	0%
2013	35	14	40%	21	60%	2	6%
2014	43	18	42%	25	58%	2	5%
2015	26	8	31%	18	69%	1	4%
2016	35	11	31%	24	69%	8	23%
2017							
TOTAL (Excluding 2017)	**179**	**61**	**34%**	**118**	**66%**	**13**	**7%**

Compliance with NPPF

- **Overall only a handful of challenges to policy principles**
- CC2 (renewables) point raised in 2012 re ability to balance harm with benefit but resolved through SPD.
- HC1 (housing)– point raised 2016 re ability to use of market housing to enable affordable housing. Other challenges now focus on saved Local Plan policies (2001) and their relationship to Core Strategy and NPPF
- **Hence focus on Development Management policy review**
- Not about repeating national policy
- Sometimes important to remain true to National Park purposes
- **This can mean challenging national policy in order to promote appropriate response for National Park**

Neighbourhood Planning Act 2017

- Development management changes: the Neighbourhood Planning Act 2017 (Commencement No.1) Regulations 2017 mean that the Secretary of State can make regulations about what kind of conditions may or may not be imposed on a grant of planning permission (Section 14 of the Act).
- Regulations governing the circumstances when the agreement of an applicant has to be obtained in advance to the terms of a pre-commencement condition.
- Also, Section 1 is now in force so that a local planning authority has to have regard to a ‘post-examination’, unmade neighbourhood development plan (‘neighbourhood plan’) as a material consideration in the determination of planning applications.
- Section 3 now in force - A draft neighbourhood plan forms part of the development plan after being made following approval at referendum

Pre-commencement conditions

- The Government's intention is to reduce the time lag between planning permission being granted and work starting on-site, as reflected in the provisions regarding planning conditions.
- Concerned "a*bout the number of unnecessary or otherwise unacceptable conditions attached to permissions… It is therefore vital to ensure that conditions are only imposed where they meet the tests that are currently set out in the National Planning Policy Framework."*
- The circumstances under which pre-commencement conditions may be imposed without an applicant's consent, and conditions that are prohibited, will be set out in regulations. Draft regulations will be consulted on, before they come into force.
- Will require the agreement of applicants to pre-commencement conditions on full planning permissions.

Pre-commencement conditions

Indicative draft regulations suggest that the applicant's written approval would always be required – in certain instances, refusal to give approval would lead to the refusal of planning permission.

'We want to reassure those who expressed concern that these proposals will not restrict the ability of local planning authorities ***to seek*** *to impose conditions that are necessary to achieve sustainable development, in line with the National Planning Policy Framework'*

'In the unlikely event that an applicant refuses to accept a necessary pre-commencement condition proposed by a local planning authority, the authority can refuse planning permission.'

Pre-commencement conditions

Proposed procedure for the imposition of pre-commencement conditions

The LPA write to the applicant giving notice of the intention to impose the pre-commencement condition(s). Unless the applicant responds within 10 working days of the notice, advising either that they don't agree with the proposed condition, or providing comment on the proposed condition, the pre-commencement condition would be imposed. A time limit longer than 10 working days may be agreed in writing by the applicant and the LPA.

The LPA would be able to decide at what point during the determination process it seeks the applicant's agreement to a pre-commencement condition.

Pre-commencement conditions

Would prohibit the imposition of the following categories of conditions:

(a) a condition that requires the development to be completed;

(b) a condition that requires the applicant to pay money or to provide some other form of consideration except where the carrying out of development is prevented or restricted until such condition is fulfilled;

(c) a condition that requires compliance with a legislative requirement;

(d) a condition that requires the disposal or conveyance of an interest in the land to a particular person (;

(e) in the case of a grant of outline planning permission, a condition which reserves a determinable matter for the subsequent approval; i.e. where details have been provided at outline stage and are not illustrative

A condition which imposes costs on the applicant may only be imposed on a grant of planning permission if the costs do not make the development in question economically unviable.

Light Industrial Use B1 (c) to C3 Dwellings

- 3 year temporary right to change from light industrial B1(c) use to C3 dwelling via a new Class PA in 2015 Order. The change of use is limited to a building with a gross floorspace of 500 square metres or less. PD right will not apply if the building is listed or is within the curtilage of a listed building.
- Subject to prior approval - transport and highway impacts, contamination and flooding risks, PLUS a statement addressing whether the introduction of, or an increase in, residential use of premises in the area would have an adverse impact on the sustainability of the provision of industrial, storage or distribution services in that area where the change is in an area regarded as "important" for these activities.
- No applications are to be accepted on or before 30 September 2017.
- The change of use must be completed within a period of 3 years starting with the prior approval date.

Mobile Phone mast development

November 2016

- Extended PDRs to allow taller ground based masts: increased from 15 metres to 25 metres in non-protected areas and a new permitted development right allowing new masts of up to 20 metres in protected areas. Subject to prior approval (56 days).
- Also allows increase in height of existing masts to 20 metres in both non-protected and protected areas without prior approval (licence notification (28 days); between 20 metres and 25 metres in non-protected areas with a prior approval; and have a new automatic right to upgrade the infrastructure on their masts in protected areas, to match existing rights in non-protected areas.
- Height restriction of 20 metres on highways and residential areas to accommodate vehicle lines of sight and pedestrian access.
- How many notifications and applications have we had?

Brownfield Registers and Permission in Principle

1. What do the Town and Country Planning (Brownfield Land Register) Regulations 2017 and the Town and Country Planning (Permission in Principle) Order 2017 do/require?

- The regulations require local authorities to prepare and maintain registers of brownfield land that is suitable for residential development. The Order provides that sites entered on Part 2 of the new brownfield registers will be granted permission in principle.

2. What is the timescale for these proposals?

- The proposals came in to force in mid April 2017. Local authorities will be expected to have compiled their registers by 31 December 2017.

Brownfield Registers and Permission in Principle

- **3. New responsibilities are being funded – a new post created**
- **4. The register is in 'two parts'?**
- Part 1 is a comprehensive list of all brownfield sites in an area that are suitable for housing, irrespective of their planning status. However registers are also a vehicle for granting **permission in principle** for suitable sites where authorities have followed the relevant procedures (regulations set out requirements for publicity and consultation where an authority proposes to enter sites on Part 2 of the register). If the authority considers that permission in principle should be granted for a site the local authority is required to enter that site in Part 2 of their register. Part 2 is therefore a subset of Part 1 and will include only those sites for which have permission in principle has been granted.

OUR SPECIAL QUALITIES CURRENTLY UNDER CONSULTATION

Photography on this page (unless stated otherwise) is kindly provided by Chris Gilbert at www.ravenseyegallery.co.uk

1. Beautiful views created by contrasting landscapes and dramatic geology

5. Landscapes that tell a story of people and industry since prehist

2. Internationally important and locally distinctive habitats and species

6. An inspiring space for escape, adventure, exploring and quiet

3. Undeveloped places of tranquillity and dark night skies within reach of millions

7. Historic features offering visible and buried reminders of

4. Characteristic settlements with strong communities and traditions

8. Vital benefits for millions of people that flow beyond the landscape