

The Localism Act 2011

DEVELOPMENT PLANS

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The law, as summarised in this paper, is stated as at February 2012

1. On 6th July 2010 the Secretary of State for Communities and Local Government, the Rt Hon Eric Pickles MP made a written statement in which began as follows:

Today I am making the first step to deliver our commitment in the coalition agreement to "rapidly abolish Regional Spatial Strategies and return decision-making powers on housing and planning to local councils", by revoking Regional Strategies.

Regional Strategies added unnecessary bureaucracy to the planning system. They were a failure. They were expensive and time-consuming. They alienated people, pitting them against development instead of encouraging people to build in their local area.

The revocation of Regional Strategies will make local spatial plans, drawn up in conformity with national policy, the basis for local planning decisions. The new planning system will be clear, efficient and will put greater power in the hands of local people, rather than regional bodies.

2. It is now February 2012 and regional strategies are still in place.
3. In this paper I will consider the:
 - a. The development plan: the changes
 - b. Plan making
 - c. Development Control/Management
 - d. Practical Issues
4. I will not consider neighbourhood development plans (which form part of the development plan) as they are covered in another paper.
5. I do not attempt to cover every relevant issue, but to provide a brief review of the main issues.

The Development Plan – the Changes

Before the Localism Act 2011

6. The development plan was (and still is) defined in section 38 of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004").
7. The development plan is comprised of:
 - a. The regional strategy (in London the spatial development strategy); and

- b. The development plan documents (taken as a whole) which have been adopted or approved in relation to the area (DPD's and saved structure and local plan policies).

After the Localism Act 2011

- 8. Section 38 PCPA 1990 as amended:

38 Development plan

(1) A reference to the development plan in any enactment mentioned in subsection (7) must be construed in accordance with subsections (2) to (5).

(2) For the purposes of any area in Greater London the development plan is–

(a) the spatial development strategy, [...]

(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area [, and]

[(c) the neighbourhood development plans which have been made in relation to that area.]

(3) For the purposes of any other area in England the development plan is–

(a) the [regional strategy] for the region in which the area is situated [(if there is a regional strategy for that region)] , and

(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area [, and]

[(c) the neighbourhood development plans which have been made in relation to that area.

- 9. If there is a regional strategy, it remains part of the development plan.
- 10. The insertion of the words “if there is a regional strategy” in section 38(3)(a) contemplate that the Secretary of State may exercise his power to revoke regional strategies relying on the power contained in section 109(3) of the Localism Act.
- 11. The Government have undertaken a strategic environmental assessment of the effects of revoking regional strategies¹.
- 12. No doubt the Secretary of State will consider the strategic environmental assessment and the consultation responses that he receives, but the outcome is not in doubt. As stated in the Plain English Guide to the Localism Act:

The Secretary of State wrote to local authorities in 2010 to tell them that the Government intended to abolish regional strategies. The Localism Act will enable us to do this.

- 13. It is to be anticipated that once the strategic environmental assessment process has been completed all regional strategies will be revoked.
- 14. Once the regional strategies have been revoked the following will make up the development plan:

¹ The SEA Environmental Reports were published on 20th October 2011 and are open for consultation until 20th January 2012.

- a. DPDs
- b. Neighbourhood development plans

The current position

15. It is worth considering the history of the Secretary of State's attempt to revoke regional strategies in order to understand the current position.
16. The Secretary of State's purported revocation of regional strategies was declared unlawful by the High Court in R (Cala Homes) v. Secretary of State for Communities and Local Government².
17. Following the first Cala Homes judgment the Chief Planner at the DCLG issued a letter (dated 10th November 2010) indicating that he expected local planning authorities to have regard to the Government's intention to abolish regional strategies as a material consideration when determining planning applications.
18. In the second Cala Homes case the claimant contended that it was unlawful for planning authorities to take into account the Government's intention to abolish regional strategies when determining planning applications. That challenge failed before Lindblom J³ and on appeal to the Court of Appeal⁴.
19. The Court of Appeal (paragraph 24) also considered the requirement imposed by section 24(1)(a) of the PCPA 2004, that local development documents must be in general conformity with the RS. The Court held that it would be unlawful for a local planning authority preparing or an inspector examining, development plan documents to have regard to the proposal to abolish regional strategies⁵.
20. The requirement imposed by section 24(1)(a) PCPA 2004 was considered further, in Stevenage BC v. Secretary of State⁶. Ouseley J held that the requirement that a DPD must be in general conformity with the regional strategy applies at the time of submission. He held that section 24 "does not bite at any earlier stage"⁷. As a result it is open to a LPA, when preparing a DPD, to have regard to the fact that the Secretary of State intends to exercise the power to revoke regional strategies.
21. Paragraph 10 of schedule 8 to the Localism Act provides that paragraph (a) in subsection (1) of section 24 PCPA 2004 will be omitted; that provision is not yet in force.
22. The current legal status of regional strategies, following enactment of the Localism Act is as follows:
 - a. The legislative framework for the preparation, approval, modification and replacement of regional strategies under Part 5 of the Local Democracy, Economic Development and Construction Act 2009 has been repealed⁸. There are to be no new regional strategies.

² [2010] EWHC 2866 (Admin)

³ [2011] EWHC 97 (Admin)

⁴ [2011] EWCA Civ 639

⁵ [2011] EWCA Civ 639 at paragraph 24

⁶ [2011] EWHC 3136 (Admin)

⁷ [2011] EWHC 3136 (Admin) at paragraph 33

⁸ Section 109(1)(b) Localism Act 2011, which came into force on enactment, 15th November 2011

- b. Any regional strategy that remains at a preparatory or draft stage ceases to have any legal status or effect.
 - c. Existing (i.e. approved) regional strategies remain in effect until wholly revoked by order of the Secretary of State under section 109(3) of the 2011 Act.
 - d. For any area within an English region for which there is no approved regional strategy, the statutory definition of the development plan under section 38(3) of the PCPA 2004 is now confined to the documents mentioned in subsection 38(3)(b) of that Act, i.e. *'the development plan documents (taken as a whole) which have been adopted or approved in relation to that area'*.⁹
 - e. For any area within an English region for which there remains an approved regional strategy, that regional strategy remains part of the statutory development plan under section 38(3) of the 2004 Act until wholly revoked by order of the Secretary of State under section 109(3) of the 2011 Act.
23. Subsections 109(5) and (6) of the 2011 Act empower the Secretary of State by order to revoke any structure plan policies currently forming part of the statutory development plan by virtue of a direction made under Schedule 8 to the 2004 Act.
24. The current position (before regional strategies are revoked):-
- a. The RS remains part of the development plan.
 - b. In making development control decisions the determining authority must have regard to the RS as part of the development plan and must make the determination in accordance with the plan unless material considerations indicate otherwise.
 - c. The Government's intention to abolish regional strategies is a material consideration to be taken into account when determining planning applications. Now that section 109 has been enacted the first of the two "obstacles" referred to be Sullivan LJ has been overcome¹⁰.
 - d. A DPD must be in general conformity with the RS – it is unlawful to take into account the Government's intention to abolish RSs when considering general conformity at the stage of submission. However it is open to LPAs when preparing plans to take account of the intention to revoke at all times up until the date of submission.
25. A duty on local planning authorities to co-operate in relation to the planning of sustainable development is imposed by section 33A PCPA 2004 (which is in force). The preparation of DPDs and other local development documents are specified as activities to which the duty applies¹¹. Compliance with the duty imposed by section 33A is added to the list of issues for the inspector to consider when examining a DPD¹².

⁹ Once there is a neighbourhood development plan that will form part of the development plan

¹⁰ See Cala Homes [2011] EWCA Civ 639 at paragraph 31

¹¹ Section 33A(3)(a) and (b) PCPA 2004

¹² Section 20(5)(c) PCPA 2004

26. The purpose and effect of the section 33A PCPA 2004 (as inserted by section 110 of the 2011 Act) is readily apparent from paragraphs 242-246 of the Explanatory Notes to the 2011 Act –

242. *Section 110 provides for a duty on local planning authorities, county councils and other bodies with statutory functions to co-operate with each other. Those other bodies will be defined in regulations. Co-operation includes constructive and active engagement as part of an ongoing process to maximise effective working on the preparation of development plan documents, other local development documents and marine plans in relation to strategic matters including sustainable development that would have significant wider impacts.*

243. *Those that are subject to the requirements of the duty will be expected to consider whether to consult on and prepare, and enter into and publish, agreements on joint planning approaches. Local planning authorities will also be expected to consider whether to prepare joint local development documents.*

244. *Local authorities, county councils and prescribed bodies that are subject to the requirements of the duty to co-operate will also be required to have regard to the activities of other bodies, also to be prescribed in regulations.*

245. *At independent examination of development plan documents local authorities will have to provide evidence that they have complied with the duty if their plans are not to be rejected by the examiner.*

246. *This section also makes provision that local authorities and other public bodies must have regard to guidance issued by the Secretary of State about how they should comply with this duty.*

27. It has been reported that the Planning Inspectorate have taken the view that the section 33A duty to co-operate does not apply to DPDs which were submitted before the Localism Act was enacted (15th November 2011). I am not clear as to the basis upon which PINS have taken that view. It may be that it is considered that the duty applies to activities set out in section 33A(3) and that those activities include (at section 33A(3)(a)) “the preparation of development plan documents”, and that once a DPD has been submitted its preparation has ceased. It is likely that the courts will be called upon to consider this issue.

Further Changes

28. The arrangements for local development schemes have been changed:

- a. The LDS does not have to be submitted to the Secretary of State¹³
- b. The scheme is to be brought into effect by resolution of the LPA¹⁴

29. The amendments proposed to sections 20 and 23 PCPA 2004¹⁵ will provide some limited additional flexibility.

30. If an inspector concludes that the section 33A duties have been complied with, but that the formal requirements in section 20(5)(a) have not been satisfied and the DPD is not sound,

¹³ Section 15(3) PCPA 2004 will be repealed by section 111(2) of the Localism Act 2011 (this comes into force on 15th January 2012)

¹⁴ Section 15(7) PCPA 2004 as replaced by section 111(5) of the Localism Act 2011 (this comes into force on 15th January 2012)

¹⁵ Section 112 Localism Act 2011 (this comes into force on 15th January 2012)

the LPA can request that the inspector recommends modifications which would make the DPD compliant with section 20(5)(a) and sound¹⁶.

31. Upon receipt of an inspector's report on an examination into a DPD, the LPA will no longer have to accept every recommendation made by the inspector without any ability to change the plan. The LPA will be able to adopt the DPD with its own modifications. However the additional flexibility is very limited – the modifications taken together must not “materially affect the policies set out in it”¹⁷.
32. The effect of the changes is to allow a plan to be changed in order to make it sound; this approach is to be preferred to the previous system which requires a local planning authority to start again when a plan is declared unsound by an inspector.
33. These change come into effect on 15th January 2012, and apply “.....in relation to all adoptions of development plan documents that take place after the coming into force of those subsections, including an adoption where steps in relation to the document have taken place before then.”¹⁸. As a result those participating in DPD preparation should consider how advantage can be taken of those provisions in relation to all DPD's now in the course of preparation (and which will not be adopted before 15th January 2012).
34. A consultation version of the Town and Country Planning (Local Planning) (England) Regulations 2012 has been produced.

Neighbourhood Planning (Schedule 9)

35. A new tier of planning policy will appear in the form of neighbourhood development plans .
36. Section 38 of the PCPA 2004 has been amended; neighbourhood development plans have been added to the definition of the development plan.

Plan Making

The Old System

37. At present section 24(1) of the PCPA requires a core strategy (“CS”) to be in general conformity with the regional strategy.
38. All subsequent DPDs have to be in conformity with the CS¹⁹.
39. At present many of the decisions on the strategic issues facing a local authority are taken in the regional strategy; for example the housing requirement for a district is to be derived from the RS. The issue to be considered at the stage of plan preparation is whether the CS is in general conformity with the RS.
40. The meaning of “general conformity” in a different context, namely general conformity of a local plan with a structure plan²⁰, was considered in Persimmon Homes v. Stevenage BC²¹.

¹⁶ Section 20(7B) and (7C) PCPA 2004

¹⁷ Section 23(2) PCPA 2004 as inserted by clause 112(3) of the Localism Act 2011 (this comes into force on 15th January 2012)

¹⁸ Section 112(6) Localism Act 2011

¹⁹ Regulation 13(6) of The Town and Country Planning (Local Development) (England) Regulations 2004 (“the Local Development Regulations”)

²⁰ Section 36(4) TCPA 1990

Laws LJ held that to read “general conformity” as meaning “in character” with was too broad a construction²². He went on to state that local plan policies must “respect” the structure plan policies as they are, while allowing for the possibility that they may be changed.

41. Section 20(5) PCPA identifies the purpose of independent examination of a DPD:

The purpose of an independent examination is to determine in respect of the development plan document -

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound.

(c)

Paragraph (c), which was inserted by the Localism Act, is referred to below

42. The “legal requirements”, at (a) are independent of the soundness requirement. It is for the inspector to consider “general conformity” in addition to considering whether the DPD is sound.
43. If a person making representations seeks to argue that the DPD has not made provision for (for example) the level of housing set out in the RS, the point could and should be taken as a “general conformity” point.
44. The obligation to achieve general conformity might be satisfied by providing a housing requirement in a CS which is either higher or lower than the level set in the RS. For example the inspector examining the South Oxfordshire Core Strategy made a ruling following an exploratory meeting in which he held that provision for part of the district within 10% of the figure derived from the RS for that part of the district was sufficient to achieve “general conformity”²³.

The new arrangements

Examination

45. Section 20(5) now provides:

(5) The purpose of an independent examination is to determine in respect of the development plan document–

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound [; and]

[(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.

46. The inspector’s role has been expanded to consider the duty to co-operate in relation to planning of sustainable development.

²¹ [2005] EWCA Civ 1365

²² [2005] EWCA Civ 1365 at paragraph 28

²³ South Oxfordshire Core Strategy: Inspector’s Conclusions After the Exploratory Meeting: 23rd May 2011. Paragraph 3 on page 4.

47. If the inspector concludes that the DPD fails on issues (a) and (b), the LPA can request that s/he makes recommendations as to the modifications that would make the DPD comply with (a) and to make it sound.
48. Once the inspector has made such modifications (“the main modifications”) the LPA can then adopt the plan with those modifications.
49. As I have already noted the LPA can also make additional modifications of their own (whether or not there are main modifications recommended by the inspector) so long as the LPA modifications do not materially affect the policies set out in the DPD.

Following revocation of regional strategies

50. Following revocation of regional strategies there will no longer be a requirement for DPDs to be in general conformity with the RS. Arguments as to the appropriate levels of housing provision for the district, or for strategic developments of regional importance, will have to take place at the CS examination.
51. The guidance given in the draft NPPF gives some indication of the range of issues to be considered at CS examinations held under the new regime:
 - a. Paragraph 28 advises that LPAs should prepare a Strategic Housing Market Assessment to assess their full housing requirements. A Strategic Housing Land Availability Assessment should be prepared to meet the identified requirement for housing over the plan period.
 - b. Paragraph 109 of the draft NPPF indicates that LPAs should “use an evidence-base to ensure that their Local Plan meets the full requirements for market and affordable housing in the housing market area ..”.
52. If, as suggested in the NPPF, the full housing requirements for a housing market area should be provided for in DPDs, there is likely to be considerable debate at examinations as to whether those full requirements have been met.
53. The RS approach took account of housing requirements but did not, in the main, seek to provide for the full requirement.
54. If the NPPF survives in the same form as the draft, CS examinations are likely to concentrate on whether or not provision has been made for the full housing requirements.
55. Those who were concerned about the “top down” approach may soon learn that meeting the full housing requirements in their local housing market area is likely to lead to many more green fields being built upon than under the RS system.

Development Control/Management Decisions

56. The most immediate issue to consider is, what part should regional strategies play in decision making until such time as they are revoked.
57. In such a case, the regional strategy remains part of the statutory development plan. As a matter of law, therefore, regard must be had to the relevant policies and proposals of the regional strategy (section 70(2) of the Town and Country Planning Act 1990). For the purposes of section 38(6) PCPA 2004, the regional strategy remains a component of the development plan. The planning application must accordingly be determined in accordance with that plan, unless material considerations indicate otherwise.

58. The local planning authority must, therefore, have regard to those policies and proposals of the regional strategy that are relevant to the development proposed under the planning application. The authority's task is to determine the weight to be given to those policies and proposals in making its overall determination of the planning application.
59. Practical guidance on how to approach that task may be found in the judgments of Lindblom J at first instance in R (Cala Homes (South) Ltd) v. Secretary of State [2011] EWHC 97 (Admin) and Sullivan LJ on appeal in R (Cala Homes (South) Ltd) v. Secretary of State [2011] EWCA Civ 639.
60. At paragraph 52 in [2011] EWHC 97 (Admin), Lindblom J said –
- Because planning decision-making is a process informed by policy, prospective changes to the policy framework itself may logically be seen as relevant to a planning decision. They engage the public interest. And they are germane to the character and the use of land. This proposition sits well, in my view, with the latitude the court has traditionally given to the ambit of what may be material in a planning decision. **And if changes to the matrix of national policy, as they emerge in draft circulars or draft Planning Policy Statements, and changes to local policy, as they come forward in draft development plan documents, can be material considerations, their weight being contingent on the stage they have reached in their progress towards finality, why should the same not be so of changes to the composition of the development plan promised by legislative proposals?** I see no distinction in principle. Pragmatism and common sense support this approach.*

61. As the passage that I have emphasised makes clear, a local planning authority is entitled give increasing weight to a prospective change in the relevant development plan policy framework, as the likelihood of that change being implemented increases and the nature of the change becomes more certain.
62. At paragraphs 31-33 of his judgment in [2011] EWCA Civ 639, Sullivan LJ explained the point in more detail. He gave some valuable guidance on the approach development control decision makers should take to evaluating the prospect of revocation of regional policies in planning decisions to which those policies are relevant. He said this –

31. In most cases the constraint of Wednesbury rationality will be a very light rein because the Courts normally give a very wide latitude to planners' judgments as to the weight to be given to planning considerations. However, it is proposed that this particular change of policy will be effected by legislation, so the proposal is subject to two legal obstacles:

(a) Parliamentary approval; and

(b) the SEA process.

32. Although the point was not raised on behalf of the Appellant, I asked the parties for their submissions as to whether it might be irrational for any decision-maker to give any significant weight at this stage to the proposed abolition of regional strategies because to do so would require the decision-maker to prejudge:

(a) Parliament's acceptance of the proposal; and

(b) the outcome of the SEA process.

....

33. Mr. Village submitted that if the proposed abolition was a material consideration it would be irrational to give it any weight at this stage. However, Mr. Mould's submissions have persuaded me that where the issue is one of weight rather than materiality, "never say never" is the appropriate response to a submission that, as a matter of law, any decision-maker in any case would be bound to give no significant weight to a potentially material factor. Mr. Mould fairly acknowledged that even within the minority of cases in which the proposed abolition of regional strategies will be relevant, there may well be very few cases in which it would be appropriate at this stage of the Parliamentary and SEA process to give any significant weight to the proposal. But the Chief Planner's letter is concerned with the whole of the period prior to the enactment of the Localism Bill (if it is enacted), and the position will change as it progresses, or fails to progress. Even now there might be finely balanced cases where the very slight prospect of a very substantial policy change might just tip the balance in favour of granting or refusing planning permission. Mr. Mould gave the hypothetical example of a large-scale residential proposal (which he referred to as a "new town", but the point would equally apply to a proposed extension of an existing settlement), which is proposed to be developed over the next 15-20 years, to which there are very strong site-specific objections, and where the sole justification for granting planning permission is the need to meet the requirement for residential development over the next 20 years in the regional strategy. In such a case it would not be irrational for the decision maker to give some weight to the prospect, however uncertain, that the regional policy justification for granting permission for such a long-term proposal may cease to exist within the short term. In such a case, to give even very little weight to the prospect of a change in policy might be to give that factor "significant" weight, significant in the sense that it might tip the balance in favour of refusing permission. This hypothetical example may well be an extreme case, but it does illustrate why it would not be safe for the Court to assume that at this stage there are no circumstances in which any decision-maker could rationally give some weight to the proposed abolition of regional strategies. In view of the uncertainty created by the legal obstacles referred to above (para. 31) any decision-maker who does think it appropriate to give some weight to the Government's proposal when determining an application or an appeal would be well-advised to give very clear and cogent reasons for reaching that conclusion, but that does not mean that there could be no case whatsoever in which any decision-maker might be able to give such reasons.

63. In summary in Cala Homes, given the very early stage that the proposal to revoke regional strategies had then reached in the legislative process, together with the fact that revocation of any individual regional strategy was to be subject to a process of strategic environmental

assessment, local planning authorities should consider whether they should give any significant weight, to the proposed abolition of regional strategies in development control decisions they were then taking. However, the Judge rejected the appellant's argument that it would be irrational to give that consideration any weight. He held that within the minority of cases in which the proposed abolition of regional strategies was a potentially significant and relevant determining consideration, there might be finely balanced cases where the very slight prospect of a very substantial policy change might just tip the balance in favour of granting or refusing planning permission.

64. Sullivan LJ acknowledged that the weight properly to be given to the prospect of that policy change would increase as it became less uncertain and more imminent. The position would change as the Localism Bill progressed through Parliament.
65. Matters have, of course, now moved on significantly in fact since Sullivan LJ gave that judgment.
66. In particular, the first of the two 'legal obstacles' or uncertainty factors identified by Sullivan LJ in paragraph 31 of his judgment has effectively now disappeared. The proposed abolition of regional strategies now has legislative effect under section 109(3) of the 2011 Act.
67. The legislative intention of section 109 of the 2011 Act is that development control decisions should in future be influenced primarily by local development documents. A local planning authority is entitled to take account of that fact. It is entitled to accord substantial weight to the clear intention of Parliament that regional policies should in future cease to form part of the development plan. See the guidance given by the House of Lords in the passages in City of Edinburgh Council v. Scottish Secretary [1997] 1 WLR 1147 cited by Sullivan LJ in paragraph 6 of [2011] EWCA Civ 639 –

The combined effect of sections 70(2) of the 1990 Act and what is now 38(6) of the 2004 Act was explained by the House of Lords in City of Edinburgh Council v Secretary of State for Scotland [1997] 1 WLR 1447 (section 18A of the Town and Country Planning (Scotland) Act 1972 was the counterpart of section 54A of the 1990 Act, the predecessor of section 38(6) of the 2004 Act)...In summary, section 38(6) creates a presumption in favour of the development plan. Two passages explain how that presumption is to be applied in practice:

"It requires to be emphasised, however, that the matter is nevertheless still one of judgment, and that this judgment is to be exercised by the decision-taker. The development plan does not, even with the benefit of section [38(6)] have absolute authority. The planning authority is not obliged, to adopt Lord Guest's words in Simpson v Edinburgh Corporation, 1960 S.C. 313, 318, "slavishly to adhere to" it. It is at liberty to depart from the development plan if material considerations indicate otherwise. No doubt the enhanced status of the development plan will ensure that in most cases decisions about the control of development will be taken in accordance with what it has laid down. But some of its provisions may become outdated as national policies change, or circumstances may have occurred which show that they are no longer relevant. In

such a case the decision where the balance lies between its provisions on the one hand and other material considerations on the other which favour the development, or which may provide more up-to-date guidance as to the tests which must be satisfied will continue, as before, to be a matter for the planning authority.”

(Lord Hope at p. 1450 B-D)

“By virtue of section [38(6)] if the application accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted. One example of such a case may be where a particular policy in the plan can be seen to be outdated and superseded by more recent guidance. Thus the priority given to the development plan is not a mere mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations indicating that it should not be followed then a decision contrary to its provisions can properly be given.”

(Lord Clyde at p. 1458 E-F)

68. In short, a local planning authority no longer need make any assumption about or pre-judge Parliament’s acceptance of the proposal to revoke regional planning policy. Revocation is intended to happen and will happen in due course.
69. Nevertheless, actual revocation of each existing regional strategy remains dependant on further executive action by the Secretary of State, i.e. the making of an order under section 109(3) of 2011 Act. Moreover, such executive action is subject to the completion of the current environmental assessment process, environmental reports on the revocation of individual RS having been published for public consultation in October 2011, with a response period extending until 20 January 2012. There remains, therefore, uncertainty as to the timing and phasing of revocation of each existing regional strategy.
70. Pending actual revocation of the relevant policies and proposals of the approved regional strategy, planning authorities and inspectors should, therefore, continue to have regard to those policies. They should consider the weight that may now be given to those policies, having regard to the fact that they are likely to cease to exist as part of the planning policy framework during the near future. As LPAs begin to promote their local plans and policies and to develop the evidence base for that purpose, the surviving regional policies are likely to attract less and less significance. Meanwhile, the evidence base that informed and supported the regional strategy will continue to be material; and available, in principle, to inform development control decision-making. Decision makers should continue to act on Sullivan LJ’s guidance about the need for clear and cogent reasons.

71. In reality local authorities are now likely to give little weight to regional strategies. If a LPA gives little weight to a RS and refuses to grant planning permission, it would be a bold developer who sought to pursue an appeal based on the RS. By the time that an appeal was determined the RS is likely to have been revoked.

Practical Issues

Plan Making Stage

72. One of the most significant changes in the new system is that requirements relating to the scale and quantum of development in a LPA area will be set by LPA's in the CS.
73. The requirement to examine the duty to co-operate is also a major change.
74. At present development requirements in a CS will, in large part, be derived from the RS. In plan preparation LPAs can have regard to the Government's intention to revoke RSs. The requirement to achieve general conformity can still be relied upon when making representations on the CS.
75. There is likely to be less debate on development requirements when considering site allocation and other DPDs, as they have to be in conformity with the CS.
76. In the future there is likely to be considerable debate about the requirement in the CS preparation process. For example, developers and landowners will have to grapple with household growth projections, and (when considering housing) to consider the "full requirement". It will be interesting to see whether the hearing system allows sufficient opportunity for full and detailed examination of the methodology and the figures.
77. The duty to co-operate will come under scrutiny at the examination. Those promoting plans should ensure that the duty has been fulfilled. Those opposed may wish to point out that it has not. This duty may reveal tensions between local authorities as to the need for growth, as were apparent in the Stevenage²⁴ case.
78. As section 19(2)(a) PCPA 2004 survives (the duty to have regard to national policy) inspectors will have consider whether a DPD has had regard to the NPPF; if it is inconsistent with the NPPF there will have to be some firm justification.
79. Inspectors will have to turn their minds not only to what is wrong with a plan, but also to what can be done to put it right (by making recommendations for main modifications).

Development Management

80. The RS's are not dead yet, although they have little life left in them. Those who wish to rely on policies in RS should proceed as quickly as they can.
81. I have not considered the NPPF in this paper – the NPPF policies are likely to assume increased prominence while the plan making system adjusts to the new provisions.
82. Decisions are likely to be made in accordance with up to date DPDs. As those DPDs will have been prepared to be in general conformity with the RS, the RS policies will live on for now.
83. In cases where there is no up to date DPD, and DPDs are in the course of preparation there is room for considerable debate. For example, it may be difficult to ascertain the level of housing required, as is demonstrated by the Bude appeal decision. This will lead to disputes

²⁴ [2011] EWHC 3136 (Admin)

as to whether or not there is an adequate supply of housing land. Those disputes will have to be resolved at the planning application stage.

84. If there is no up to date development plan, applicants may wish to consider housing and other figures proposed in draft plans and household growth projections, however little or no weight can be given to now defunct draft regional strategies. This will not make for simple decision making.

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