

London can benefit from NPPF design policy

Where skills and resources to make assessments over the full range of building types is in short supply, third party design review can help to fill the gap.

The draft **National Planning Policy Framework** (at 52 pages, very readable) promotes the idea of high quality design, innovation and even experiment within the heart of the planning system. The two pages on 'Design' are about as much as anyone interested in quality could have hoped for, starting with a ringing endorsement: 'Good design is indivisible from good planning . . . The government's object for the planning system is to promote good design that ensures attractive, usable and durable places. This is a key element in achieving sustainable development.'

Note that sustainable development, therefore, is not just something that ticks insulation standard boxes, but includes something more fundamental: the quality of the building and place. While local planning authorities could try to achieve this using design codes, the NPPF draft says these should 'avoid unnecessary prescription or details'. Moreover, and one might think of Chelsea Barracks here, planning policies and decisions 'should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles'. A pity this policy wasn't in place when Rogers Stirk Harbour started getting beaten up by the usual suspects.

What's more, in determining applications, 'significant weight should be given to truly outstanding or innovative designs'; equally significantly, 'permis-

sion should be refused for development of obviously poor design'.

It is difficult to convince sceptics that it is possible to assess design except on the basis of personal aesthetic preference. That is not what planning is about. If you want to know if a suit is any good, ask a tailor, or better still a group of tailors. The framework draft suggests that local planning authorities should have local design review arrangements in place to achieve just this, and that where appropriate, major projects should be referred for a national design review, a service currently provided by Design Council CABE.

About one-third of London local authorities have borough-specific panels in place, and DC CABE reviews well over 100 London projects a year. Arrangements may need to become more focussed and this has prompted a review of DR by Peter Bishop, former London Development Agency chief, and ex-chief planning of Camden council. His review will take into account the NPPF, as well as the implications of localism legislation.

With specialist panels in place covering Crossrail, Thames Tideway and Locog programmes, these are busy times for DC CABE. This is unlikely to change under a planning regime where good design quality is considered essential, but where skills and resources to make assessments over the full range of building types is in short supply. Third party design review can help to fill the gap. ■

A passion for the public realm

London needs a bit of protein in its public realm diet, and a bit of passion.

Westminster seems to be getting the improvement of the public realm bit between its teeth as we head towards 2012, as does the Crown Estate in St James's, and Grosvenor in Mayfair. At last we all have a better understanding of the ultimate power of great public realm to deliver much greater financial rewards for imaginative and dynamic landowners, which in turn pay for more public realm improvements and a better urban experience for all of us. This is what improves the city for all Londoners.

Grosvenor and Westminster City Council jointly unveiled a water feature by no less an architect than Tadao Ando in the heart of Mayfair this month - an aesthetic apparition in one of the capital's most establishment locations. This would have been pretty much inconceivable in connection with either of the two parties concerned, or the location, twenty years ago. It is testimony to how the argument about architecture, design, and now urban design, has

encouraged all parties concerned with the built environment to improve their offering.

Such a transformation probably reflects the global and social upheaval flowing from what used to be called 'the IT revolution' which has continued the work of the iconoclastic 1960s in dissolving social distinctions and spreading cultural interactions. In the process it is throwing off a huge amount of creative energy, much of which passes through, or is generated or harnessed in London. Next year's Olympics, and central London in particular, promise a truly spectacular few weeks for the capital.

You can feel the city humming with people from everywhere at all times of the year. It is no longer possible to identify a period when Westminster is not under tourist seige. This does make it rather difficult for indigenous Londoners who have to fight for pavement space. >>>

Those with teenage daughters understand the eternal attractions of Oxford Street, but those without would probably like to see the ludicrous number of buses reduced. Here, it is also very welcome to see the New West End Company's modest pavilion providing a contemporary addition to the north side of Oxford Street, and - at last - an indication that the public realm can still serve the sort of basic human needs which have been progressively stripped from the streets as local authorities hunkered down under restricted budgets. The return of the public lavatory in sparkling new guise is long over-

due. Who cares what some people choose to do in them? We need them. All public realm contributions, however humble, are capable of transforming their bit of the city, which is a lesson London is gradually re-learning.

Remember Stanley Green, the sandwich-board man who until 1993 used to patrol Oxford Street urging Londoners to avoid protein (peanuts!) and thereby reduce passion? His sandwich board is now in the Museum of London. He was wrong. London needs a bit of protein in its public realm diet, and a bit of passion. ■

Peace in the parks

London is blessed with a range of open spaces which contrast with intensely used urban areas. They should provide peace and tranquility for residents and visitors alike.

Management of the Royal Parks has been subject to change in recent years and there has been discussion about handing them from Department for Culture, Media and Sport control into the care of the Mayor of London.

Now managed by 'The Royal Parks', an executive agency of the DCMS, it seems they no longer can be relied upon to give us the peace and tranquility for which they were once renowned. With increasing regularity they are monopolised for fun fairs, concerts, marathons and good causes.

It is not just 'Proms in the Park' or Christmas extravaganzas in Hyde Park but closures of Richmond Park which not only deprive thousands of users of peaceful (or energetic even) leisure but cause traffic chaos for hours on end on a Sunday.

Of course it was not always thus. The Green Park was once upon a time reserved for the establishment classes as a 'pleasure garden' with whirlygigs, music and all (*see right*), but following the burning down of those installations, the space was given over to the ordinary populace for simple recreation.

The invasion of the Royal Parks for narrow if populist purposes is becoming too much of a good thing. A sort of municipal commercialisation which needs to be more tightly rationed in the interests of the wider population, and the increasing need we all share for an escape into peaceful nature, however artificial. The issue is that the Royal Parks offer uncluttered green space and that

the agency has been forced into crowding it with cheap money-raising events because the Parks have been terribly underfunded. The importance of the open tranquil space is that it makes London an excellent place to live and attracts major financial and real estate values to the capital which should be acknowledged in government funding. The kind of sums raised by events is effectively just pocket money and risks undermining the essential worth of the parks and the wider value that they generate.

We have to sympathise with the agency which has been struggling between the rock of the Treasury and the hard place of public expectation.

London enjoys the brilliant juxtaposition of open landscape and urban intensity but this is in danger of being lost when these spaces are deprived of their peacefulness. Even more so when we find their gates closed at the weekend. ■

RIGHT: image of the Temple of Peace 1794 in the Green Park.



PLANNING IN LONDON

THE JOURNAL OF THE LONDON PLANNING & DEVELOPMENT FORUM

ISSN 1366-9672
ISSUE 79 OCTOBER-DECEMBER 2011
www.planninginlondon.com

Publishing Editors:
Brian Waters, Paul Finch and Lee Mallett

Subscriptions and Advertising:
Tel: 0207 834 9471 Fax: 0207 828 8050
Email: planninginlondon@mac.com

Available only on subscription: £75 pa
See subscription form or buy online.

Editorial Advisory Panel:
Michael Bach, Giles Dolphin GLA, Esther Kurland DfL, Alastair Gaskin & Drummond

Robson LP&DF, Andy Rogers ACA, Rory Joyce Drivers Jonas, Duncan Bowie, University of Westminster.

Planning in London is published quarterly in association with **The London Planning & Development Forum** by **Land Research Unit Ltd** Studio Crown Reach, 149a Grosvenor Road, London SW1V 3JY
Tel: 0207 834 9471 Fax: 0207 834 9470
Email: planninginlondon@mac.com

All contents © Land Research Unit Ltd unless stated. Contributors write in a personal capacity. Their views are not necessarily those of The London Development & Planning Forum or of their organisations.

Correspondence and contributions are invited for consideration. The editors reserve the right to edit material and letters supplied.

Designed by Wordsearch and Gavin Ambrose
Printed by Euro Colour Print 01442 234018

The London Planning and Development Forum (LPDF)

The LPDF was formed in 1980 following an all-party inquiry into the development control system. It selects topics to debate at its quarterly meetings and these views are reported to constituent bodies. It is a sounding board for the development of planning policy in the capital, used by both the public and private sector.

Agendas and minutes are at planninginlondon.com. To attend please contact secretary Drummond Robson: robplan@btconnect.com

The LPDF is administered by:

Chairman: Brian Waters MA DipArch (Cantab) DipTP RIBA MRTPI ACArch PPACA FRSA
Principal: The Boisot Waters Cohen Partnership brian@bwcp.co.uk

Honorary Secretary: Drummond Robson MRTPI, 41 Fitzjohn Avenue, Barnet, Herts EN5 2HN
Tel: 0208 449 3113 Fax: 0208 440 2015: robplan@btconnect.com

Honorary Treasurer: Alastair Gaskin, Reagh Consulting: alastair.gaskin@btinternet.com

Member bodies
Association of Consultant Architects
Association of London Borough Planning Officers/Planning Officers' Society
London Councils
British Property Federation
Design Council CABE
City of London Law Society
Confederation for British Industry
DCLG
Design for London
English Heritage
Environment Agency
Greater London Authority
Home Builders Federation

Landscape Architecture SE
London Chambers of Commerce & Industry
London Forum of Amenity Societies
London Housing Federation
National Planning Forum
RIBA, RICS, RTPI, UDAL
Transport for London
London University (The Bartlett, UCL)

Affiliated members:
University of Westminster
Planning Aid for London
Berkeley Group plc
London Metropolitan University

From NIMBY to PIMBY – a change in flavour for London

The public's opinion of new development is changing, says David Rycroft. If harnessed, the prospects are good for London's developers, contractors and planning community.



David Rycroft is a director at Morgan Sindall Professional Services

My tastes change. I used to hate eating my greens when I was a kid, now I enjoy them. I like the odd glass of whisky with friends, but I never used to.

What does this have to do with London's infrastructure? Well, tastes are changing here too. Slowly but surely, people are becoming more supportive of new development, largely because they recognise the wider benefits it can bring. Likewise, I now eat my veg not just because I think it has a good flavour but because, in the longer term, it helps keep me healthy.

People are increasingly accepting that new buildings can help regenerate communities, provide employment, and act as proud, confident and comforting references for their neighbourhoods. In uncertain economic times, people see that the job creation and investment new development can bring is not only a good thing, but desperately needed. We're shifting from 'NIMBY' to 'PIMBY' – from Not to Please In My Back Yard.

This is a nationwide trend but particularly important for London which is leading the UK's fragile economic recovery and where new development in particular can bring genuine economic impact.

Designers, developers and planners have an important role to play here. If we can encourage people to embrace their 'inner PIMBY' we can usher in an era where we have new, striking buildings which become integral to London life and are welcomed, even when they challenge traditional orthodoxies and accepted design.

As part of this we need to recognise that the economic, social and cultural benefits that development can bring will not, in themselves, be enough to deliver our new infrastructure. We still need genuine consultation with local people, stakeholders and businesses and not take local communities for granted.

We must also ensure that we design buildings which are appealing, inspirational and connect with their environment. Take some of the capital's landmark buildings such as the Barbican Centre or the South Bank complex; people recognise their massive cultural value but, aesthetically, they are not universally loved – indeed, a few years back the Barbican was voted London's ugliest building. If these cultural treasures were going through planning now, the benefits they bring would probably be buried by concerns over design. That would be a tremendous loss.

As it is with the arts, so it is with industrial infrastructure, for example. Yes, we should focus on the economic and community benefits it brings, but we should overlay this with stunning design. Why not? We will end up with some practical and beautiful buildings which will help us feel good about our local area.

We took this approach with our design for a waste incinerator at Crossness in East London (pictured). It looks anything but a traditional incinerator; its design is award-winning, it fits with the locality and, by and large, people like it.

Ultimately, it's about getting people to take an active and positive interest in new development, so that they become stakeholders with a vested interest in its success. Educating people about a building's benefits and impact – economic, environmental, social – shows it has added value. Making it look great means they'll be inspired. Put it all together and people won't just accept a building but see it as part of the fabric of where they live. Dare I say it, they'll even form an attachment to it.

NIMBYs are already becoming PIMBYs but if we recognise this trend, and give it a little push, we can cement the rise of PIMBYism in London and the UK.

Or, to go back to my earlier analogy, people won't just eat their greens because they feel they have to. They'll want to. Some may even ask for second helpings. ■

BELOW: East London sludge incinerator, Crossness



'Prior approval' stage suggested for deregulating 'offices-to-resi'

Jeff Field suggests an amendment to proposals to deregulate change of use from offices to residential to prevent B1 markets being 'blown away'.



Jeff Field is Jones Lang La Salle's director of planning

From this small but willing poll, some 72 per cent considered it a good idea.

Suggested alternatives

We considered there ought to be some alternatives instead of supporting this major and far-reaching change. We suggested the introduction of some form of "prior approval" procedure to obtain certainty as to whether planning permission would be granted. Linked with this, we suggested the government explore opportunities for introducing "Statements of Development Principles" (SDPs).

SDPs were considered some years ago at government level. We consider that this approach could be explored as a "halfway house" for Class B1 buildings and their conversion to housing. A period of five weeks would be allowed for the "prior approval" process ending with the SDP setting out the key aspects to be addressed in any planning application.

This would represent a step forward for applicants without incurring significant upfront costs; they could then devote more resources (and submit a planning application) knowing that permission would be granted – a sort of Reserved Matters application based on the SDP.

The Government's proposals

We considered that the main problem with the full UCO proposed changes was that it granted a permanent right for a temporary problem. We feared for the impact right now, but moreover for what could happen in the future.

The failing in housing supply could mean that the government could be setting up a wave of activity that it will not be able to stop. Commercial areas (good as well as bad) could simply be blown away. Our suggestion was that we would prefer a national policy based approach with in-built flexibility.

The detail

The wider Class B1 category means that it would not just be offices that could change to housing. It would also apply to research and development as well as light industrial premises. Class B2 buildings which had permitted development rights to change to Class B1 would also benefit.

Consultation closed at the end of June on the Government's proposals to change the Use Classes Order to allow changes of uses without planning permission from Class B1 (business use) to housing. To anyone involved in property, this would have major implications.

We decided to survey our property colleagues (excluding planners) to obtain their views. The poll included investment advisers, property managers, project and building surveyors and members of the land team, drawn from London and across the regions.

This is where the "unintended consequences" would start. Companies as large occupiers could be then be faced with significant uncertainty as landlords seek to manipulate the system. Uncertainty would result in terms of security of tenure, potentially where it was not intended. Many architects have observed that Class B buildings do not lend themselves to residential conversion, but surely the risk is that where implemented, they will compromise design quality objectives.

Area impacts

Clearly some local authorities would be more concerned than others. The views of the City of Westminster and the Corporation of London will be heard above others, although for different reasons. I suspect however that most authorities would support proposals to opt out of the deregulation procedures should they be faced with these coming into force.

Mixed use areas would change into areas of high residential values, with residential becoming the dominant driver at the expense of office use. In fringe or marginal areas of the commercial cores these could see a transition to mixed fringes, but all without managing the change through the planning system.

The impacts are unlikely to be temporary. Once changes have been made to housing it is very rare that buildings return to employment-generating use again. Buildings and areas transferred to housing would not come back.

We did not support the new powers being available to general industry principally because we believe these buildings are usually in locations that might not be suited to housing or they would give rise to "residential islands".

Unintended consequences

We advised the government that it had not given full regard to the mechanics of the property system, focusing instead on the planning considerations. The government's analysis was very short in terms of potential effects upon landlords and tenants.

The proposals could have implications for tenants who have signed long leases with development break clauses or where there was every intention or likelihood that new leases would be granted. The effect of this legislation would be that changes of use could occur least where intended, and mostly where they are not needed. Landlord and tenant law plus lease drafting would be tested to the full.

Office and business rents could also increase on the basis that the business building would be capable of being used for housing as an alternative use. This would introduce a serious burden to businesses in the current tight economic period. Inevitably, there would also be an impact on the value of employment buildings, as cherry picking would take place. ■

Immunity from listing – lessons from Broadgate

A fundamental problem with the listing system in assessing buildings for listing is that the remit of the Secretary of State, and his adviser English Heritage, relates solely to the assessment of architectural and historic interest, says Nigel Hewitson.



Nigel Hewitson is a partner and London head of planning at Norton Rose LLP and former Legal Director at English Heritage

The decision in June by Culture Secretary, Jeremy Hunt, not to list London's Broadgate development was greeted by many in the property development community as a victory for common sense. The decision allows nos. 4 and 6 Broadgate to be demolished and replaced with a 700,000 square foot purpose-built London headquarters for Swiss investment bank, UBS. This represents a major inward investment into London. At the same time, though, the case raises some interesting questions about the listing system.

The situation at Broadgate arose from an application by British Land for a certificate of immunity from listing for the whole Broadgate development. Such a certificate precludes the Secretary of State from listing the building concerned for a period of five years. However the certificate procedure is something of a double-edged sword. The Secretary of State has a long-standing policy that, if a certificate is refused the building will normally be listed. This is because, if it is not appropriate to issue a certificate, it must be the case that the building is worthy of listing. English Heritage advises the Secretary of State whether to grant a certificate or list the building.

In the case of relatively recent buildings, the "30 year rule" now contained in the Department for Culture Media and Sport's "Principles of Selection for Listing Buildings March 2010" applies. The 30 year rule states that where a building which is less than 30 years old is proposed for listing, it will normally only be listed if it is both under threat and of "outstanding quality" - in other words worthy of listing at Grade 1 or Grade II* (the two highest grades).

In the case of Broadgate, because the 30 year rule applied, English Heritage, if it were to recommend listing at all, had no choice but to recommend that the buildings be listed at least at Grade II*, which, in the event, is what they did. In the end, it is the 30 year rule that may well have saved the day from British Land's point of view. Jeremy Hunt, while accepting that nos. 4 and 6 were under threat, stated that he did not agree that Broadgate represented "outstanding architectural quality and historical interest" and therefore concluded that the buildings did not merit such a high listing status.

English Heritage, while admitting they were "disappointed" by the decision, went on to say: "Broadgate Square may not be everyone's idea of heritage, but every decade has its architectural high points, and the 1980s are no different. The timeline for assessing our built environment moves on, and we will increasingly be asked to consider buildings of the 1980s for listing".

This last point raises an interesting question about the subjective nature of the assessment of what properly constitutes "heritage". It is probably fair to say that there is a broad public consensus that a good proportion of surviving



ABOVE: Make's now-permitted scheme for Broadgate

buildings from the 19th century and earlier - particularly grand set piece ones such as the Palace of Westminster or St Paul's Cathedral - should be subject to statutory protection. There is considerably less agreement about the extent to which even outstanding examples of modern, particularly post-war, architecture - such as the BT Tower, Centropoint and the Barbican Centre - merit protection.

Herein perhaps lies a fundamental problem with the listing system. In assessing buildings for listing the remit of the Secretary of State, and his adviser English Heritage, relates solely to the assessment of architectural and historic interest. The Secretary of State is not permitted to take into account the extent to which the public's taste in architecture coincides with expert views of the merits of a building, nor, indeed to take account of the wider impacts on the economy that listing may have. (In the Broadgate case these were clearly major factors which, in other circumstances, would have been taken into account.) English Heritage can, and does, take account of wider factors when looking at applications to make changes to listed buildings, but at the stage of listing its remit, and that of the Secretary of State, is narrow.

The only question to be considered is: does the building have architectural or historic interest sufficient to merit listing? This is not the Secretary of State's or English Heritage's fault. The test derives from primary legislation (s.1 of the Planning (Listed Buildings and Conservation Areas) Act 1990). Should that legislation be revisited to provide for other material considerations to be taken into account in listing decisions? Arguably, yes, but, if the abandonment of the Heritage Protection Bill in the last Parliament is anything to go by, it seems unlikely that Parliamentary time for heritage legislation will be found any time soon. ■

Style wars miss the point

Quality, not style, is what is important about design, says Paul Finch



Paul Finch is chairman of Design Council CABA and joint publishing editor of *Planning in London*

The recent spat in the media between 'traditionalists' and 'moderns' ran along the usual lines: outraged classicists claim they are discriminated against by organizations like Design Council CABA, because of the perceived style preferences of its chairman and panel members. The response is that reviews are carried out with stylistic preference left at the door of the critic room, but that it is foolish to pretend that individuals don't have preferences.

The truth is that not too many 'traditional' designs get reviewed because there aren't too many such schemes that warrant it. In my years as chair of design review at old CABA, the majority of traditional

designs we saw came from people trying to get country houses built under planning guidance which said permission could be given if they were of outstanding design quality.

It might surprise the traditionalists, but we would err on the side of generosity in our advice on these cases, usually of the Palladian villa variety. If someone sent in plans clearly based on the Villa Rotonda, for instance, one could take the view that the design was outstanding – though certainly not innovative! Of course traditional architects can be as mediocre as anyone else, so we did our best to be even-handed.

One of the few significant classical buildings that came our way was the Quinlan Terry design for a medical block forming part of the Royal Hospital range of buildings in Chelsea – Wren's magnificent main building plus a modest addition by Soane.

Giles Worsley (RIP), a scholar of classical architecture, was deeply critical of the Terry design for a variety of reasons; his comments were reminiscent of

Gavin Stamp's highly critical review of the same architect's classical additions to Downing College, Cambridge, in the mid-1980s. Richard Rogers, a local resident, was deeply opposed to the idea of a classical building on the site and lobbied John Prescott to call in the proposal for inquiry.

Our task was not to enter a debate on the more arcane aspects of classical detailing, but to assess the proposal in the round, especially given that the working spaces had been designed by a specialist medical practice, Quinlan Terry providing the envelope. We took the view that, as a matter of principle, if the client wanted a 'traditional' building then it was certainly not our business to tell them otherwise. (We had been deeply critical of an earlier 'traditional' scheme by another architect, which led to a competition which Terry won.)

In the event, two of CABA's design review panellists did a site visit and looked in detail at the designs: Demetri Porphyrios and Simon Allford, whose architectural preferences were dissimilar. They were broadly supportive of the proposal, and so was the panel to which QT and client presented.

That scheme is just across the road from another contentious site, Chelsea Barracks, involving a Richard Rogers design, critical comments by Quinlan Terry, an intervention by the Prince of Wales, and the subsequent replacement of the Rogers Stirk Harbour by a team of architects that one wouldn't exactly describe as traditional, but who would be perceived as working in a more familiar urban manner.

CABA reviewed both proposals, and was broadly supportive of both. This is not surprising to those who know how we work, because style difference is not the point. Quality of design is. We don't have to score one design against another because we give advice, not decisions. That will not change, and unless and until traditionalists can demonstrate that they are being discriminated against at review, they should calm down. I do not believe they can show any such thing. ■

Next meeting of the London Planning & Development Forum

Monday 12th December 2011 at 12 George Street SW1 – Hosts: RICS

Discuss:

- The National Planning Policy Framework and its interaction with the London Plan
- The impact of Use Classes Order changes for London
- London Plan Supplementary Planning Guidance on Housing.

Provisional: please check the agenda at: www.planninginlondon.com



The planning guarantee - or what?

A Planning Guarantee is welcome as long as it is more than just additional wallpaper in an over-decorated system.



Christian Drage is Partner, Planning and Environment at Berwin Leighton Paisner LLP

"When the appeal process is as slow as it is, who is ever going to risk the time it takes to appeal a refusal?" These are the words of a BLP client – I wonder if he's been heartened by the Government's often repeated announcements about planning for growth and initiatives to achieve sustainable development without delay?

One of those initiatives is the 'Planning Guarantee', intended to ensure no planning application takes longer than 12 months.

Details are expected in the autumn, and England's Chief Planner, Steve Quartermain, has given a few hints already:

- The clock would start on submission of a valid application and only stop when the decision is issued.
- It would not stop in appeals against failure to determine an application – though it would exclude periods when progress is out of the decision maker's control.
- Applications handled via planning performance agreement would also be excluded.

However, some immediate questions emerge:

- Will local authorities be less inclined to validate an application for fear of premature clock starting?
- Since the Planning Guarantee would apply to appeals, will it also apply to ministerial decisions?
- Fundamentally, people are saying "what are the consequences of breaking the guarantee?" We can presumably exclude any possibility of compensation.

Quartermain seems to recognise these points: "It is important applicants feel there are consequences where the required time frame is not met...the Government will consult in the Autumn on further measures that may be needed to improve the timescales of decisions."

However, why do we need a guarantee when we already have a statutory period for determining planning applications? If it is only intended to assist larger scale planning applications, is a 12 month guarantee appropriate? Big schemes cannot be hurried through public consultation.

The RTPI makes a good point. Only 0.7% of the 48,300 planning applications made in 2010/2011 took longer than 12 months. Perhaps the guarantee should cover different scenarios: for example, a three month guarantee for minor applications and a six month guarantee for major applications but below a certain threshold?

There are further points to consider:

- The Planning Guarantee should not lead to higher upfront pre-application costs.
- Developers should retain flexibility to amend proposals to take on board consultation responses throughout the application process.
- The Government must eliminate risk of late stage planning refusals just because deadlines are being approached.
- Should there be a mechanism to pay a premium to get faster service? Government should work with the RTPI and the industry to come up with a system that is clear and equitable allowing payment for quicker service. Of course one would not expect a difference between quality and outcomes of quick and slow decisions.
- Should costs of an appeal be borne by the losing party? This would be a great disincentive to bad decision making.
- Any local or Inspectorate guarantee needs to be matched by Central Government, to include call-in decisions and decisions under other legislation – especially decisions now made by Ministers for nationally significant infrastructure projects.
- What are the extra resource demands of local authorities and the Inspectorate?

Despite concerns, we may see more appeals. The DCLG Impact Assessment highlights risks posed by the presumption in favour of sustainable development of more refusal/appeals in areas without up to date plans. The NPPF contains measures to speed up local plan production by authorities, where failure risks individual development proposals going through on appeal. A more streamlined planning system may aid achievement of the desperately needed growth agenda in the right places.

A Planning Guarantee is welcome as long as it is more than just additional wallpaper in an over decorated system. ■

A storm of protest

I am becoming increasingly bemused by the storm of protest over the Government's proposed National Planning Policy Framework. A number of other planning professionals with whom I work regularly have also expressed puzzlement over the brouhaha, blogs Martin Goodall.

My mother used to tell me as a small boy – “Don't cry until you're hurt”, but bodies such as the National Trust, the CPRE and RSPB, not to mention the Daily Torygraph (who seem to be stirring up the controversy for their own purposes, no doubt in an effort to boost circulation) don't seem to have heard of this old saying. They are screaming the place down, and seem to be under the impression, whether genuine or simulated, that the NPPF will lead to the whole of England's green and pleasant land being covered in bricks and concrete, not to mention the entire destruction of the country's wildlife and habitats and the loss of the country's historic buildings, ancient towns and archaeological sites. This is an extreme and frankly absurd reading of the NPPF, and those who are so loudly banging the drum about these alleged evils are in considerable danger of destroying their own credibility, with the result that they may be listened to with less respect in the future on an occasion when they do actually have a valid point to make.

On the other hand, the Government has to a large extent brought this trouble on themselves. Their attempt to abridge ministerial policy guidance so drastically was bound to be fraught with difficulty, and I have previously pointed out in this blog that the absence of much useful guidance contained in the existing policy documents could be a source of considerable doubt and uncertainty for users of the planning system in the future. It was an entirely unnecessary exercise, designed solely to demonstrate the political machismo of Fatty Arbuckle (or 'Uncle Eric', as we have learned to call him in this blog).

Even without the pro-development agenda which the government has been pursuing since late March, the removal of numerous detailed points in the existing guidance was bound to cause anxiety in some quarters that the silence of the NPPF on points of detail which had been clearly spelt out in previous ministerial policy guidance would in practice be interpreted as a deliberate policy change. This fear has been greatly exacerbated by the additional spin in favour of 'sustainable development' which has been stirred into the cauldron.

It may be too late for the government to extricate themselves from the mess in which they now find themselves, but it is abundantly clear that the pro-development agenda which the government wishes to pursue could have been introduced without the need to scrap existing ministerial policy guidance and to attempt to squeeze it into a single abbreviated document. Some revision of individual PPGs/PPSs would have been required in order to change the emphasis of certain ministerial policies, but such an exercise would never have caused such a furore as has been stirred up by the draft NPPF.

Even a forthright statement of principle, such as those set out in various circulars in the early 1980s (for example – 9/80, 22/80, 15/84 and 14/85), is unlikely to have courted such controversy. That earlier drive for growth, led by Michael Heseltine as Secretary of State under the leadership of Margaret Thatcher, did not engender any such outcry as the draft NPPF has caused. Admittedly, its results did in time lead to increasing unease in Middle England; and the growing weight of protest against 'greenfield' development in Tory MPs' postbags did eventually persuade the Iron Lady to reverse the policy in

1987, and to develop instead the concept of 'plan-led development', which was enshrined in 1991 in what then became Section 54A of the 1990 Act. But by that time, property development had played its part in promoting economic growth, as the Thatcher government had intended.

So what can the government do now to get itself off this very uncomfortable hook of its own making? One obvious ploy would be to make 'concessions' to critics of the NPPF, by adding back into the text passages from previous policy guidance which were omitted from the original draft, but which would not significantly alter the general thrust of ministerial policy. As I mentioned earlier, there are quite a few points of detail whose omission does not betoken any significant change of policy, but whose absence has nevertheless caused anxiety in various quarters. Such text could readily be restored without diluting the government's overriding aim of promoting development.

An even more significant concession could be made by removing from the NPPF those words and phrases which appear to be calculated to promote an unduly relaxed approach to development management, and replacing them in an entirely separate document, perhaps a circular similar to those issued in the early '80s which would spell out the government's determination to promote development as an instrument of economic policy.

The other steps which the government could take would be to amend subordinate legislation to make it much easier and simpler to apply for planning permission, followed as soon as practicable by amendment of the primary legislation to introduce a much simplified development plan system. Repeal of Section 38(6) of the 2004 Act would be another very helpful step in the same direction. Section 70(2) of the 1990 Act is a perfectly adequate basis on which to base the development control process.

The government has already embarked on consultation in connection with the first part of this exercise, and so we can genuinely hope that there will shortly be some simplification of the development control system. Primary legislation to amend the development plan regime would have to await the next available slot in the parliamentary timetable, bearing in mind that De-LoG have had their 'turn' with the Localism Bill and so may now have to go to the back of the queue behind other government departments anxious to introduce their own bills.

How this all pans out will gradually become a little clearer towards the end of the year, when the Localism Bill reaches the statute book, and when the consultation exercise on the simplification of the development control process is completed and is (we hope) turned into revised subordinate legislation. The hysterical campaign against the NPPF will eventually abate, and a more measured discussion of planning policy may then be possible. In the meantime, planners who want to avoid raised blood pressure should refrain from reading the Daily Torygraph, and turn a deaf ear to all the yelling coming from the National Trust, the CPRE and the other usual suspects. ■

© MARTIN H GOODALL *Martin Goodall is a Consultant with KEYSTONE LAW of 53, Davies Street, London W1K 5JH. (martin.goodall@keystonelaw.co.uk) FOLLOW Martin's blog at <http://planninglawblog.blogspot.com/>*

No sense of place

If this were a Core Strategy it would be rejected because it did not have a clear vision and strategy, was not sufficiently place-specific and, in some instances, perhaps, policy free says Michael Bach.



Michael Bach is chairman of the Planning and Transport Committee of the London Forum of Amenity and Civic Societies

The NPPF is a placeless document. It does not recognise that England is a highly urbanised country – no mention of cities, towns or urban areas, although it does mention, in relation to green belts, urban sprawl, urban regeneration and urban land. Is it the reference to green belts that identifies it as being about England?

The document does not even identify the most sustainable options for housing growth – such as infill development or urban extensions (even the near useless 1992 PPG3 suggested focusing housing growth on existing urban areas - the reference in para 19 to encouraging “the multiple benefits from the use of land in urban and rural areas” is cryptic). It does not even “prefer” previously-developed land – all references to this are in the Glossary – what is the use of a definition for which you have no use? So, if you can demonstrate that an authority does not have a 5-year land supply for housing, any greenfield site (except in designated areas) is fair game regardless of sustainability. It is back to planning by appeal as in the late 1980s. We don’t even try to choose the most sustainable sites.

Most of the references to towns are in the justification for green belts – they do not warrant a line of policy in their own right. Town centres, on the other hand, do warrant a section under “Planning for Prosperity”, but the eco-

nomic rationale for the policy of concentrating retail and leisure (what happened to offices and other town centre uses?) in town centres is not set out. Many people may be pleased to see that the Government is still concerned “to promote competitive town centres” followed by warm words, but, when it comes to the crunch, it no longer requires developers to demonstrate that they could not find a more central site but instead suggests that “local planning authorities should prefer applications for retail and leisure uses to be located in town centres where practical” not “required wherever possible”. Without a strong sequential test and enforcement, this “nudge” approach to planning will totally fail to put town centres first. The outturn, let alone the consents, in recent years show that town centre first policy is not being applied or enforced. We are rapidly returning to the proportion of new retail outside town centres as we had in the late 1980s and early 1990s. We need a town centre first policy that bites.

And London – well the only reference is to the address of DCLG!

If this were a Core Strategy it would be rejected because it did not have a clear vision and strategy, was not sufficiently place-specific and, in some instances, perhaps, policy free.

There as plenty more work to do here to flesh out the policies. If space is a worry, most of the process/how to do it material could be dropped as well as the constant repetition of the “presumption in favour of sustainable development”.

Can somebody press the buzzer - I am sure Nicholas Parsons would not allow it! ■

The 1923 origin of the ‘presumption in favour of development’

The Minister considers that the presumption should always be in favour of the person who wishes to undertake development.

David Brock in his blog has been pointing out for some time that the presumption is not new and dates from 1923. This point was made by Michael Harrison QC (who became a distinguished High Court judge) in a 1992 article in the *Journal of Planning and Environmental Law* and by Professor Michael Purdue in his analysis (also published in the *JPL*) of the case of Pehrsson v. Secretary of State.

Research at the National Archive at Kew has turned up the circular which is extracted above.

ABOVE: The text of the 1923 circular which created the presumption in favour of development

His Honour George Dobry QC, author of the report which gave rise to the national and regional planning (formerly ‘development control’) fora made the same point in a letter to *The Times* last month.

FOLLOW: thedavidbrockblog.com or email him at david.brock@keystonelaw.co.uk

Instant reactions



The CBI says the dNPPF must be used to rebuild investors' confidence in the system.

Katja Hall, CBI Chief Policy Director, said: "It's vital there is a presumption in favour of sustainable development to balance the shift towards localism with

the need for economic growth. This should send out a strong signal to local authorities that it is possible to grow the economy while behaving responsibly to our environment. I hope this change will help to attract the £200 billion in investment we need to build our decarbonised energy future.

"Cutting back the reams of planning policy and guidance we currently have makes absolute sense. A clear, digestible guide to local planning decisions will ensure that local authorities are well-informed about national priorities and the need for development.

"The publication of this new framework is a chance for the Government to rebuild investor confidence in a planning system which has been shaken by a year of rapid reforms and ripped-up policy."

The CBI is calling on the Government to ensure its reforms to the planning system, including the NPPF and the Localism Bill, deliver effective strategic planning at all levels.

Ms Hall said: "For the middle tier of planning, all we have is the 'duty to cooperate' clause in the Localism Bill. We still need greater assurances that this will be strong enough to ensure sub-national infrastructure is delivered.

"We can't afford to wait around while local authorities take a trial-and-error approach and our infrastructure carries on crumbling."



RTPI President Richard Summers said: "The draft National Planning Policy Framework is a missed opportunity.

"We are concerned that the draft NPPF will not secure balanced economic and housing growth across England. It fails to set out a vision for the development that is needed to support a growing population and to promote economic growth across the country and that is effectively linked with infrastructure to redress existing and potential geographical and social disparities.

"Economic growth is generally set to trump the aspirations of local communities expressed in local and neighbourhood plans. The relationship between the presumption in favour of sustainable development and the primacy of locally-led development plans is not clear. It appears that the NPPF could direct local policies to be set aside to deliver the government's growth agenda in response to market-led demands rather than to promote truly sustainable development for neighbourhoods and for local and wider than local areas."

"However, it does begin to go in the right direction towards a National Spatial Planning Framework for England that the RTPI has campaigned for over more than ten years. The Institute looks forward to continuing its dialogue with the government during the NPPF consultation period and beyond to help secure truly sustainable development policies and a workable planning system for the future."



Radical planning shake-up threatens green fields

The Government has published a highly sensitive draft National Planning Policy Framework for public consultation. This represents the biggest shake-up of planning for over 50 years and CPRE believes it will place the countryside under increasing threat as the economy recovers. An earlier leaked copy of the NPPF received a hostile reception from conservation and environmental groups. The Government has made some welcome improvements, for example proposals to curb light pollution. But many elements of the new draft are deeply worrying. In particular, Ministers have failed to commit to the principle that the countryside should be protected for its own intrinsic character, beauty and heritage.

Shaun Spiers, CPRE Chief Executive, says: "The draft planning framework is an improvement on the version we saw earlier this month, but major problems remain. The new framework will make the countryside and local character much less safe from damaging and unnecessary development. If it is not amended, there will be battles against development across the country that will make the public revolt against the sale of the forests look like a tea party."

CPRE fears pressure on the countryside from damaging development will grow due to:

- Loss of emphasis on brownfield regeneration - as a result of the removal of the national brownfield target and the failure to promote efficient use of land
- Over-allocation of land for new housing - the draft NPPF requires local councils to allocate at least 20 per cent additional sites for housing over and above the existing five year supply
- Weakening of the 'town centre first' policy by removing office development from the sequential test
- Pressure for increased car use - by removing the requirement to set maximum parking standards for non-residential parking in major development
- Abolition of exceptions policy which allows small scale affordable housing to be built in rural settlements, which is likely to add to pressure for market housing and reduce the supply of affordable housing
- Weakening of controls over outdoor advertisements, including no mention of billboards being inappropriate in the countryside
- Changes to Green Belt policy which would allow local communities to support building which would previously have been restricted.

Shaun Spiers continued: "The Government admits that policy changes, such as removing priority for brownfield development and allowing 'Community Right to Build' schemes could lead to greater development on greenfield land. Although they say protected landscapes, like Green Belts and AONBs, will still be protected, and that is to be welcomed, it seems it is open season for the rest of the countryside, including some of our finest agricultural land. We are fear that in reality what is proposed will weaken Green Belt protection, in spite of Ministers' intentions. "CPRE welcomes much of the thinking behind the Government's reform of the planning system. We do need more people engaging with planning, and its complexity has become a barrier. But with their crude focus on economic growth and default 'yes' to development, Ministers are storing up plenty of unintended consequences for the future.

"Over the next few months the Government needs to listen and make further improvements or the consequences for the English countryside and the character of our towns and villages will be grave."

>>>



Government must not relax vital planning controls, says National Trust

"Planning is for people, not for profit," says Director-General, Dame Fiona Reynolds. The National Trust signalled its grave concerns over the Government's planning reforms, warning that the proposed changes could lead to unchecked and damaging development in the undesignated countryside on a scale not seen since the 1930s.

The draft of the National Planning Policy Framework, published by the Government yesterday, contains a core presumption that the default answer to any proposed development will be 'yes'.

This finally sounds the death-knell to the principle established in the 1940s that the planning system should be used to protect what is most special in the landscape, creating a tool to promote economic growth in its stead.

The Trust criticised the Government's focus throughout its consultation document on economic growth, which sends the message that schemes which deliver this alone will be enough to get planning permission.

This will focus developers' and local authorities' attention on the narrow grounds of short-term financial gain, rather than delivering the wider public benefit that good planning can deliver.

The Trust believes that the town and country planning system, as a whole, has served the country well.

It has enabled growth by guiding development to the places that need it, while protecting open countryside, preventing sprawl and safeguarding designated areas and historic buildings. "Those planning principles remain as necessary today as when they were first established," said Fiona Reynolds, the Trust's Director-General. "Weakening protection now risks a return to the threat of sprawl and uncontrolled development that so dominated public debate in the 1930s." Fiona Reynolds emphasised: "The National Trust believes in growth as we all do – but not at any cost. "Development that works must

pass a triple bottom line test – by showing that it meets the needs of people and the environment as well as the economy.

"Despite some warm words to this effect, the document makes it clear that development is to be encouraged, even urging local authorities to promote more development than is in the plan and over-allocate land for housing."

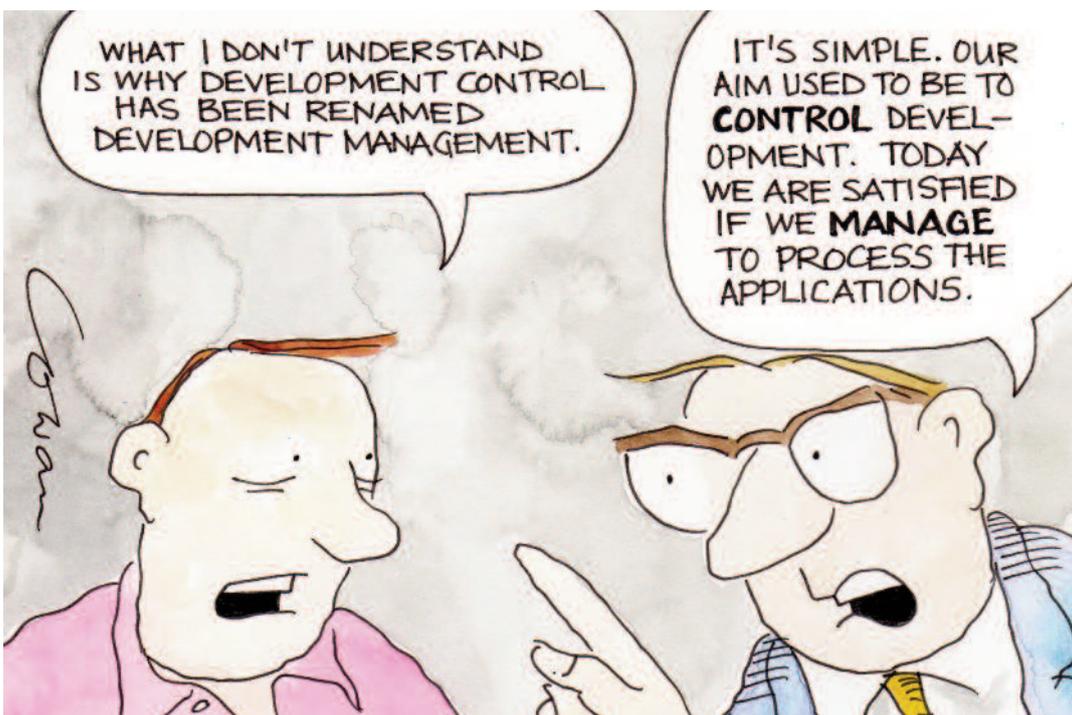
"The Government's proposals allow financial considerations to dominate, and with this comes huge risk to our countryside, historic environment and the precious local places that people value."The National Trust believes the tone and language of the NPPF and consultation document is wrong on several counts:

- the reversal of development controls in the public interest comes at too high a price. The NPPF's concept of sustainable development puts too little weight on benefiting people and the environment
- the removal of much detailed guidance to local authorities leaves too much power in the hands of developers who will only need to show that their proposals will deliver growth for other important considerations – for example impact on communities, nature and landscape, and the environment – to be pushed aside.
- local people will have to rely on a development plan to protect what they treasure and shape where development should go. Yet only some local authorities have development plans in place and many local authorities and neighbourhood groups do not have the resources and specialist skills to create plans that genuinely integrate social, environmental and economic considerations. If there is no up to date development plan, planning applications will automatically get consent.

Fiona Reynolds concluded: "The National Trust shares the Government's commitment to localism but it has got the changes to planning wrong. We urge a rethink of the NPPF before we throw the baby out with the bathwater."

To coincide with the Government's consultation the Trust is today launching a campaign to show what people value about their local places and the importance of strong planning principles.

A twitter feed will ask people to tweet their views with #NTlocal to build up a national picture. ■



Cartoon courtesy Rob Cowan taken from his new book *Plandemonium* which is available from www.streetwiseexpress.com and supported by Francis Taylor Building chambers. ©2010 Rob Cowan