

## Queen's Speech 2016—neighbourhood planning and compulsory purchase

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**Local Government analysis: Wayne Beglan at Cornerstone Barristers Chambers advises that governance in local authorities continues to be a subject of significant and detailed interest in the Queen's Speech and neighbourhood planning is a good example.**

### What were the key announcements in the Queen's Speech affecting local government practitioners?

Governance in local authorities continues to be a subject of significant and detailed interest in the Queen's Speech. Practitioners are often invited to consider the extent of powers held by the various layers of local government, and how they interact.

#### *Neighbourhood planning*

Neighbourhood planning is a good example. The government is intent to continue the reforms it began with the Localism Act 2011 and it will be interesting to see how the government seeks to resolve what often appears to be an inherent tension between allowing greater local control over development decisions and the recognised need to deliver one million new homes together with necessary supporting infrastructure—representing as it does a further step change in the level of housing provision. The background notes to the speech indicate that plans for house building are more than 10% higher in the first areas to have adopted neighbourhood plans, as opposed to only having a local plan. However, the notes make no claim in relation to the causation of that increase.

It appears that the government views an important part of progress to be streamlining existing procedures and processes. The background notes to the speech refer to introducing better processes to allow neighbourhoods to make co-ordinated neighbourhood plans, thus potentially providing greater flexibility for where sites of significant, or even strategic, scale might be located.

In light of the well-publicised difficulties which have occurred in the application between local planning authorities of the duty to co-operate, it will be interesting to see the precise mechanism used to facilitate more neighbourhood co-ordination and co-operation. It would not be surprising if the private sector becomes increasingly involved in the processing of planning matters (if not the decision-making) as presaged by pilot provisions in the Housing and Planning Act 2016 (HPA 2016).

It seems clear that the movement towards early reviews and updates of existing local plans, especially those which pre-date the National Planning Policy Framework, will be accelerated by the use of further incentives for early review.

#### *Compulsory purchase and pre-commencement conditions*

Allied to the recognised need to improve levels of housing delivery and infrastructure provision, the government proposes to simplify and speed up the notoriously complex system of compulsory purchase that currently operates across England and Wales, into a single statutory framework. The recent work started with the 2015 consultation which fed into HPA 2016. A second consultation on further reform closed on 15 May 2016.

The government plainly has in mind the need to simplify and clarify the rules which provide for the assessment of compensation, and in particular, the assumptions which will apply to the 'no (or cancelled) scheme world' so that the true market value of the acquired land can be calculated. The central proposals for change included a clearer:

- definition of the project of scheme that should be disregarded in assessing value, and
- basis for assessing whether the project forms part of the larger 'underlying' scheme that should also be disregarded

Such clarification would be welcomed by those involved in the compulsory purchase of land. The government plainly hopes that by creating greater certainty about the level of compensation it may encourage more purchases by agreement.

The proposals to restrict the use of pre-commencement conditions to situations where they are ‘absolutely necessary’ will require careful consideration. That is because it is already a requirement of any planning condition that it should be, among other things, necessary in order to allow the development to proceed, and reasonable in all other respects. Existing guidance in the National Planning Practice Guidance (NPPG)—introduced in 2014—requires that pre-commencement conditions should only be used where the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission.

Yet it is clear that for a number of years the industry has regarded, and continues to regard, such conditions as a major bar to expeditiously bringing forward sites with the benefit of planning permission—the issue was substantially discussed in the 2008 Killian Pretty report. There is, again, the prospect of an inherent tension between the desire to reduce reliance on pre-commencement conditions, and increasing the influence of neighbourhood planning, because support for such conditions often comes from statutory and non-statutory consultees to applications. It may be that the new legislation will seek to be more prescriptive in relation to the forms of words to be used in dealing with typical pre-commencement issues that commonly arise. The correct construction of planning policy is a matter of law. Accordingly, it appears inevitable that cases will arise testing any reformulation of the requirements for pre-commencement conditions.

### **What are the trends? Do you have any predictions for future developments in this area?**

Thus the clear trends of changes to decision-making include the greater devolution of planning powers to neighbourhoods, and potentially an increasing use of alternative service providers to speed up the processing (and ultimately determination) of planning applications and relevant pre-commencement conditions by local planning authorities. Such greater devolution, to be successful, seems bound to require a greater level of collaboration and co-operation between authorities. In those circumstances government may seek to revisit the operation of the duty to co-operate to ensure it fulfils its intended role (recent changes have been made to the relevant guidance in the NPPG, but it remains to be seen whether those changes will be sufficient).

### **What action should lawyers advising in this area take now to ensure they are well prepared?**

Lawyers advising in this area will wish to pay close attention to the detail and progress of the Neighbourhood Planning and Infrastructure Bill, as stakeholders may wish to make representations on the putative proposals as they develop. It will also be important to consider the inevitable savings and transitional provisions when the Bill is enacted, in order to advise as to when neighbourhood planning, planning applications and compensation proposals will be affected by the new provisions.

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