



# Property and Planning Law Bulletin Issue 25

In this edition we look at:

- Draft National Planning Policy Framework published
- Section 106 Obligations: The devil is in the detail
- Planning on a Top Ranking

## Draft National Planning Policy Framework published.

On 25 July 2011 the Government published the first draft of the long-awaited National Planning Policy Framework.

This document is intended to replace all current Planning Policy Statements and Planning Policy Guidance (PPSs and PPGs), which means around 1300 pages of national planning policy are intended to be replaced by a single 58 page document.

The “presumption in favour of sustainable development” is central to the NPPF, and the document expressly says that Local Planning Authorities should “assume the default answer to development proposals is ‘yes’, except where this would compromise the key sustainable development principles”.

There is some concern, however, that the difficulty of interpreting terms such as “sustainability” will result in appeals and judicial review becoming more commonplace.

Designations such as the Green Belt, Areas of Outstanding Natural Beauty, and Sites of Special Scientific Interest are intended to be maintained, as is a commitment to preserve heritage assets.



The Government is consulting on the draft document, and comments must be submitted by 17 October 2011.

## *Section 106 Obligations: The devil is in the detail*

It is common for the commercial pressure to obtain a planning permission and release value in a site to result in developers entering into a Section 106 Obligation which it believes is excessive or unjustified, with the intention of obtaining planning permission but to try to renegotiate the Obligation at a later stage.

LPA's have in recent years been more amenable to renegotiating agreements on viability grounds where the Obligation was originally entered into in a happier financial climate. It was also announced in the Budget earlier this year that the Government wished LPA's to reconsider existing Section 106 Obligations to stop developments stalling in the recession.

However developers should be aware that Section 106 Obligations are binding contracts, as the recent case of *R(on the Application of Millgate Developments Ltd) v Wokingham Borough Council [2011]* has highlighted.

In this case the original application was refused, but during the appeal process the developer gave a unilateral Section 106 Undertaking to Wokingham Borough Council which would become binding if planning permission was granted.

Planning permission was granted on appeal, with the Planning Inspector concluding the Section 106 payment of around £170,000 was not justified. However Wokingham Borough Council sought to enforce the Undertaking anyway on the basis that it was a binding contract as planning permission had been granted. The High Court agreed: the Section 106 Obligation was a binding contract, and Wokingham could sue for the unpaid debt.

A further case this year, *R(Renaissance Habitat Ltd) v West Berkshire District Council [2011]* has also emphasised the contractual nature of Section 106 Obligations.

In this case the developer entered into a Section 106 Agreement agreeing to pay contributions calculated in accordance with formulae set out in the West Berkshire Council's planning policy in a Supplementary Planning Document (SPD). Following the grant of planning permission the formulae were revised by

the Council following criticism from Planning Inspectors. This meant that a substantially smaller amount would be payable for the same development if it were applied for again. As the planning permission had already been implemented, the developer decided to only pay funds in line with the revised formulae.

West Berkshire Council sued for the unpaid debt, and the High Court agreed that it was entitled to do so.

These cases highlight the importance of ensuring any Section 106 Obligation is drafted so as to protect developers against these types of issues.

If you require any advice about Section 106 Obligations, Blandy & Blandy LLP's Planning team would be happy to help.

## *Planning on a Top Ranking*

We are delighted to announce that the firm's Planning and Environment team has been acknowledged as one of the top 50 planning and environmental teams in the UK by Planning magazine.

Planning magazine is the market-leading title for the industry and has been running for almost 40 years. The rankings recognise those practices in the planning world and Blandy & Blandy is included as one of the top firms in this sector.

Blandy & Blandy's Planning team is one of the largest in the Thames Valley and is top rated in independent legal directories for providing strategic advice to some of the largest institutions in the Thames Valley. The team advises on a wide range of planning and development issues including strategic planning, planning agreements, highways law, enforcement, infrastructure projects, advice to local authorities, environmental matters, and conservation issues.

The team is headed by Karen Jones, who the Legal 500 – an independent guide to the legal profession – states is '*vastly experienced*' and Simon Dimmick, who has been the firm's Senior Partner since 2008 and is recognised by the guides as one of the leading planning law experts in the South East.



Karen Jones commented:

*“We are delighted that our Planning and Environment team has been recognised as one of the leaders in the planning world having been recognised by Planning magazine. It is a fantastic achievement to be recognised as a firm which has the breadth and quality of skills to achieve this ranking and our inclusion is testament to the quality and skills of our people and the excellent client-base we are privileged to have.”*

Blandy & Blandy LLP does not assume legal responsibility for the accuracy of any particular statement contained in this bulletin. In the case of specific problems we recommend that professional advice be sought.

## *Contact us*

We hope you found this edition of interest. If you would like to discuss any of the matters raised in more detail or if you have any other property related queries, please contact the following:

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