

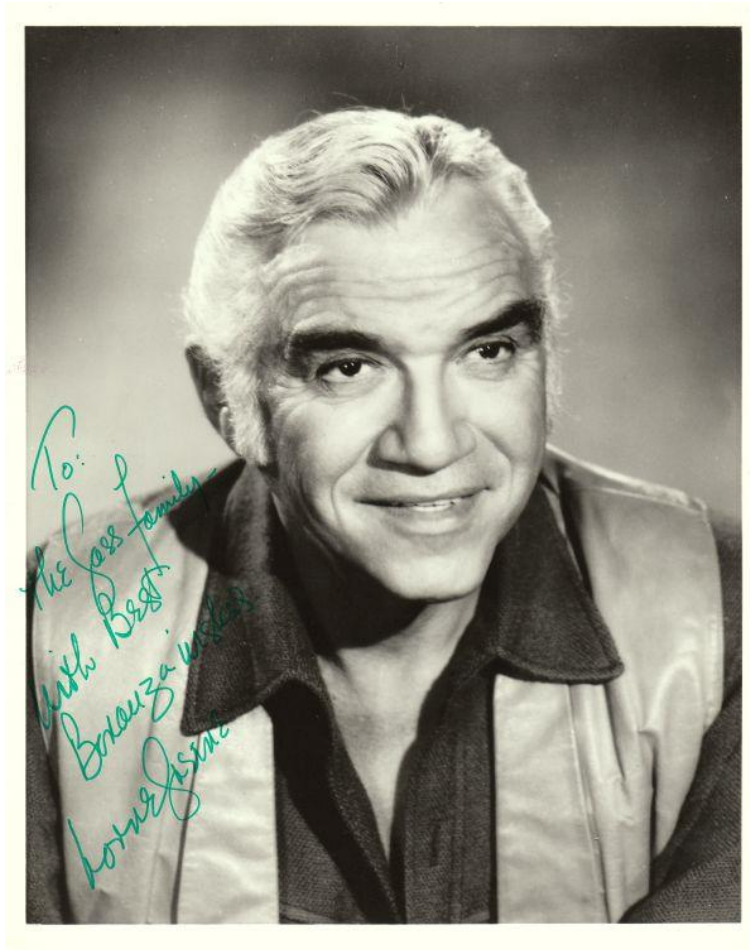
NPPF- A Commercial Perspective

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Structure of Talk

- First I shall consider whether the NPPF in its final draft remains a bonanza for business as has been alleged.
- Second I shall briefly explore elements of the NPPF from a commercial perspective.
- Clearly what I have to say will also be of relevance to those who have to address the needs of the business community and determine their planning applications.

I. NPPF- a Bonanza for Business ?



No bonanza....at least not yet.



My main theses is that there **will** be a change in **emphasis** in decision taking in the short term. But that as the impact of the NPPF takes effect, business **will** find it progressively easier to gain permissions that would have been more difficult without the NPPF.

To develop this theses I shall consider

- A. The History of the NPPF
- B. The Content of the NPPF



A. NPPF- The History

- There are two arms to the NPPF.
 - Substantive change in policy content
 - Simplification and reduction in existing policy
- There is of course no necessary connection between the two arms.
- I propose to deal mostly with the substantive change: in particular the “presumption in favour of sustainable development” and the impact of this change for business.

NPPF History- the Ridley Presumption in favour

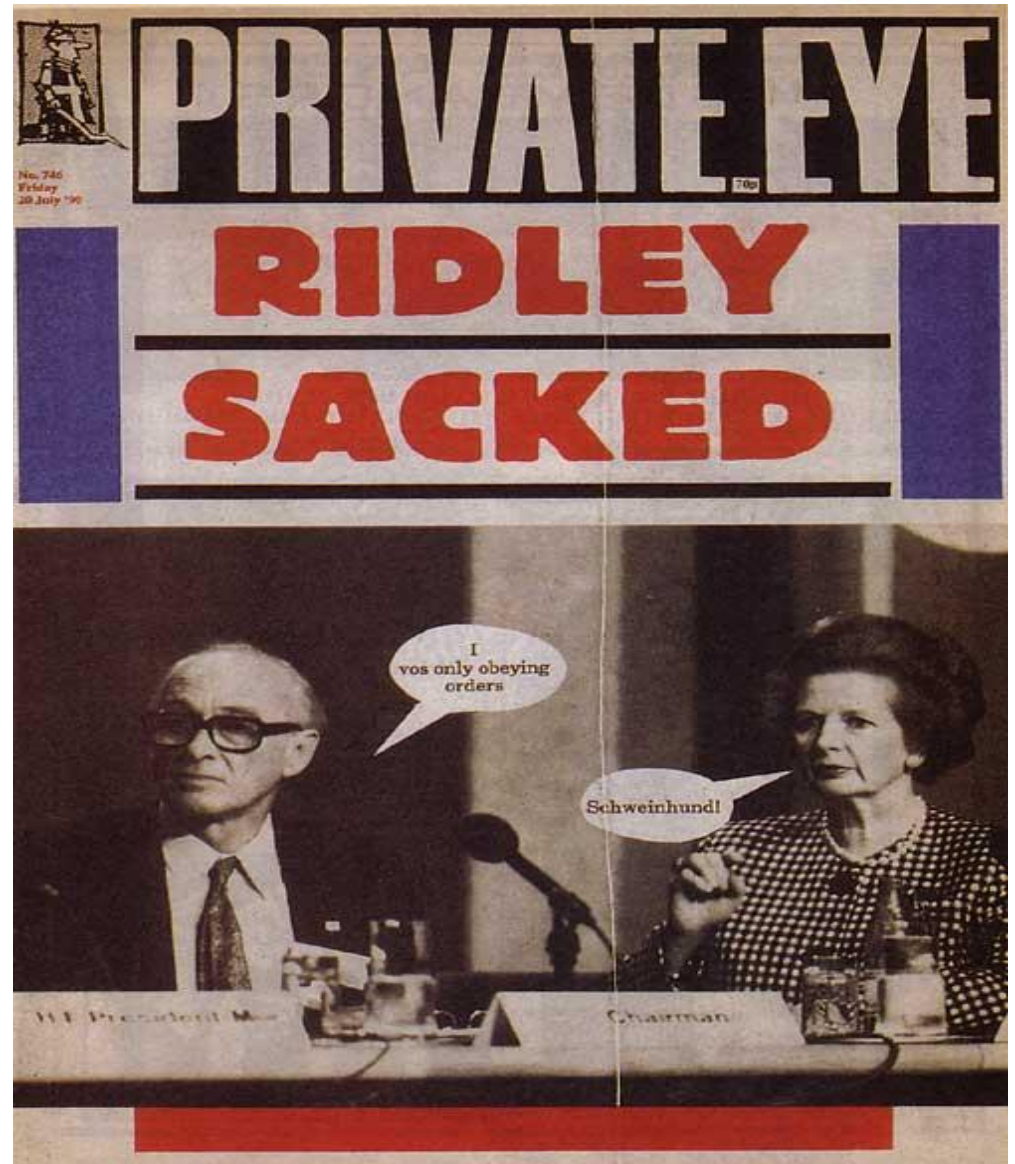


- The former “Presumption in Favour of Development”-
- until 1991, the presumption was that you got your permission unless your development caused “demonstrable harm to interests of acknowledged importance.” (PPG 1 Para 15 1988).
- Seen in its post 88 guise as the lightest touch, most business friendly regime ever.



Ridley and Planning

- Nicholas Ridley
MP close ally and
intellectual
companion of Mrs
T wanted the
planning system to
interfere as little
as possible with
business and
growth.



NPPF- the History –s 54A



- The presumption in favour of development was seen as irreconcilable with s 54A of the 1990 Act introduced by the P and C Act 1991.
- There was now a presumption in favour of the Development Plan.
- The perception was that in some circumstances, local authorities were stifling business development unnecessarily.

NPPF – Greg Clarke’s view of where we should go.



- Greg Clerk writes the Foreward to the NPPF. He is not an inconsiderable scholar of land-use planning in the UK. He has long written about and understood the planning system.
- On Newsnight he is clear: “we’ve had the presumption in favour of development, then the presumption in favour of the Development Plan, it time we went back to something like the presumption in favour of development.”
- In this he is supported in principle by the Treasury

But Clark faces three obstacles to untrammelled presumption in favour of development.



- First, The Act. Clearly the former untrammelled presumption is inconsistent with Primary Legislation and the Plan-led system. There is no stomach to change primary legislation (which sits better with the concept of localism). A more nuanced approach is needed.



Three obstacles to the untrammelled presumption.

- Second, the public outcry and the lobby groups to a planning free-for-all.



Three obstacles to the untrammelled presumption



- Third, the Prime Minister and political reality.



Summary of the History of the NPPF.



- A proper understanding of the NPPF is impossible without a proper understanding of the history which lies behind it.
- There was pressure for the former presumption in favour of development or something like it to return. That pressure has resulted in the coining of the term, “presumption in favour of sustainable development” - (pre election Green Paper).
- The nature and effect of that presumption at least initially has been softened by the need to respect the Development Plan led system and by political expediency. But as we shall see the structure and content of the Framework has the potential to strengthen the effect of the presumption as new Development Plans are rolled out.

B. Content of the NPPF.

- NPPF makes it clear that it cannot and does not alter the planned system. (Para 12).
- But, it seeks unashamedly
 - to embed the presumption in favour of development in the Development Plan System and
 - to apply that presumption now where the Development Plan is silent or out of date.

Embedding the Presumption



- The key para 14 of the NPPF requires lpas (as part of a golden thread running through Planning)
 - Positively to meet the development needs of their area through their Local Plans unless
 - Adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework (which together define sustainability) or
 - Specific protection against development is afforded by the Framework –e.g Green Belt

Note the similarity of language to PPG 1 Para 18.

If this guidance is followed, allocations and DC policies will over time be framed by reference to a general presumption in favour of development which can be shown to be needed.

Embedding the Presumption the consequences.



- If needs **must** be met unless the adverse impact of so doing would significantly and demonstrably outweigh the benefits, one would expect emerging Development Plans, reflecting this requirement to become over time more and more permissive of development(growth). Mr Clark is clever enough to realise this. He gets the presumption but through the DP system
- Inspectors examining LDFs for example will require LPAs to justify very robustly why needs once identified should not be met.
- This is likely to be welcomed by those who saw the planning system as a significant impediment to development. There will be impatience however that such a shift will need to go through the Development Plan Process.

Applying the Presumption Now if DP system has failed.



- Para 14 makes it clear that for decision taking-
“where the development plan is absent, silent or relevant policies are out of date permission should be granted unless
 - Adverse effects of granting permission would significantly and demonstrably outweigh their benefits when assessed against the policies of this Framework as a whole” or
 - Protection against development is specifically provided for in the Framework... eg Green Belts.

The effect of this?

- This proposition is a straightforward presumption in favour of development **unless**of the Ridley type.
- True the exact nature of the **unless** is different to the extent that adverse impacts are framed by reference to the contents of the Framework (sustainability) as a whole but.... The ultimate test is “do the adverse impacts of a proposal significantly and demonstrably outweigh its benefits.” If they do not, the presumption (the golden thread) is...you get your permission.



So when can you set aside the Development Plan now in favour of the presumption



- When it is absent
- When it is silent- a matter of fact degree and debate and
- When it is out of date. This is the tricky one. Again whether a Plan is out of date will be a matter of fact, degree and judgment for the decision maker but some guidance is set out in Annex 1
 - Policies not out of date simply because pre-date the NPPF.
 - For 12 months decision takers may give full weight to post 2004 policies even if limited degree of conflict.
 - Thereafter weight will depend on compliance with NPPF

Consequences of the Presumption and the 12 month rule for development projects.



- Most large Commercial Developers will understand that the determination and appeal period involved with a significant project will be likely to exceed 1 year.
- Most authorities will be struggling to achieve even a partial review of its development plan within that timeframe (though they are urged to and some are trying).
- Much significant development will be determined at first instance in reliance upon extant DPs which will be significantly less weighty by the date of the Appeal. These will be interesting times.

Overall Conclusion on the impact of the presumption upon the Business World



- In the short term, there will be no bonanza, no shower of permissions.
- There will be significantly more weight given to the positive economic impacts of developments. Some on balance cases will be granted where before they would be refused simply for this reason.
- LPAs with woefully out of date DPs will suffer immediately, the presumption in favour of development will be hard to resist for them unless significant and demonstrable harm.
- The longer term “freeing” of the system for developers will depend upon the efficient feeding of the new presumption in favour of development through the Development Plan system. But Mr Clarke has put a mechanism into place which is likely in the medium term and beyond to lead to many more permissions.

II. Other Matters of Particular interest from a Commercial Perspective I- weight and Growth



- Core Principle 3 requires planning to proactively drive and support sustainable economic development to deliver homes businesses and industrial units.
- Para 19 reflects the Governments commitment to do everything it can to support sustainable economic growth. Significant Weight should be placed on the need to support economic growth through the planning system.

Economic Growth and weight -continued



- These provisions mean that more weight will be given to the benefits of economic development in decision making. Inevitably, in on balance cases, this will result in more permissions being granted.
- This enhanced weight is already part of policy in Clark's Planning for Growth and is reflected in a number of key planning decisions already.



Other Matters II retail

- Importance of input of John Rhodes from the major developers group to retail section of NPPF.
- Town Centre first remains the priority.
- Failure to shoulder the rigours of the sequential approach means a refusal (Para 27)



Retail Ctd



- But policy recognises the importance of fully meeting the need for town centre uses such as retail, housing and leisure and ensuring that they are not compromised by limited site availability.
- To this end the ability of out of centre sites to continue to meet needs that cannot be met on sequentially preferable sites is emphasised again. (Para 24).
- On balance a more realistic approach for developers.

Housing-Again emphasis is on meeting the need not finding reasons for avoiding meeting the need.



- Para 47- identify and update a supply of deliverable sites sufficient to provide 5 year supply
- plus 5% unless persistent record of under-provision in which case plus 20%



Housing- the presumption in favour of development in operation.



- Housing should be considered in the context of the presumption (Para 49)
- Failure to have a 5 year land supply renders housing supply policies (including locational policies on supply) automatically out of date.
- Then the presumption kicks in...permission unless harms significantly and demonstrably outweigh the benefits, or specific policy prohibition in the Framework.

Overall Conclusions.

- Gradual freeing of the system through the embedding of the presumption in the development plan system.
- Short term emphasis on supporting growth.