

PLANNING NOTES



2017: STANDING AT THE CLIFF EDGE?

Martin Edwards looks back on one momentous year, and ahead to an uncertain future



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To say that 2016 was eventful is an understatement. Who would have thought, a year ago, that Britain would be heading out of the EU and that the US would have elected a property tycoon, with no political experience, as its 45th president? Whatever your view, Brexit is no joking matter. The EU referendum unleashed some dark forces, as the assassination of MP Jo Cox tragically highlighted. Divisive campaigning on both sides revealed a fractured society with significant distrust of the Westminster political elite and growing disapproval of the uneven distribution of the fruits of globalisation. These forces are not unique to the UK, as the votes in the US, Italy, France and Austria showed. Populism is on the rise and the established political order is under threat.

Turbulent times

The planning system is not immune from this. Those of us who regularly attend planning inquiries have seen the level of opposition to development become increasingly vociferous and, sometimes, intemperate. The country's need for new homes and infrastructure needs both clear political direction and consistent decision-making. But planning decisions are essentially political in nature and much important unfinished business remains from 2016. We were promised the outcome of the Community Infrastructure Review, revisions to the National Planning Policy Framework (NPPF), announcements regarding any changes following the Local Plan Experts Panel report and the Housing White Paper. None of these appeared, but are expected early in 2017.

We may also see a resolution of the judicial debate over the meaning of paragraph 49 of the NPPF and what exactly is meant by "relevant policies for the supply of housing", as *Suffolk Coastal District Council v Secretary of State for Communities and Local Government* [2016] EWCA Civ 168 reaches the Supreme Court.

The Neighbourhood Planning Bill is still before parliament but there are already signs that difficult times may lie

KEY POINTS

- ▶ **Populism is on the rise, and planning is not immune**
- ▶ **Dealing with Brexit may push the housing crisis down the government's agenda**
- ▶ **Greater consistency is still needed in planning decision-making**

ahead, at a time when the government enjoys a slim House of Commons majority not seen since the days of the Major government. Much parliamentary time may have to be devoted to the consequent political and legislative imperatives of Brexit, diverting attention away from other equally pressing issues, such as the housing crisis.

Some Conservative backbenchers, with greater potential to cause the government trouble, are deeply unhappy with the drive to free up more land for housing and the deregulation of the planning system, and are beginning to make worrying noises. After all, many Brexit voters are to be found in the very areas that perceive themselves to be under threat from development, as the recent protests about the release of land for housing from the Birmingham green belt, and in Folkestone, demonstrate.

No shortage of issues

Come what may, the development industry faces myriad urgent challenges. The retail sector is faced with the relentless growth of online shopping, undermining the viability of established shopping areas. The government has tried to address some of these challenges by increasing permitted development freedoms so that redundant shops can be more easily adapted to new uses, but many locals remain uncomfortable with the effects as cherished local pubs and other community facilities are lost to more valuable housing schemes.

But, given the pace of internet evolution, there must be doubt as to whether these planning changes are too little or too late. Bolder changes may be necessary if town centres are to survive, let alone thrive. This also highlights a dichotomy at the heart of

the modern planning system. Many dislike these changes but are unwilling to acknowledge that every time we shop online and wait for the parcel to be delivered we are contributing, in a small way, to the gradual death of our high streets. Similarly, many may rail at the explosion of polytunnels in the countryside, but revel in the availability of out-of-season fruit and vegetables.

The housing crisis

This is most evident in the housing sector. Most people accept that we need to build more homes – but only if they are not built near them. Arguably the Localism Act 2011, and the introduction of neighbourhood planning, has encouraged this, and Gavin Barwell's written statement of 12 December 2016 on neighbourhood planning may increase the volume of protest. Changes in the Housing and Planning Act 2016 and forthcoming changes in the Neighbourhood Planning Bill are also aimed at encouraging the growth of neighbourhood planning and planning vox populi. However, the real challenge for government, as recognised by Barwell, will be reconciling the desire of local communities "to shape their area" with the expectation that they should also accept "their fair share of local housing need" and ensuring that "housing is being delivered across the wider local authority area".

Greater consistency in secretary of state appeal decisions is always essential, but it is increasingly difficult to discern from recent decisions. The courts are also not blameless, for there has been a measure of inconsistency on some key legal points, as *Saleson LJ* acknowledged in *Gladman Developments Ltd v Daventry District Council* [2016] EWCA Civ 1146, at paragraph 45, regarding the circumstances when the imperative in paragraph 47 of the NPPF to "boost significantly the supply of housing" applies.

If nothing else, 2017 promises to be another eventful year.

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