



Report of the Chief Planning Officer

CITY PLANS PANEL

Date: 16th April 2015

Subject: UPDATE REPORT ON CHANGES TO NATIONAL PLANNING LEGISLATION

Electoral Wards Affected:

ALL

No

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: Members are asked to note the contents of this update report.

INTRODUCTION:

- 1.1 This report is brought to City Plans Panel for information to update members of recent changes to national planning legislation which have been made and which were mainly announced in a written statement by the Secretary of State to the House of Commons on 25th March, just before the end of the Parliamentary session.
- 1.2 The changes affect a number of main areas and fall into the following categories;
 - Sustainable urban drainage (SuDS)
 - Permitted Development & Use Classes
 - Development Management Procedure Order
 - Housing Standards
 - National Planning Policy Guidance

Each of these will be taken in turn and a summary of the main changes given in the following sections.

Sustainable Urban Drainage (SuDS)

- 2.1 After prolonged consideration the Government has decided that this topic will be dealt with through the planning system from 6th April 2015. National planning policy guidance on the website has been updated to reflect this change and the Lead Local Flood Authority (LLFA) has become a statutory consultee on all major applications from 15th April.
- 2.2 Sustainable urban drainage systems are designed to control surface water run off close to where it falls and mimic natural drainage as closely as possible to reduce the causes and impacts of flooding, remove pollutants from urban run-off at source and combine water management with green space to give benefits for amenity, recreation and wildlife. Whether a sustainable drainage system should be considered will depend on the proposed development and its location. New development should only be considered appropriate in areas at risk of flooding if priority has been given to the use of sustainable drainage systems. When considering major development the guidance is that sustainable drainage systems should be provided unless demonstrated to be inappropriate. Generally the aim should be to discharge the surface water run off as high up the following hierarchy of drainage options as reasonably practicable;
- into the ground (infiltration);
to a surface water body;
to a surface water sewer, highway drain, or another drainage system;
to a combined sewer.
- 2.3 SuDS becomes a material consideration as a result and is likely to result in a change to the way that developments are designed with greater discussion at pre application stage and appropriate details submitted at outline and detailed stage. Planning conditions will be used to ensure effective systems are provided as part of developments and then subsequently maintained in the future.

Permitted Development and Use Classes Order

- 3.1 The Town and Country Planning (General Permitted Development) Order has been consolidated and a new 2015 Order published which comes into force on 15th April and revokes 24 previous Orders and Amendments.
- 3.2 The new consolidated Order is 162 pages long and is complex as it now contains 19 Parts in relation to permitted development rights with classes within each. For example in Part 1 – Development within the curtilage of a dwelling house there are 8 classes covering different aspects. The most complicated section is probably Part 3 which covers Change of Use where there are now Classes A to V (22 in total).
- 3.3 The main changes introduced are as follows;
- Requirement for any proposal for a betting shop or pay day loan shop to require planning permission.
 - Greater flexibility introduced to allow change of use between shops and financial and professional services, allowing the change of such uses to restaurant or leisure use, and allowing retailers to adapt their facilities to support click and collect.
 - Increasing ability to allow change of uses from some business uses to residential. This includes casinos, amusement arcades, and storage and distribution uses.

- The previously time limited rights for extensions to non-domestic premises (e.g offices, shops, industrial buildings and schools) have been made permanent.
 - The provision to erect larger single storey domestic extensions has been prolonged for a further 3 years from 1st May 2016 to 1st May 2019.
 - The introduction of a new right for temporary use of building and land for commercial film making for up to 9 months in any 27 month period.
 - A new permitted development right for the installation of solar PV panels with a generating capacity of up to 1 megawatt on the roofs of non-domestic buildings (not on listed buildings or on a roofslope in a conservation area facing the road)
- 3.4 In the written statement to Parliament the Secretary of State confirmed that the government will further consider the case for extending the office to residential pd rights – at present they remain unchanged and are temporary up to 30th May 2016.
- 3.5 There has been a further increase in the use of the prior approval process as a result of the changes and there are now 24 prior approval provisions within the Consolidated Order where the works or change is permitted development but the applicant needs to submit some details to the Local Planning Authority for prior approval before proceeding.
- 3.6 The introduction of the need for planning permission for betting office and pay day loan shops is welcomed and was a measure the Council supported strongly and lobbied for.
- 3.7 Many of the other changes, previously raised through the Technical Consultation last summer, were opposed by the Council.
- 3.8 The widening of the pd right for shops to change to A2 uses (financial and professional services) without any prior approval process and visa versa gives additional flexibility but will lead to concerns about the greater freedoms given to certain uses (eg letting agents) and the possible groupings of uses and the impacts on main shopping frontages in centres.
- 3.9 The Use Classes Order has been amended from 15th April 2015 to make it clear that betting offices and pay day loan shops are added to the list of uses excluded from the specified classes (i.e they are “sui generis”). Within the Order there is also a detailed definition of a pay day loan shop.

Development Management Procedure Order

- 4.1 The Town and Country Planning (Development Management Procedure) Order 2015 comes into force on 15th April 2015 and consolidates the 2010 Order and the 15 subsequent amending instruments. There are a number of changes of note;
- A requirement to notice an infrastructure manager when any development is within 10 metres of relevant railway land and to make that clear on site notices and publicity
 - The introduction of a deemed discharge procedure for planning conditions where no decision has been made by the Local Planning Authority and there is no

agreement in place between the LPA and the applicant to go beyond the 8 weeks set out in the Order within which the decision should be made

- The introduction of a requirement that any planning condition that an LPA imposes requiring that a particular matter is dealt with before development starts should provide a reason for its imposition in the notice of decision.
- Amendments to the consultation requirements which should be carried out before the grant of planning permission (reflecting the introduction of SuDS into the planning process and other changes).

4.2 The most significant change consists of the introduction of the “deemed discharge” provision for planning conditions. Some clarification has been sought from CLG about the implementation of this. Within the Order however there are specified exclusions to this provision so it will not apply to the following situations;

- Where the LPA has given notice of their decision
- Where the applicant has not submitted the “deemed discharge notice”
- Where the applicant agrees in writing it does not apply
- Where an extension of time has been agreed between the parties in writing
- EIA development
- Flooding
- Contaminated land
- Archaeology (investigation of potential)
- Highways (access between development and highway or requires Section 278)
- Reserved matters
- Enterprise Zone
- Where it requires a Planning Obligation to be entered into

4.3 In those situations where it does apply and no decision has been given and the correct procedure has been followed then the applicant would be entitled to proceed with the development in accordance with the details submitted but not determined.

4.4 At the 7th April the service was dealing with a total of 328 outstanding condition discharge applications – some of which include multiple conditions. The introduction of this measure will involve some reappraisal of priorities and consideration of the adequacy of existing resources to deal with this additional pressure.

Housing Standards

5.1 The Government is introducing a new approach for the setting of technical standards for new housing. This rationalises the many different existing standards into a simpler system. The new system will comprise new additional optional Building Regulations on water and access and a new national space standard and will complement the existing set of Building Regulations, which are mandatory. The Code for Sustainable Homes has been withdrawn. New Building Regulations were issued at the end of March to bring in the changes and involve the optional regulations set out above and a new Part Q which will, introduce a new mandatory security requirement for windows and doors for new dwellings (including those formed in converted buildings) which will come into effect on 1st October 2015. The new national space standard has not been incorporated into the Building Regulations but is part of the government’s new national planning policy on the setting of technical standards for new dwellings and should be taken into account in applying the NPPF in both plan making and decision taking.

- 5.2 The written statement by the Secretary of State sets out transitional requirements. The government's policy is that until 30th September 2015 planning permissions should not be granted requiring compliance with any technical housing standards other than those where LPAs have existing policies on access, internal space or water efficiency in Local or neighbourhood plans. From 1st October 2015 decision takers should only require compliance with the new national technical standards where there is a relevant Local Plan policy. The optional new national technical standards should only be required through any new Local Plan policies if they address a clearly evidenced need and where the impact on viability has been considered in accordance with the NPPF and Planning Guidance. Neighbourhood Plans should not be used to apply the new national technical standards.

National Planning Policy Guidance

- 6.1 NPPG sits beneath the NPPF and is a web based resource. Significant changes have been made recently to the content to reflect the content of the ministerial written statement and changes made to the national planning regime outlined above and additional guidance to clarify the intent of recently introduced changes.

- 6.2 Of particular note are the following matters;

- (a) EIA Screening Thresholds changed from 6th April 2015 – the screening thresholds have been raised for when an Environmental Statement may be required to be submitted because development is regarded as EIA development. For urban development projects (the most usual category in Leeds) the starting point for assessment now is greater than 150 dwellings, more than 1 hectare of urban development or the overall area exceeds 5 hectares.
- (b) Change of use of agricultural to dwellings – this is included in the General Permitted Development Order and is subject to a prior approval procedure. A significant number have been refused across the country due to concerns about location and sustainability. Clarification has now been provided in the NPPG. The 3 dwelling limit does not include existing residential properties within the established agricultural unit unless they were created by the use of the pd right on a previous occasion. The pd right does not apply a test in relation to sustainability of location and this is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead the LPA can consider whether the location and siting of the building would make it impractical or undesirable to change use to a house but the starting point should be that the pd right grants planning permission subject to the prior approval requirements. Impracticable means “not be sensible or realistic” and undesirable reflects that it would be “harmful or objectionable”.
- (c) Vacant Building Credit - the text has been changed to give some clarity on this policy which was loosely worded. The new text states “ National policy provides an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is brought back into lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the LPA calculates any affordable housing contribution which will be sought. Affordable housing contributions may be required for any increase in floorspace. “ Additional text has been added around the process and what vacant means to clarify the government's intentions with this policy and how the vacant building credit should be applied. Legal advice has been sought on the

new wording and what weight can be given to the vacant building credit compared to Development Plan policies recognising that the introduction of the policy has been challenged by some LPAs in the High Court.