NEIGHBOURHOOD PLANNING BILL 2016-2017: UPDATE

Pre-Commencement Conditions: A Help or a Hindrance?

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Following the Second Reading of the Neighbourhood Planning Bill in the House of Lords on 17 January, Cornerstone Barristers Pupil Liam Wells provides an update on the progress of the Bill since it was introduced in September of last year. He then comments upon the debate over Clause 12 of the Bill, concerning restrictions upon the power of a LPA to impose pre-commencement planning conditions.

Introduction

1. Presented to the Commons on 7 September last year, following announcement in the Queen's speech in May: the Neighbourhood Planning Bill 2016-2017 proposes important changes to many areas and has the stated aim of providing more land for housing and greater certainty for the housing sector through the passage of measures which speed up the delivery of housing. This is no doubt, a noble end. The means, however, have proved controversial to some extent, particularly where the Bill proposes to put in place restrictions on the power of LPAs to impose pre-commencement planning conditions.

The Neighbourhood Planning Bill 2016-2017

2. The Bill is supplementary to the Housing and Planning Act 2016. In addition to the restrictions on planning conditions, the Bill seeks to make several other important changes.

    a) To strengthen neighbourhood planning; through,
        i. Increasing the relevance of Neighbourhood Plans to the decision-making process.
        ii. Making the Neighbourhood Plan a part of the development plan immediately after post-referendum approval.

iii. Introducing a new modifications process for Neighbourhood Plans and Neighbourhood Areas.

a) To introduce a planning register, to enable potential registration or prior approval applications and notifications of permitted development to be put on the planning register.

b) To make changes to the compulsory purchase regime.

Progress Through the Commons: Important Additions

3. The Commons committee stage was completed on 27 October 2016. During the 3rd and 4th sittings, the focus was upon the neighbourhood planning clauses. In the 5th and 6th sittings, Clause 12 was debated, about which more below. In the context of the 7th and 8th sittings, all of the Bill's Part 2 (compulsory purchase) measures were agreed to, but the Minister made noteworthy comments upon the Government's view of the interaction between CIL and Section 106 Agreements, hinting that a nationally set CIL charge may be on the cards in the Government's review of the CIL later this year.

4. Following the final sitting, further provisions were added to the Bill concerning powers of intervention in relation to Local Plans. These were as follows:

   a) The SoS will have the power to make Regulations to require LPAs to review Local Development documents, *"at prescribed times"* (Clause 10).

   b) LPA Development Plan Documents will have to identify the strategic priorities for the development and use of land in the authority's area (Clause 6 1B)).

   c) Under Clause 8 and Schedule 2, County Councils will be given default powers by invitation from the SoS to prepare DPDs.

Comment: Pre-Commencement Conditions

5. Following earlier reforms in this area the Bill, as introduced last September, sought to provide for further measures. The most important of these is that Regulations are to be made setting out certain conditions which may not be imposed in prescribed circumstances (see below). These include conditions which, *"unreasonably impact on the deliverability of a development…"* and, *"duplicate a requirement for compliance with other regulatory provisions".* During committee stage in the Commons, the Housing and Planning Minister Gavin Barwell, was reported to have explained that he did not accept that, *"issues such as landscaping and materials must be dealt with before a single thing can be done on site, as the development begins to get underway. There is no reason why they cannot be dealt with during the process".*

6. As it stands, under Clause 12 5) of the Bill, a (proposed) new section 100ZA) 5) TCPA 1990 will read, "*Planning permission for the development of the land may not be granted subject to a pre-commencement condition* ***without the written agreement of the applicant to the terms*** *of the condition".* Where agreement cannot be reached, the Bill consultation paper suggests that the LPA would either change or remove the condition, or allow the developer to comply with it after development has begun. The LPA would also have the right to refuse a planning application if it considers that the condition is necessary, but it has not been agreed by the applicant. The applicant would then be able to appeal the condition under the existing process.

7. It was noted by some that the proposed changes to pre-commencement condition had the potential to encourage *"horse-trading"* between the parties on potential conditions both ahead of, and immediately subsequent to, the issue of reports to committee prior to the final determination of the application. In this writer's view, such prior, "horse trading", if that nomenclature is apt, may well further the stated objective of the Bill in minimising delays after the grant of Permission. That is contingent however, upon the willingness of LPAs to trade horses. It is also based upon the assumption that those delays are attributable to pre-commencement conditions, and that where they are so attributable, they are unwarranted.

8. In relation to the last point, the second reading in the Lords prompted substantial debate on the validity of these assumptions. Whilst some gave Clause 12 their support, others called for more evidence that, in the context of house building, it is pre-commencement conditions that are to blame for the delays. Still others, such as the Liberal Democrat peer, Baroness Parminter, asserted that pre-commencement conditions actually speed up the process by enabling planning permission to be secured without finalising the full details.

9. If the ability to impose pre-commencement conditions does indeed work as such; this would suggest that LPAs have a facilitative attitude towards developments. That surely cannot be true in every case. In cases where a LPA is welcoming of the development, then the process of engagement between the LPA and applicant is likely to proceed smoothly and produce a positive outcome under Clause 12. However, in cases where the LPA is averse, that is unlikely to occur.

10. It is instead, those cases in which a hostile LPA misuses pre-commencement conditions in order to inhibit the progress of a development, which are germane. The new Clause 12 is a clear attempt to take powers away from such LPAs. Whether this will be successful however, will depend upon the extent to which LPAs wish to resist that loss by for example, insisting upon the condition and pushing the developer through the ordinary Appeals process.

11. Greater detail will become available on how the process will work, and thus we hope, on the question of whom is likely to have the ultimate say, after the House of Lords Committee Stage is complete, which is anticipated to be 8 February 2017.

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February 2017