39 Essex CHAMBERS

PLANNING, ENVIRONMENT & PROPERTY NEWSLETTER
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INTRODUCTION

Jonathan Darby

Welcome to this week's edition of our Planning, Environment and Property newsletter, which is our final offering before we take a break for the holiday season. We are aiming to return with our next edition during the final week in August.

This week we feature an article from Katherine Barnes as to lessons from a recent local plan challenge involving our very own James Burton. We also feature the second – and final – part of Victoria Hutton's overview of the planning changes which have taken place from March-July 2020.

We hope that you all have a great remainder of the Summer!

Contents

1. INTRODUCTION
Jonathan Darby

2. LESSONS FROM A RECENT LOCAL PLAN CHALLENGE
Katherine Barnes

3. WHAT HAVE I MISSED? PART 2
Victoria Hutton

12. CONTRIBUTORS

LESSONS FROM A RECENT LOCAL PLAN CHALLENGE

Katherine Barnes

On 23 July 2020 Holgate J handed down judgment in *Keep Bourne End Green v Buckinghamshire Council* [2020 EWHC 1984 (Admin), dismissing an application under s.113 of the Planning and Compulsory Purchase Act 2004 for statutory review of the Wycombe District Local Plan ("Plan") brought by a local residents' group who objected to the release of land from the Green Belt in order to meet housing need.

The grounds of challenge were broadly focussed around two issues, both of which are of obvious importance to plan-making and local plan examinations in general. These issues were: (1) whether the 2016-based household projections produced by the Office for National Statistics ("ONS") should have been taken into account in the assessment of the "objectively assessed housing need" ("OAHN") for the district; and, (2) the identification of "exceptional circumstances" to justify the release of green belt land through a review of green belt boundaries.

Use of the most up-to-date evidence (the 2016 ONS projections)

In respect of (1), the Claimant's arguments centred on the fact that the Inspector had continued to rely on the 2014 ONS projections as the starting point for the OAHN figure rather than the 2016 ONS projections which were published shortly before the close of the examination hearings and which showed a material reduction in the projected growth in the number of households (a reduction of c.42%). The Inspector's justification in this regard was as follows:

> *"there are some doubts about the reliability of the 2016-projections and their reliability for plan making. Notwithstanding this, the PPG on HEDNA makes clear that the household projections are only the starting point for establishing a housing requirement figure. For these reasons and having regard to the importance of boosting the supply, it would be unjustified to revisit the Plan's evidence base and delay adoption of the Plan in the light of the 2016-based projections."*

In addition, the Claimant relied on the fact that the above approach of the Inspector was inconsistent with that taken by the Inspector examining the Guildford Borough Local Plan (there the local authority had revised its OAHN based on the 2016 ONS projections and the Inspector had found this to be sound).

The court rejected the Claimants arguments on this issue, finding that the NPPF advice that local plans should be based on up-to-date evidence, and the indication in the NPPG that this applied "wherever possible", did not mean that up-to-date evidence had to be relied on unless it was "impossible". Rather, the expectation was that the most recent information would be used, but not if the change affecting housing would not be meaningful. Further, this was a question of planning judgment which could only be challenged on an irrationality basis.

The court also considered legitimate the Inspector's concerns about the reliability of the 2016 ONS projections, finding that the Government's Technical Consultation on these figures had identified issues with the use of the 2016 ONS projections which logically applied to transitional plans as well as "new" plans developed in accordance with the standard methodology.

As for the approach of the Guildford Inspector, the court found that he did not actually consider for himself whether the 2016 ONS projections should be used or whether a "meaningful change" was involved. Rather, the Inspector considered in the round whether the OAHN figures were sound. As such, the two cases, Guildford and Wycombe, were not "like" with the result that the consistency principle did not bite.

Green Belt land release
The Claimant also argued that "exceptional circumstances" test which governs the release of land from the Green Belt had been misunderstood, principally because housing need alone could not meet this threshold.

The court rejected this argument with reference to *Compton Parish Council v Guildford Borough Council* [2020] JPL 661 and *Calverton Parish Council v Nottingham City Council* [2015] EWHC 1078, noting that that which constitutes "exceptional circumstances" in a particular case depends on the planning judgment of the decision-maker. Moreover, the court confirmed that there is no requirement for release of land in the Green Belt to be a last resort or that, to justify the release of land, the intended development had to deliver any benefits (such as infrastructure) beyond housing.

Comment
The decision is therefore a reminder of the broad discretion enjoyed by decision-makers when it comes to local plans, and therefore the importance of objectors engaging as fully as possible with the local plan process at any early stage.

More specifically with reference to issue (1), it is hard to take issue with the court's interpretation of the relevant guidance, finding as it did that "the NPPG contains an exhortation to use the latest available information, but not if the change affecting housing would not be meaningful". However, while the Inspector's reasoning in this respect not ultimately have been unlawful, it certainly could have been clearer. In particular, although the Council informed the Inspector in response to a question that the 2016 ONS projections did not constitute a "meaningful change in the housing situation in the district" (and a main modification was recommended recording that position, which was accepted by the Inspector), the reasons given in the formal Inspector's report did not address why the new projections did not amount to a meaningful change and instead identified other reasons why it was appropriate not to rely on them. Arguably, therefore, there was a departure from guidance without proper reasons given so doing so. Even if there was not, however, those involved in the local plan process would do well to ensure justifications follow as closely as possible the relevant policy test. Needless to say, sometimes that is easier said than done.

WHAT HAVE I MISSED? PART 2

Victoria Hutton

This 'update' is the second half of a light touch overview of the planning changes which have taken place from March-July 2020, many of which are directly related to the impacts of Covid-19. The first half was contained in our newsletter a fortnight ago. This second half of the update covers: CIL and s106, Permitted Development Rights, Changes of Use, Construction Working Hours, JR and Statutory Challenges and Housing Land Supply and Coronavirus. It is up to date as of 28 July 2020.

Community Infrastructure Levy and Planning Obligations
As was heralded in guidance dated 13 May 2020[1] the Government has now laid new regulations before parliament (Community Infrastructure Levy (Coronavirus) (Amendment) (England) Regulations 2020).[2] The Regulations were laid on 30 June 2020 and are due to come into force later this summer. Their effect will be to add new Regulations 72A-C to the Community Infrastructure Levy Regulations 2020. These will assist small and medium sized developers (annual turnover not exceeding £45million) in that they allow collecting authorities to, in certain circumstances: the defer CIL payments, temporarily disapply late payment interest and surcharge payments and pay back interest already charged where they consider it

1 'Coronavirus (COVID-19): Community Infrastructure Levy guidance'.
2 Coronavirus (Covid-19): Community Infrastructure Levy Guidance: https://www.gov.uk/guidance/coronavirus-covid-19-community-infrastructure-levy-guidance

appropriate to do so. These are intended to be temporary measures which will be removed 'when the economic situation has recovered'.[3] Guidance which will accompany the new Regulations once they come into force has been published in draft.[4]

Also of note is the Coronavirus (COVID-19): Community Infrastructure Levy guidance which encourages charging authorities to be flexible with regards to CIL in accordance with legislation which currently persists. The Guidance:

a. Encourages LPAs to take advantage of CIL regulation 69B to bring into effect a new installment policy which will allow those liable to pay CIL to pay the charge in one or more installments.

b. Encourages LPAs to use their discretion in considering what enforcement action is appropriate in respect of unpaid CIL;

c. Encourages LPAs to take a positive approach to their engagement with SME developers to ensure CIL liabilities do not cause undue burdens; and

d. Encourages LPAs to note the existing flexibilities they have for enforcing CIL on larger developers.

The same Guidance addresses s106 obligations. It states:

> *'There are greater flexibilities within section 106 planning obligations than CIL. Where the delivery of a planning obligation, such as a financial contribution, is triggered during this period, local authorities are encouraged to consider whether it would be appropriate to allow the developer to defer delivery.*
>
> *Deferral periods could be time-limited, or linked to the government's wider legislative approach and the lifting of CIL easements (although in this case we would encourage the use of a back-stop date). Deeds of variation can be used to agree these changes. Local authorities should take a pragmatic and proportionate approach to the enforcement of section 106 planning obligations during this period. This should help remove barriers for developers and minimise the stalling of sites.'*

Permitted Development

Since March a dizzying number of permitted development rights have been tabled some of which have now come into force. There have been five new sets of regulations (applying to England). I briefly cover each below, starting with those laid most recently.

On 21 July 2020 the Government laid two sets of amending regulations before Parliament:

a. The Town and Country Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2020/755; and

b. The Town and Country Planning (General Permitted Development) (England) (Amendment) (No.3) Order 2020/756

Each of these is due to come into force on 31 August 2020.

SI/2020/755 introduces a new PD right into Part 1 of Schedule 2 (Class AA) which permits the enlargement of a dwellinghouse by the construction of new storeys on top of the highest existing storey of the dwellinghouse. If the dwellinghouse is two or more storeys tall then two storeys may be added. If the dwellinghouse is a bungalow then one storey may be added. The new right is subject to a number of limitations including relating to the building's height and its height in relation to neighboring properties (if semi-detached or terraced). Further, prior approval is required in relation to such matters as: impact on amenity, external appearance and impact on protected views.

3 Coronavirus (Covid-19): Community Infrastructure Levy Guidance: https://www.gov.uk/guidance/coronavirus-covid-19-community-infrastructure-levy-guidance

4 https://www.gov.uk/guidance/coronavirus-covid-19-community-infrastructure-levy-guidance#draft-guidance-on-the-community-infrastructure-levy-coronavirus-amendment-england-regulations-2020

SI/2020/755 also amends part 20 of Schedule 2 of the GDPO to add four more permitted development rights (Classes AA, AB, AC and AD). These allow for the construction of new flats on top of the highest storey of certain types of building:

a. Class AA permits construction of up to two new storeys of flats on top of detached buildings in commercial or mixed use, including where there is an element of residential use;
b. Class AB permits the construction of new flats on top of terrace buildings (including semi-detached buildings) in commercial or mixed (including residential) use;
c. Class AC permits the construction of new flats on top of terraced dwellinghouses (including semi-detached houses). Two storeys may be added to buildings of two or more storeys, one storey may be added to bungalows;
d. Class AD allows the construction of new flats on top of detached dwellinghouses. Again, two storeys may be added where the building is two or more storeys tall or one additional storey on a bungalow.

These four rights are subject to limitations and conditions and require prior approval from the LPA including with regards to transport and highways impacts, external appearance, adequate natural light, amenity impacts, and impact on protected views.

SI/2020/756 introduces a new PD right into Part 20 of Schedule 2 (Class ZA) which allows for the demolition of a single detached building in existence on 12 March 2020 that was used for office, research and development or industrial processes, or as a free-standing purpose-built block of flats, and its replacement by an individual block of flats or a single detached dwellinghouse within the footprint of the old building. Limitations include that the old building should have a footprint of no larger than 1,000msq and be no higher than 18m. The old building must have been built before 1990 and have been vacant for at least six months before the date of the application for prior approval. The PD right grans permission for works for the construction of the new building which can be up to two storeys higher than the old building with a maximum overall height of 18m. This right is also subject to prior approval on matters such as: transport and highways, contamination, flooding, design, external appearance, adequate natural light, amenity, noise from commercial uses on the new occupiers, impact on business and new residents, heritage and archaeology, method of demolition, landscaping and impact on protected views.

On 25 June 2020 the Government introduced the Town and Country **Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020** (SI 2020/632). The amendments to PD rights come into force on 1 August.

The headline points are:

a. The definitions of ‘dwelling house’ and ‘flat’ in article 2 of the GPDO 2015 are amended (by reg.3);
b. An applicant and authority are able to agree a longer period for the determination of prior approval applications where the time period is specified in schedule 2 GDPO 2015 or are subject to an 8 week time period (reg.4);
c. Development permitted by Class A of Part 1 of Schedule 2 to the GDPO 2015 are subject to a fee (reg.5);
d. Class B of Part 1 Schedule 2 GDPO 2015 is amended to ‘elucidate what is not considered to be enlargement’ and also on the meaning of a ‘rear or side extension’ (reg.6)
e. A number of conditions of prior approval are amended to include the consideration of the provision of adequate natural light to all habitable rooms. This applies to:
    i. Class M of Part 3 of Schedule 2 –change of use from retail, hot food take-away

or specified sui generis uses to a dwellinghouse (reg.13);

ii. Class N of Part 3 of Schedule 2 – change of use from specified sui generis uses to a dwellinghouse (reg.14)

iii. Class O of Part 3 of Schedule 2 – change of use from office to dwellinghouse (reg.15)

iv. Class PA of Part 3 of Schedule 2 – change of use from light industrial use to dwellinghouse (reg.16)

v. Class Q of Part 3 of Schedule 2 – change of use from agricultural building to dwellinghouse (reg.17)

f. The prior approval procedure under paragraph W of Part 3 of Schedule 2 is amended relating to classes M, N, O, PA and Q. Applicants will need to submit floor plans indicating dimensions and proposed use of each room, the position and dimension of windows, doors and walls and elevations (reg.18). Local Planning Authorities must refuse prior approval if adequate natural light is not provided in all habitable rooms (reg.12).

g. A definition for 'habitable rooms' is inserted into paragraph X of Part 3 of Schedule 2 (reg.19).

h. A new time-limited right has been added to the GDPO 2015 (Class BA of Part 4 Schedule 2) between 1 July 2020 and 31 December 2020 an additional period of 28 days for a temporary use of land or an additional 14 days for the holding of a market or motor car and motorcycle racing (reg.20)

i. A new time-limited right for the holding of local markets by or on behalf of local authorities until 23 March 2021 has been introduced – Class BA, Part 12 of Schedule 2 (reg.21)

j. A new PD right for the construction of additional dwellinghouses as part of an extension (up to 2 storeys) on buildings which are existing purpose-built detached blocks of flats. The right includes necessary ancillary development (e.g. structural changes). Limitations include a restriction to buildings of 3 storeys or more in height and the extended building must not be taller than 30 metres. The height of the extension cannot be more than seven metres and any individual storey must not be more than 3 metres. The PD right is subject to prior approval. Further, the age of the building is important. It does not apply if the building was constructed before 1 July 1948 or after 5 March 2018. Any dwellinghouses constructed under this PD right will have its ability to use a number of other PD rights limited:

    vi. Permitted development rights applying to dwellinghouses built under part 20 to schedule 2 GDPO 2015 are limited through some of these new regulations. The following PD rights do not apply to part 20 dwellinghouses:

        1. Development permitted by Class A of Part 1 of Schedule 2 (reg.5);
        2. Class B of Part 1 of Schedule 2 (reg.6)
        3. Classes C, D, E, F, G and H of part 1 of Schedule 2 (regs 7-12)

k. Some amendment is made to the Town and Country Planning (Compensation)(England) Regulations 2015 (SI 2015/598) (reg.26).

The **Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020/330** allows for a time limited (until 23 March 2021) change of use to the provision of takeaway food from uses falling within:

a. Class A3 (Use Classes Order 1987)

b. Class A4 (Use Classes Order 1987)

c. A mixed use for any purpose within Class A3 and A4

d. Class AA of Part 3 of Schedule 2 to the GDPO

The new temporary right is found in Class DA of Part 4 of Schedule 2.

The **Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020/412** inserts new part 12A into Schedule 2 of the GDPO. This allows local authorities and certain health service bodies to carry out development for the purposes of:

a. Preventing an emergency;

b. Reducing, controlling or mitigating the effects of an emergency; or

c. Taking other action in connection with an emergency.

The new rights are subject to various conditions.

Changes of use

As of 1 September 2020 the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020/757 will come into force (in England only). In doing so they will amend the Use Classes Order, providing for new use classes: Class E (commercial, business and service), Class F.1 (learning and non-residential institutions) and class F.2 (local community). Class E subsumes previous use classes: A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes), B1 (business). Classes F.1 and F.2 subsume some of the previous use classes which were specified as D1 (non-residential institutions) and class D2 (assembly and leisure).

The new Class E is defined as:

Use, or part use, for all or any of the following purposes—

a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,

b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,

c) for the provision of the following kinds of services principally to visiting members of the public—

(i) financial services,

(ii) professional services (other than health or medical services), or

(iii) any other services which it is appropriate to provide in a commercial, business or service locality,

d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,

e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,

f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,

g) for—

(i) an office to carry out any operational or administrative functions,

(ii) the research and development of products or processes, or

(iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class F.1 (Learning and non-residential institutions) is defined as:

'Any use not including residential use—

a) for the provision of education,

b) for the display of works of art (otherwise than for sale or hire),

c) as a museum,

d) as a public library or public reading room,

e) as a public hall or exhibition hall,

f) for, or in connection with, public worship or religious instruction,

g) as a law court.'

Class F.2 Local community is defined as:

'Use as—

a) a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where—
   (i) the shop's premises cover an area not more than 280 metres square, and
   (ii) there is no other such facility within 1000 metre radius of the shop's location,
b) a hall or meeting place for the principal use of the local community,
c) an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms,
d) an indoor or outdoor swimming pool or skating rink.'

Regulation 7 provides that:

'For the purposes of the Use Classes Order, if a building or other land is situated in England, and is being used for the purpose of one of the following classes which were specified in Part A or B of the Schedule to that Order on 31st August 2020, as –

a) Class A1 (Shops)

b) Class A2 (Financial and professional services)

c) Class A3 (Restaurants and cafes), or

d) Class B1 (Business),

that building or other land is to be treated, on or after 1st September 2020, as if it is being used for a purpose specified within Class E (Commercial, business and service) in Schedule 2 to that Order.'

Some former use classes will be 'removed' and become *sui generis*. The list of new *sui generis* uses is:

'p) as a public house, wine bar, or drinking establishment,

q) as a drinking establishment with expanded food provision,

r) as a hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises,

s) as a venue for live music performance,

t) a cinema,

u) a concert hall,

v) a bingo hall,

x) a dance hall.'

There are transitional provisions which mean that the use classes as currently exist will remain relevant in England as well as Wales, where they are un-amended. The following transitional provisions will apply until 31 July 20201. Regulation 3(2) provides that references in the GDPO are to be construed as pertaining to the old use classes. Regulation 3(3) provides for references to uses or use classes in prior approval applications, or article 4 directions made under the GDPO to be construed as references to previous use classes. Regulation 4 provides that relevant planning applications which are submitted prior to 1 September 2020 are to be determined by reference to the previous use classes.

The purpose of these amendments was set out by Robert Jenrick in his 'housing and planning update' on 30 June 2020. He heralded the changes stating that the Government would create a new broad category entitled 'commercial, business and service' uses which is intended to allow greater freedom for businesses to adapt. It appears that some uses will be excluded from benefiting from this new use class, the update states:

'In undertaking this reform, I recognise that there are certain uses which give rise to important local considerations; for example to ensure local pubs and theatres are protected, or to prevent the proliferation of hot food takeaways or betting shops. It will remain the case that changes to and from these uses will still be subject to full consideration through the planning application process. Heavy industrial uses will also require local consideration through the planning process.'

Construction Working Hours

On 13 May 2020 Lord Greenhalgh (Minister for State for Building Safety and Communities) made a written ministerial statement ('WMS') to 'make clear that, with immediate effect, local planning authorities should take a swift and positive approach to requests from developers and site operators for greater flexibility around construction site working hours. This is to ensure that, where appropriate, planning conditions are not a barrier to allowing developers the flexibility necessary to facilitate the safe operation of construction sites during the response to the COVID-19 pandemic and to proceed at pace with work otherwise delayed as a result of COVID-19.'

The WMS further stated:

> *'…local authorities should not refuse requests to extend working hours until 9pm, Monday to Saturday without very compelling reasons for rejection. In some cases, such as in areas without residential properties, extending working hours beyond this, including allowing 24 hour working where appropriate, may be justified. In all cases, sympathetic site management should be demonstrated to mitigate local impacts and local authorities should show best endeavours to facilitate such requests.*
>
> *Applications should only be refused where there are very compelling reasons such as significant impact on neighbouring businesses or uses which are particularly sensitive to noise, dust or vibration, which cannot be overcome through other mitigation, or where impacts on densely populated areas would be unreasonable.*
>
> *Any temporary changes to construction working hours conditions granted by local planning authorities should not extend beyond 13 May 2021.'* [5]

Section 16 of the **Business and Planning Act 2020** (now in force) introduces a fast-track planning process for applicants to apply for the temporary variation of planning conditions and documents approved under planning conditions which regulate construction working hours.[6] LPAs have 14 days to respond to such applications. If they do not respond, then the application is deemed to have been granted. The new sections to the Town and Country Planning Act 1990 dictate the form and content of such applications. Applications may only seek to modify conditions/restrictions in documents approved under planning applications up until 1 April 2021. The Government has published guidance which covers the modification of conditions relating to construction working hours.[7]

Judicial Review and Statutory Challenges

In short, judicial reviews and statutory challenges are being heard by virtual events through the use of either Microsoft Teams or Google Meets. Current Guidance can be found on the Judiciary. UK website.[8] In my experience, Judges are keen to ensure that hearings run smoothly through requiring core hearing bundles which contain only the pages of documents advocates wish to refer to. Some hearings in both the High Court and the Court of Appeal have been delayed due to disruption caused by Covid19.

Housing Land Supply and Coronavirus

At the time of writing the Government has not issued guidance as to how Covid 19 is to be treated in calculating housing land supply. However, the issue has been addressed by Inspectors and also the Secretary of State recent decisions.

5 https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2020-05-13/HLWS230/

6 By adding a new 74B-D into the Town and Country Planning Act 1990

7 https://www.gov.uk/government/publications/construction-working-hours-draft-guidance/draft-guidance-construction-site-hours-deemed-consent

8 https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/#civilguidance

Of note is an appeal decision by Inspector Christina Downes dated 9 April 2020 in which she dismissed an appeal by Welbeck Strategic Land II LLP against the refusal of planning permission by Wokingham Borough Council for 118 dwellings and associated landscaping at land north of Nine Mile Ride, Finchampstead, Berkshire (Ref: 3238048). Following the inquiry into that appeal the Inspector asked the main parties whether they wished to comment on the implications of Covid19 on their evidence on housing delivery. Key parts of the decision letter state:

> *'109. The Covid-19 pandemic is likely to have implications for the housebuilding industry as with other sectors of the economy. The evidence indicates that a number of developers are temporarily closing their construction sites to protect employee and customer welfare. For those remaining open, the lockdown will impact on the availability of support services. Customer confidence is also likely to be reduced with a consequent effect on the buying and selling of property.*
>
> *110. The Appellant has concluded that the effects would be felt for a 3 to 6 month period, which does not seem unreasonable. On that basis the conclusion is that a further 168 dwellings should be removed from the trajectory to take these factors into account. Whilst it is contended that this is an optimistic assessment, it is equally possible that a bounce back will occur once the crisis ends. Indeed, it is reasonable to surmise that housebuilders and their suppliers will be keen to rectify losses if it is possible to do so.*
>
> *111. At this stage the economic effects of Covid-19 cannot be known. However, even if all of the impacts suggested by the Appellant are accepted, the Council would still be able to demonstrate about 5.2 years supply of deliverable sites.'*

On 25 June 2020 the Secretary of State decided the recovered appeal by Wavendon Properties Ltd at land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands (ref: 3169314).[9] Before issuing his decision the Secretary of State wrote to the main parties and invited them to comment on the Rectory Farm appeal decision. The Secretary of State's decision stated:

> *16. The Secretary of State has noted that, in their correspondence of 26 May 2020 and 12 June 2020, the appellant has referred to the potential impact of the current Covid-19 pandemic on house building. He has also noted that the appellant submitted a document with their correspondence of 26 May 2020 issued by the Council entitled 'Rectory Farm decision and the Implications for Five-Year Housing Land Supply', published on 29 April 2020. The Secretary of State considers that, as the quantification in that document is based on the appellant's modelling using a past event and they have not put forward specific evidence about the deliverability of individual sites, it does not affect his judgement in this case.*

The Newport Road decision is also notable for the comment that the Secretary of State agreed with his Inspector that 'a proforma can, in principle, provide clear evidence of a site's deliverability (DL[12] and IR[12.14]). The relevant part of the Inspector's Report stated, in relation to this issue:

> *'12.14. Dealing with the former, the Council clarified at the Inquiry that the proformas included a covering letter explaining their purposes for assessing 5 year HLS. Representatives of each site were asked to confirm or amend the Council's trajectory for each site. Although relevant boxes were not always ticked, the proformas were signed and returned with a covering email in many cases. While a SOCG or MOU could provide more information, they offer no more of a commitment to the deliverability of homes than a proforma. Therefore, I consider that a proforma can, in principle, provide clear evidence*

9 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/894813/Combined_DL_IR_R_to_C_Newport_Road_Woburn_Sands.pdf

of a site's deliverability. Additional evidence to support a proforma can also be taken into account subject to its specific content and timing….'

Aside from individual judgments on 'deliverability'[10] there have been calls by some to relax the requirement to maintain a 5 year supply of housing land. For example, Councilors from South Oxfordshire District Council wrote to MHCLG on 20 April 2020 to raise the matter with the Secretary of State.[11] The letter raised the following issues:

a. Though the planning system is functioning many staff have had to be redeployed to other functions related to Covid19;

b. It is hard for site visits to take place; and

c. Some upcoming applications require input from statutory consultees 'and with all consultees under resource pressure and communities understandably focused on the Covid response, I worry that the pressure to meet targets will significantly reduce our ability to get such developments right and open the council up to challenge from developers and residents alike.'

The letter ultimately asked for the Government:

'…to consider suspending the statutory planning targets and adjust the 5 year housing land supply requirements during the period of the Covid crisis - perhaps reviewing it on a three month rolling basis as with other aspects? Many builders in this area have stopped or adjusted work on the larger housing sites so it will be more difficult to keep up with the currently required level of delivery to achieve a five year land supply against our submitted Local Plan.'

A similar request has been made by seven councils in East Sussex, calling for the suspension of the five year housing land supply requirements and the relaxation of the housing delivery test.[12]

Some local planning authorities have launched individual planning responses to Covid 19. For example, Sefton Council has reportedly announced measures including the following:

a. Free meetings for investors and developers;

b. Free pre-application advice for schemes that 'can demonstrate…that they will bring reasonable benefits to the local economy of Sefton';

c. Refunds of planning application fees for schemes that seek a renewal of consent and commence development within 12 months of approval; and

d. Speedier decision-making.

Similarly, Cheltenham Borough Council has announced that it is accelerating applications for temporary changes to the use of public areas and private land in order to facilitate uses such as placing tables and chairs on a footpath or public square.[13]

10 It is beyond the scope of this paper to address legal developments which are not directly related to Covid-19. However, it is worth flagging up here that the Secretary of State (in June 2020) signed a consent order in the case of *East Northamptonshire Council v Secretary of State for Housing, Communities and Local Government* which stated that the definition of 'deliverable' in the NPPF was not a closed list.

11 http://www.southoxon.gov.uk/news/2020/2020-04/letter-sent-mhclg-about-planning-system-during-coronavirus-pandemic

12 https://crowboroughlife.com/wp-content/uploads/2020/06/Secretary-of-State.pdf

13 https://www.cheltenham.gov.uk/downloads/file/8141/temporary_structures_guidance

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Victoria has extensive experience in planning, environmental and property law. She has consistently been rated as one of the top planning juniors under 35 by Planning Magazine. Victoria acts in a wide range of planning and environmental law matters for developers, local authorities and other interested parties. She is also a qualified mediator and is able to mediate between parties on any planning/environmental dispute. Her work in 2016/17 includes: representing a major housing developer in objecting to the Silvertown Tunnel DCO (junior to James Strachan QC), representing Natural Resources Wales at a 20 week inquiry into the diversion of the M4 (with Richard Wald), acting for the Secretary of State for Communities and Local Government in a number of statutory challenges and representing a developer in relation to multiple retail schemes across the country including those at appeal. Victoria was appointed to the Attorney General's C Panel of Counsel in 2016. To view full CV click here.

Jonathan Darby

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Jon is ranked by Chambers & Partners as a leading junior for planning law and is listed as one of the top planning juniors in the Planning Magazine's annual survey. Frequently instructed as both sole and junior counsel, Jon advises developers, consultants, local authorities, objectors, third party interest groups and private clients on all aspects of the planning process, including planning enforcement (both inquiries and criminal proceedings), planning appeals (inquiries, hearings and written representations), development plan examinations, injunctions, and criminal prosecutions under the Environmental Protection Act 1990. Jon is currently instructed by the Department for Transport as part of the legal team advising on a wide variety of aspects of the HS2 project and has previously undertaken secondments to local authorities, where he advised on a range of planning and environmental matters including highways, compulsory purchase and rights of way. Jon also provides advice and representation in nuisance claims (public and private), boundary disputes and Land Registration Tribunal matters. To view full CV click here.

Katherine Barnes

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Katherine practises in all areas of planning and environmental law, including the specialist areas of town and village greens, assets of community value and highways. Her clients include developers, local authorities, NGOs, community groups and individuals. She is listed as one of the 'Highest Rated Planning Juniors Under 35' by Planning Magazine. To view full CV click here.

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