



# Property and Planning Law Bulletin Issue 27

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## *Draft NPPF a 'material consideration'*

In the July 2011 issue of the Property and Planning Bulletin we advised that a draft National Planning Policy Framework ("NPPF") had been published by the Government and is open for comment until 17 October.

There has been much discussion in the press about the possible consequences of the NPPF if introduced in its current form and in particular, concerns about the presumption in favour of sustainable development and perceived concerns about encroachment into the Green Belt. In future issues of the Bulletin we will update you on some of the key policy changes in the emerging NPPF.

The Planning Inspectorate has this month issued guidance to its Inspectors on the relevance of the draft NPPF. Although the draft is only a consultation document at this stage, and is therefore subject to potential amendment following consideration of responses, the Inspectorate advises that it is capable of being a material consideration in



planning appeals which are currently underway. However, even if it is a material consideration, the amount of weight to be given to the proposed draft NPPF will be a matter for the decision maker in each individual case. Parties involved in appeals which are currently underway may therefore wish to make comments on the amount of weight they consider the consultation draft of the NPPF should be given.

The Guidance to Inspectors states that it can be assumed that all new appeals being lodged will address the consultation draft NPPF and the weight the parties consider it should be given.

The Inspectorate has also however advised Inspectors that in the case of appeals already underway before the consultation draft NPPF was published, Inspectors should not refuse to accept further comments from the parties (even if out of time) on the relevance of the emerging NPPF and the weight it should be afforded.

If you would like further advice on the consultation draft NPPF and how it may impact upon your interests then please contact the Planning team at Blandy and Blandy on 0118 951 6923

### *Important Changes Being Introduced In The Town and Country Planning (Environmental Impact Assessment) Regulations 2011*

The EIA Directive requires that an environmental impact assessment (EIA) is carried out before development consent is granted for certain projects which are 'likely to have a significant effect on the environment'. The legislation sets out examples of projects which may have such an effect including industrial estate development projects and urban development projects (e.g. housing projects, shopping centres, and car parks). The EIA Directive was implemented in England and Wales primarily by the Town and Country Planning (Environmental Impact Assessment) Regulations 1999. The 2011 Regulations are consolidating regulations, but also make some changes.

Before submitting a planning application, potential applicants can apply to the local planning authority for an opinion on whether a development should be subject to an EIA. This is called a screening opinion. A new duty has been placed on local planning authorities and the Secretary of State to provide reasons for all

screening decisions; this includes giving reasons when the decision states an EIA is not required. Previously local planning authorities and the Secretary of State were only required to give reasons when they were recommending an EIA be carried out.

A useful limitation has been introduced to the requirement for applications for the approval of reserved matters to be subject to the screening process. These applications now only require screening where the development in question is likely to have significant effects on the environment which were not identified at the time that the initial planning permission was granted. Where it appears to the local planning authority that the environmental information supplied to them at the initial application stage is adequate to assess the environmental effects of the development, they can simply use that information when making their decision on whether to approve the application for reserved matters.

Changes have been made to how modifications or extensions to projects are screened- any applicable screening threshold now applies to the development as a whole following modification, and not just to the change or extension in isolation.

Finally the Regulations have confirmed that a screening opinion for a Schedule 2 development (these are developments listed in Schedule 2 of the Regs which sometimes require an EIA but not always depending on their likely effect) may be requested from the Secretary of State by any person. These directions, given by the Secretary of State, may direct that a development which is below the Schedule 2 thresholds is none the less an EIA development and should be subject to an EIA.

For further details of the changes and their effect please contact The Planning Team by emailing [planning@blandy.co.uk](mailto:planning@blandy.co.uk)



## Temporary increase in small business rate relief for England extended to 30 September 2012

Small business rate relief was introduced last year for a year with effect from 1 October 2011. The relief provided for 100.0% relief for eligible business occupying premises with a rateable value of not more than £6,000.00. It also provided tapered relief from 100.0% to 0.0% for properties with a rateable value of between £6,001.00 and £12,000.00. This relief was due to expire on 30 September 2011.

The Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) Order 2011 came into effect on 3 August 2011 which had the effect of extending the temporary increase in the level of small business rate relief in England for a further year until 30 September 2012.

The temporary relief extension will come as welcome news for qualifying small businesses.

## Limitation on recovery of Service Charges in Residential Leases

In a new case, *Brent Borough Council v Shulem B Association Ltd* [2011], the High Court decided that a letter notifying tenants of estimated costs in relation to major works did not constitute a valid demand or relevant notification for the purposes of Section 20B of the Landlord and Tenant Act 1985 ("the 1985 Act").

The 1985 Act provides that within 18 months of incurring a service charge expense, a Landlord must demand it as a service charge or notify the leaseholders that they will, at a subsequent date, be required to pay this amount. If a Landlord does not comply with this, they will not be able to recover any sums incurred outside the time limit, even if that expenditure was reasonably incurred.

In the Brent Council case, the Council served their tenants with a section 20 notice of intended major works and gave details of the proportion of the estimated cost of the works. A year later, the works were completed at a total cost of around £640,000. 11 months following the works being completed, in February 2006, the Council sent the tenants a letter together with the invoice for major works. It was this letter which was central to the dispute. The letter and invoice were based on the estimated costs sent out in the original section 20 notice; the tenants were advised that actual costs were still not calculated.

It was not until December 2006 that an invoice based on actual costs was served on the tenants. The Defendant refused to pay on the basis that the demanded sum had been incurred by the Council more than 18 months before December 2006. The Council could not therefore rely on the December 2006, so it tried to rely on the February 2006 letter and invoice.

On appeal, the judge specifically referred to the fact that estimated figures in the section 20 notice were the same as those demanded following completion of the works. The judge also held that as the leases did not provide for advance payments, and the landlord had failed to serve any valid demand or notification based on “actual” cost incurred, the landlord was unable to recover any of the cost.

This case is a reminder that the area of service charge recovery is a minefield for landlords. The Council here paid a hefty penalty for what was really just a technical fault.

Landlords need to take note that if costs have been incurred on major works, but a final figure has not yet been calculated, then the demand for payment must be based on actual costs as far as they are able to be calculated. It will not matter if these are not correct as the judge in this case made it clear that it is open to landlords to correct figures at a later date. Landlords must also ensure that any service charge demand must be sent within 18 months of the cost being incurred.

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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