

Welcome to Landmark Chambers'

**'A comprehensive guide to the latest Planning
Law, Practice and Policy – Part two' webinar**

The recording may be accessed [here](#).

Your speakers today are...



Topic:
The key themes
and trends in
housing appeals
over the past
year (part two)

Sasha White QC (Chair)



Topic: LPA
powers and
decision-making
during the
COVID-19
lockdown

Zack Simons



Topic:
Top Ten
Secretary of
State planning
decisions over
the past year

Matthew Fraser

The key themes and trends in housing appeals over the past year (part two)



Sasha White QC

Key theme 12 – How are Inspectors considering Neighbourhood Plans?

- **MID SUFFOLK [02/03/2020] LAND AT EYE, SUFFOLK – DISMISSED**
 - PROPOSAL FOR 126 DWELLINGS ON GREENFIELD SITE ON EDGE OF SMALL MARKET TOWN.
 - PROPOSAL NOT ALLOCATED IN EMERGING NEIGHBOURHOOD PLAN.
 - A CONFLICT WITH EMERGING NEIGHBOURHOOD PLAN AND IT BEING UNDERMINED WAS DECISIVE IN REFUSING THE SCHEME.
- **ARUN [20/12/2019] – ARUNDEL – DISMISSED.**
 - PROPOSAL FOR 46 UNIT SHELTERED HOUSING SCHEME.
 - ACKNOWLEDGED HLS SHORTFALL BUT A POLICY IN NP RECENTLY APPROVED IN A REFERENDUM.
 - PROPOSAL DID NOT CONSIDER ALL DEVELOPMENT OPTIONS AS ENSHRINED IN NP POLICY AND THEREFORE THE PROPOSAL SHOULD BE DISMISSED.
- **SOUTH OXFORDSHIRE [21/10/2019] – LAND AT THE ELMS, THAME – DISMISSED.**
 - CARE HOME SCHEME FOR 78 DWELLINGS.
 - THE NP ALLOCATED THE SITE FOR A DEVELOPMENT OF 45 HOMES.
 - THE PROPOSAL SHOULD BE REFUSED AS IT EXCEEDED THE NUMBER OF DWELLINGS PERMITTED TO A SIGNIFICANTLY MATERIAL EXTENT.
 - BENEFITS WOULD NOT OUTWEIGH THE HARM TO THE NP POLICY CONFLICT AND LACK OF AFFORDABLE HOUSING PROVISION.
- **AYLESBURY VALE [30/09/2019] – LAND ADJACENT TO 80 CHILTON ROAD, LONG CRENDON – DISMISSED.**
 - FULL WEIGHT TO NP POLICIES IN REFUSING A PROPOSAL FOR 65 DWELLINGS.

Key Theme 13 – What approach is being taken to landscape and visual impact AND valued landscapes?

- **CENTRAL BEDFORDSHIRE [16/03/2020] LAND NORTH OF SUNDERLAND ROAD – DISMISSED.**
 - MAJOR MIXED USE SCHEME OF 228 HOMES ON SITE ON EDGE OF SETTLEMENT IN BEDFORDSHIRE.
 - INSPECTOR HELD THAT APPELLANT HAD UNDERESTIMATED VISUAL EFFECTS OF PROPOSAL.
 - ALSO MITIGATION EFFECTS OF THE PROPOSAL HAD BEEN OVERSTATED.
 - EXISTING SETTLEMENT BOUNDARY AVOIDED URBANISATION OF COUNTRYSIDE AND SHOULD BE RETAINED.
- **HINCKLEY AND BOSWORTH [18/12/2019] – ALLOWED**
 - OUTLINE PROPOSAL FOR 80 UNITS IN COUNTRYSIDE.
 - DEVELOPMENT WOULD NOT INTRUDE INTO WIDER AREA AND ALTHOUGH THE SITE WAS VALUED BY LOCAL RESIDENTS IT WAS NOT PART OF A VALUED LANDSCAPE.
 - ONLY VERY LIMITED WEIGHT TO EMERGING LOCAL PLAN AND EMERGING NEIGHBOURHOOD PLAN.
- **WEST DORSET [13/12/2019] – LAND SOUTH OF WESTLEAZE, CHARMINSTER – DISMISSED.**
 - PROPOSAL FOR 120 DWELLINGS ON THE EDGE OF SETTLEMENT IN “THOMAS HARDY” SETTING.
 - HARM TO THE WIDER LANDSCAPE AND SIGNIFICANT VISUAL HARM.
 - THE HARMS TO BOTH HERITAGE AND LANDSCAPE WERE SUCH THAT PROPOSAL NOT ACCORD WITH DEVELOPMENT PLAN AS A WHOLE.
- **SUMMARY – LANDSCAPE AND VISUAL IMPACT GENERALLY JUSTIFYING REFUSAL WHETHER ON FLAT OR TILTED BALANCE.**

Key Theme 13 – The approach to Valued Landscapes?

- CHRONOLOGY OF VALUED LANDSCAPE POLICY:
 - NPPF 1 [MARCH 2012] – “*The planning system should contribute to and enhance the natural and local environment by – (a) protecting and enhancing valued landscapes*”
 - Led to **Stroud DC v SoSCLG** [2015]EWHC 488; **Forest of Dean DC v SoSLGC** [2016] EWHC 2429; **CEG Land Promotions v SoSHCLG** [2018]EWHC 1799; “*demonstrable physical attributes for the site to fall within NPPF 170*”
 - NPPF 2 paragraph 170 – “*Planning policies and decisions should contribute to and enhance the natural and local environment by: (a) protecting and enhancing valued landscapes..(in a manner commensurate with their statutory status or identified quality in the development plan);*
 - Not changed in NPPF 3 [February 2019]
- KEY ISSUE - In what circumstances can it be contended that a site sits in a valued landscape:
 - THREE ACTIVE INTERPRETATIONS TO NPPF 170(A):
 - **THE SUBJECTIVE INTERPRETATION** - when the judgment of the LPA is that it is a valued landscape i.e. *it is an open list* [based on a GVLIA BOX 5.1 assessment criteria showing demonstrable physical attributes as established in NPPF 1]
 - **THE OBJECTIVE INTERPRETATION** - only when it has statutory status or a quality identified in the development plan – *i.e. a closed list?* Irrespective of physical attributes.
 - **THE CUMULATIVE INTERPRETATION** – that it needs to be both identified by its statutory status or in the development plan and it needs actual physical attributes consistent with the case law
 - **MID SUFFOLK [02/02/2020] – EYE, SUFFOLK – DISMISSED.**
 - SITE FELL WITHIN SPECIAL LANDSCAPE AREA BUT INSPECTOR CONSIDERED SITE DID NOT EXHIBIT ANY PARTICULAR UNIQUE QUALITIES OR RARITY AND THEREFORE NOT VL.
 - **WEST DORSET [13/12/2019] – LAND SOUTH OF WESTLEAZE, CHARMINSTER – DISMISSED.**
 - SITE IDENTIFIED AS LAND OF LOCAL LANDSCAPE IMPORTANCE [LLLI] AND ADDITIONALLY INSPECTOR CONSIDERED SITE WAS A VALUED LANDSCAPE.

Key Theme 14 – What approach is being given to heritage harm?

- **EPPING FOREST [23/03/2020] – COOPERSALE – DISMISSED**
 - PROPOSED DWELLING WITHIN THE WALLED GARDEN OF LISTED HOUSE.
 - HARM TO HERITAGE ASSETS NOT OUTWEIGHED BY COSTLY RESTORATION OF WALLED GARDEN AND REPAIR OF CURTILAGE LISTED WALL AND REINSTATEMENT OF HISTORICAL WALLED GARDEN.
- **SWALE [02/03/2020] – LAND WEST OF BARTON HILL DRIVE – ALLOWED.**
 - URBAN EXTENSION FOR 700 DWELLINGS TO MINSTER ON SEA.
 - ALTHOUGH A GRADE II FARMHOUSE ABUTTED THE SITE, AN EXTENSIVE AREA WOULD BE RETAINED PROTECTING THE SETTING OF THE LISTED BUILDING AND THEREFORE IMPACT WAS ACCEPTABLE.
- **TOWER HAMLETS [18/02/2020] – FORMER LEB BUILDING – DISMISSED.**
 - PROPOSAL FOR 189 FLATS AND 1676 SQ M OF COMMERCIAL FLOORSPACE IN TWO BUILDINGS ONE OF 5 STOREYS AND ONE OF 15 STOREYS.
 - HARM TO THE CONSERVATION AREA AND LISTED BUILDINGS MEANT THAT NPPF 196 NOT PASSED AND NO TILTED BALANCE.
- **HART [14/02/2020] – LAND EAST OF CRONDALL ROAD, CROOKHAM – DISMISSED.**
 - PROPOSAL FOR 62 BED CARE HOME AND 160 RESIDENTIAL APARTMENTS.
 - HARM TO CONSERVATION AREA AND LISTED BUILDINGS.
 - STRONG PUBLIC BENEFITS – MEETING CARE NEEDS, PROVISION OF AFFORDABLE HOUSING ETC BUT NOT STRONG ENOUGH TO OUTWEIGH THE HARM.
 - DISENGAGEMENT OF THE TILTED BALANCE DUE TO HARM TO CA AND LISTED BUILDINGS.

Key Theme 15 – What approach is being taken to severe impacts on highways?

- **EAST HERTS [18/03/2020] – LAND EAST OF MARSHGATE DRIVE, HERTFORD – ALLOWED.**
 - APPLICATION SOUGHT 29 HOUSES, 346 FLATS AND 2710 SQ M OF EMPLOYMENT.
 - SITE ALLOCATED FOR 200 HOMES AND 3000 SQ M OF EMPLOYMENT IN U TO DATE DEV. PLAN.
 - INSPECTOR FOUND THAT THERE WOULD BE SLIGHT INCREASE IN QUEUING, ANY RESIDUAL IMPACT WOULD BE SMALL AND WELL BELOW NPPF THRESHOLD FOR RESISTING DEVELOPMENT.
- **MANSFIELD [15/11/2019] – LAND SOUTH OF PEAFIELD LANE, MANSFIELD WOODHOUSE – DISMISSED**
 - PROPOSAL FOR UP TO 240 DWELLINGS.
 - SHE WAS NOT SATISFIED THAT THERE WOULD NOT BE AN UNACCEPTABLE EFFECT ON HIGHWAY SAFETY OR A SEVERE CUMALATIVE EFFECT ON HIGHWAY SAFETY.
 - TILTED BALANCE APPLIED BECAUSE THE MOST IMPORTANT POLICIES WERE OoD BUT CONCLUDED THAT EXTREMELY SUBSTANTIAL WEIGHT SHOULD BE GIVEN TO THE POTENTIALLY ADVERSE IMPACT ON HIGHWAY SAFETY AND THE APPEAL WAS DISMISSED.
- **CHESHIRE WEST AND CHESTER [02/10/2019] – LAND AT THE HOLLIES – ALLOWED.**
 - PROPOSAL FOR 258 NEW HOMES.
 - WOULD THE PROPOSAL HAVE A RESIDUAL CUMULATIVE IMPACT TO JUSTIFY REFUSAL UNDER NPPF 109?
 - INSPECTOR CONCLUDED THAT WOULD BE PEAK HOUR SPREADING BUT CONSIDERED NOT SIGNIFICANTLY HARMFUL IMPACT ON THE LOCAL HIGHWAY NETWORK PER NPPF 109.
- **CANTERBURY [03/09/2019] – LAND OFF POPES LANE, STURRY, KENT – REFUSED.**
 - PROPOSAL WOULD CAUSE SEVERE IMPACT BECAUSE OF FOUR JUNCTIONS BEING OVER CAPACITY EVEN AFTER DEVELOPMENT ALLOWED.

Key Theme 16 – What approach is being taken to issues of accessibility?

- **WOKINGHAM [19/11/2019] – LAND TO THE REAR OF 6 JOHNSONS DRIVE – DISMISSED.**
 - PROPOSAL FOR 25 HOUSES IN COUNTRYSIDE OUTSIDE FINCHAMPSTEAD.
 - ACCESSIBILITY FOUND WALKING DISTANCES TO FACILITIES TOO GREAT AT 1.2-1.4 KILOMETRES.
 - BUS SERVICE PROVISION NOT WITHIN ASPIRATION OF CS TO BE “GOOD”.
- **HEREFORDSHIRE [01/11/2019] – DYMOCK ROAD, LEDBURY – DISMISSED.**
 - OUTLINE APPLICATION FOR UP TO 420 HOMES SOUTH OF LEDBURY WITHIN SETTING OF AONB.
 - KEY SERVICES AND FACILITIES LAY IN EXCESS OF 1.5 KMS DISTANT WHICH EXCEEDED DISTANCES RECOMMENDED BY THE IHT GUIDELINES.
 - THE PROPOSAL WOULD BE DEPENDENT ON THE USE OF CARS.
 - APPEAL DISMISSED.
- **WOKINGHAM [09/04/2020] LAND NORTH OF NINE MILE RIDE, FINCHAMPSTEAD – DISMISSED.**
 - PROPOSAL FOR UP TO 118 DWELLINGS.
 - COMPARISON WITH OTHER SITES GRANTED PP IS NOT PARTICULARLY HELPFUL
 - MOST IMPORTANT POINT IS WHETHER ALTERNATIVE CHOICES ARE AVAILABLE FOR AS MANY LOCAL JOURNEYS AS POSSIBLE
 - OPPORTUNITIES FOR MODAL CHOICE REMAIN LIMITED AND IT IS LIKELY THAT MOST JOURNEYS WOULD BE UNDERTAKEN BY THE CAR
 - THESE HARMFUL IMPACTS ARE MATTERS OF VERY SUBSTANTIAL WEIGHT AND IMPORTANCE IN THE PLANNING BALANCE.

Key Theme 17 – What approach is being taken to Climate Change?

- CURRENTLY APPEARS REMARKABLY UNDETERMINATIVE IN THE APPROACH TO RESIDENTIAL PLANNING CONSENTS.
- FOUND NO PLANNING APPEAL INVOLVING RESIDENTIAL WHERE THE EFFECT ON CLIMATE CHANGE WAS CONSIDERED DETERMINATIVE OR FUNDAMENTAL TO THE DECISION.
- CLEARLY CONSIDERED UNDER THE QUESTION OF ACCESSIBILITY AND SUSTAINABILITY PARTICULARLY IN THE ISSUE OF MODE OF TRANSPORT.
- MANY LPAS SUCH AS WINDSOR AND MAIDENHEAD AND WOKINGHAM DECLARED CLIMATE CHANGE EMERGENCY BUT THE NEXT RAFT OF DEVELOPMENT PLANS LIKELY TO HAVE POLICIES WITH MORE TEETH THAN CURRENTLY UTILISED TO DEAL WITH THIS ISSUE.

Key Theme 18 – What approach is being taken to Costs applications?

- **WAVERLEY [02/03/2020] – LAND EAST OF LOXWOOD ROAD – ALLOWED.**
 - PROPOSAL FOR 80 HOUSES ON EDGE OF SETTLEMENT.
 - TWO PREVIOUS RECENT APPEALS HAD HELD LPA DID NOT HAVE 5 YEAR HLS BUT LPA STILL SOUGHT TO ARGUE IT COULD SHOW 5 YEAR HLS BUT THEN CHANGED POSITION NEXT DAY.
 - LPA ACCEPTED IT SHOULD PAY APPELLANTS COSTS ENDORSED BY INSPECTOR.
- **SEVENOAKS [26/07/2019] – SWANLEY SHOPPING CENTRE – ALLOWED.**
 - TOWN CENTRE REDEVELOPMENT INCLUDING 303 NEW DWELLINGS.
 - LPA SENT LETTER OF APPEAL NOTIFICATION OUT ASKING THOSE WHO WISHED TO ATTEND TO REGISTER WITH THE LPA PRIOR TO THE START OF THE INQUIRY.
 - LPA HAD NOT RESPONDED TO SUCH REQUESTS OR RESPONDED TO EMAILS MEANING THAT MEMBERS OF THE PUBLIC MIGHT BE DISCOURAGED FROM ATTENDING THE INQUIRY.
- **TANDRIDGE [26/06/2019] – FELBRIDGE – ALLOWED.**
 - TWO RESIDENTIAL APPEALS FOR 25 AND 59 DWELLINGS.
 - LPA MEMBERS OBJECTED TO SCHEME ON HIGHWAY IMPACT BUT WITHDREW OBJECTION THE WEEK BEFORE THE INQUIRY.
 - COUNCIL HAD DELAYED DEVELOPMENT IT CLEARLY SHOULD HAVE ALLOWED, MISAPPLIED POLICY AND FAILED TO KEEP CASES UNDER REVIEW UNTIL THE LAST MINUTE AND FAILED TO PRESENT EVIDENCE TO SUBSTANTIATE ITS POSITION AT THE APPEAL.
- **WILTSHIRE [06/04/2020] – LAND AT PURTON ROAD, SWINDON – DISMISSED**
 - LPA HAD NOT BEEN CLEAR ABOUT CONCERNS REGARDING WILDLIFE IMPACT IN REASONS OF REFUSAL AND APPELLANT COULD NOT ESTABLISH WHAT WAS NEEDED TO OVERCOME CONCERN.
- **SUMMARY – PROCEDURAL COMPLIANCE WITH THE RULES IS OF THE HIGHEST IMPORTANCE PARTICULARLY POST ROSEWALL.**

Key Theme 19 – What approach is being taken to Emerging policy?

- **HARROGATE [13/02/2020] – LAND AT HARROGATE ROAD, WETHERBY – DISMISSED.**
 - PROPOSAL FOR 210 HOUSES OUTSIDE SETTLEMENT.
 - TILTED BALANCE SHOULD APPLY AS EXISTING DEVELOPMENT PLAN OUT OF DATE.
 - BUT HEALTHY HOUSING LAND SUPPLY POSITION AND AN EMERGING LOCAL PLAN AT ADVANCED STAGE WITH ADOPTION IMMINENT.
 - LOSS OF THIS SITE UNJUSTIFIED WHEN EMERGING PLAN WOULD MEET HOUSING NEEDS.
- **BEDFORD [09/01/2020] – LAND TO THE WEST OF ODELL ROAD, HARROLD – DISMISSED.**
 - PROPOSAL FOR 90 HOMES INCLUDING 30% AH.
 - LPA COULD NOT DEMONSTRATE A FIVE YEAR HLS MAKING ITS DP OoD.
 - HOWEVER POSITION WOULD BE CHANGED BY IMMEDIATE ADOPTION OF AN EMERGING LOCAL PLAN FOUND SOUND BY INSPECTORS EXAMINING THE SUBMISSION PLAN.
 - INSPECTOR GAVE SIGNIFICANT WEIGHT TO THE NEW POLICIES AND THEREFORE DID NOT BENEFIT FROM THE PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT.
- **ST ALBANS [09/01/2020] – LAND TO THE REAR OF BURSTON GARDEN CENTRE – DISMISSED.**
 - PROPOSED RETIREMENT VILLAGE AT A GARDEN CENTRE BUT WITHIN GB.
 - DITE ALLOCATED IN EMERGING NEIGHBOURHOOD PLAN AND ALONG WITH ITS REMOVAL FROM GB.
 - NP NOT YET BEEN ALLOCATED AND INSPECTOR QUERIED WHETHER GB DESIGNATION COULD BE ALTERED BY EMERGING NEIGHBOURHOOD PLAN.
 - GAVE SUBSTANTIAL WEIGHT TO CONFLICT WITH THE GB AND INAPPROPRIATE DEVELOPMENT.

Key Theme 20 – What approach is being taken to Green Belt appeals?

- **TANDRIDGE [02/03/2020] – LAND AT FRITH MANOR FARM, EAST GRINSTEAD – DISMISSED.**
 - PROPOSAL FOR 101 DWELLINGS ON GREEN BELT LAND.
 - NO VSC TO JUSTIFY RELEASE OF THE SITE.
 - ADDITIONALLY INAPPROPRIATE TO RELEASE GB LAND OTHER THAN THROUGH DEVELOPMENT PLAN EXAMINATION.
- **WINDSOR AND MAIDENHEAD [16/12/2019] – LAND AT LODGE FARM, HOLYPORT – DISMISSED.**
 - PROPOSAL FOR 150 HOUSES IN OPEN COUNTRYSIDE IN THE BERKSHIRE GREEN BELT.
 - GREAT IMPACT ON THE GREEN BELT AS IT WOULD BE SEEN AS AN URBAN FORM.
 - ALTHOUGH THIS WAS AN AREA OF SIGNIFICANT HOUSING NEED ONLY LIMITED WEIGHT TO THE BENEFITS IN THE BALANCING EXERCISE.
 - VERY SPECIAL CIRCUMSTANCES DID NOT EXIST.
- **YORK [23/10/2019] – NORTH OF BOROUGHBIDGE ROAD, YORK – ALLOWED**
 - PROPOSAL FOR 266 HOUSES IN GREEN BELT OUTSIDE YORK.
 - FORMER CIVIL SERVICE SPORTS GROUND IN AN AREA DEFINED AS GREEN BELT.
 - EMERGING LOCAL PLAN PROPOSED TO EXCLUDE SITE FROM GREEN BELT AND ALLOCATE IT FOR HOUSING.
 - NO 5 YEAR HLS AND WEIGHT TO THE EMERGING LOCAL PLAN JUSTIFIED VSC WHICH JUSTIFIED THE GRANT OF PP.
- **SUMMARY – HOUSING NEED GETS LITTLE TRACTION IN THE VSC BALANCING EXERCISE UNLESS SOMETHING ELSE CONSTITUTES VSC.**

Key Theme 21 – What approach is being taken to the AONB?

- **CHELTENHAM [23/03/2020] – [KIDNAPPERS LANE] – ALLOWED**
 - PROPOSAL FOR 25 HOUSE WITH 40% AFFORDABLE HOUSING.
 - SITE LAY ADJACENT TO THE COSTWOLDS AONB.
 - PREVIOUS SCHEME FOR 45 HOUSES DISMISSED IN 2016.
 - HARM TO THE SETTING OF THE AONB WAS OUTWEIGHED BY THE BENEFITS OF THE PROPOSAL.
- **MID SUSSEX [16/12/2019] – LAND OFF LONDON ROAD, BOLNEY – DISMISSED.**
 - APPLICATIONS FOR C2/C3 USES IN THE AONB TO MEET UNMET NEED IN THE AREA.
 - SIGNIFICANT ADVERSE IMPACT ON THE AONB AND IN PARTICULAR THE PURPOSES OF WHICH THE AONB HAD BEEN DESIGNATED AND THE PROPOSALS WOULD BE MAJOR DEVELOPMENT IN THE AONB CONTRARY TO NPPF 172 – MAJOR DEVELOPMENT ONLY PERMITTED IN AONB IF EXCEPTIONAL CIRCUMSTANCES.
- **HEREFORDSHIRE [01/11/2019] – DYMOCK ROAD, LEDBURY – DISMISSED.**
 - OUTLINE APPLICATION FOR UP TO 420 HOMES SOUTH OF LEDBURY WITHIN SETTING OF AONB.
 - SCALE OF HOUSING WOULD FAIL TO CONSERVE AND ENHANCE THE AONB.
 - HARM SIGNIFICANTLY AND DEMONSTRABLY OUTWEIGHED THE BENEFITS.

Key Theme 22 – What approach is being taken to design?

- **HILLINGDON [26/03/20] – STANFORD HOUSE [DISMISSED]**
 - TEN STOREY BLOCK OF FLATS FOR 81 FLATS AND GROUND FLOOR COMMERCIAL USE.
 - SITE ON TOWN CENTRE FRINGE.
 - NO HARM TO ADJACENT NESTLE FACTORY CONSERVATION AREA.
 - DESIGN UNACCEPTABLE BECAUSE LACK ON ANY ENTRANCES PROPOSED ON THE PRINCIPAL ROAD FRONTAGE TO CREATE AN ACTIVE FRONTAGE AND NARROW UNWELCOMING SIDE ACCESS WHERE THE PROPOSED ACCESSES WERE LOCATED.
- **LONDON LEGACY DEVELOPMENT CORP [03/01/2020] – 60 DACE ROAD - ALLOWED.**
 - SCHEME FOR 60 RESIDENTIAL FLATS AND COMMERCIAL FLOORSPACE.
 - DESIGN QUALITY WAS A FACTOR IN GRANTING CONSENT FOR SCHEME WHICH WOULD REPRESENT AN IMPROVEMENT ON THE EXISTING.
 - PROPOSED DEVELOPMENT WAS OF HIGH QUALITY DESIGN AND ALSO THERE WAS A POLICY IMPERATIVE TO IMPROVE THE EFFICIENT USE OF LAND.
- **MANSFIELD [25/10/2019] – MARSHALLS MONO LTD, MANSFIELD WOODHOUSE – ALLOWED.**
 - PROPOSAL FOR UP TO 150 HOUSES ON A FORMER CONCRETE WORKS.
 - DESIGN IMPROVEMENTS TO AN ACCESS INCLUDING PEDESTRIAN ACCESSIBILITY WOULD ENHANCE PEDESTRIAN CONNECTIVITY.
 - IMPROVEMENT TO CONNECTIVITY IMPORTANT FOR DELIVERING QUALITY DESIGN.

Key Theme 23 – The current position regarding appeals with PINS.

- LATEST ADVICE FROM 14 APRIL 2020.
- **CASEWORK DIVISION** HAVE INFORMED THOSE WITH APPEALS IN THE SYSTEM THAT ALL APPEALS ARE SUSPENDED **UNTIL THE 1ST MAY 2020.**
- PINS LOOKING INTO WAYS OF USING TECHNOLOGY AND WHETHER ANY APPEALS CAN CONTINUE OR BE DETERMINED AT THE PRESENT TIME.
- SAME TRUE FOR LOCAL PLAN EXAMINATIONS.
- NO ACTUAL DECISION ABOUT THE WAY FORWARD HAS FORMALLY BEEN PUBLISHED OR ANNOUNCED.
- CURRENTLY PINS IN LOCKDOWN ALTHOUGH APPEAL DECISIONS ARE BEING RELEASED.

Key Theme 24 – What is likely to happen in the future to residential appeals?

- THE APPEAL SYSTEM MIGHT WELL CHANGE MATERIALLY WITH THE LOCKDOWN AND THE USE OF VIRTUAL TECHNOLOGY.
- ROSEWELL HAS CHANGED THE PLANNING APPEAL SYSTEM MATERIALLY.
- MORE ROUND TABLES AND LESS CROSS EXAMINATION.
- EXAMPLE OF INQUIRY IN BOLNEY, MID SUSSEX WHERE 4 OF THE 6 TOPICS DONE BY ROUND TABLE.
- QUICKER AND MORE INQUISITORIAL.
- LIKELY TO BE CHANGES TO THE ASSESSMENT OF NEED AND IN PARTICULAR USE OF THE STANDARD METHODOLOGY.
- MY JUDGMENT IS THAT THE GOVERNMENT WILL REVISE THE NPPF [AGAIN] IN THE AUTUMN TO PROVIDE AN EVEN GREATER PRESUMPTION IN FAVOUR OF DEVELOPMENT [SUSTAINABLE?] TO BOOST THE ECONOMY MATERIALLY IN THE LIGHT OF COVID 19.

Key theme 25 - SUMMARY AND CONCLUSIONS

- THE PLANNING APPEAL SYSTEM IS GETTING MORE EXPENSIVE, MORE DIFFICULT AND LESS FAVOURABLE TO APPELLANTS.
- INSPECTORATE IS GETTING MORE ADVERSE TO GRANTING PLANNING PERMISSION AT APPEAL.
- THE APPROACH OF INSPECTORS IS FUNDAMENTALLY HOSTILE TO THE GRANT OF PLANNING PERMISSIONS AT APPEAL.
- THE USE OF THE TILTED BALANCE IS STILL VARIABLE AND NOT FULLY FOLLOWED.
- THE FLAT BALANCE IS WEIGHTED TOWARDS IMPACTS, RATHER THAN BENEFITS.
- THE FUTURE MIGHT WELL INVOLVE TECHNOLOGICAL IMPROVEMENTS AND ADVANCEMENTS LIKELY TO INVOLVE REMOTE CONFERENCING HEARINGS.
- NO END IN SIGHT FOR THE RECOMMENCEMENT OF THE PLANNING APPEALS SYSTEM CURRENTLY.

Top Ten Secretary of State planning decisions over the past year



Matthew Fraser

Overview of the last 12 months – some stats

- **17** decisions on recovered appeals / called-in applications between 15 April 2019 and 15 April 2020 involving some element of housing development.
- **10 out of 17** granted planning permission (59%)
- In **11 out of 17**, Secretary of State agreed with his Inspector (65%)

The effect of conflict with the development plan

- Of the 11 cases where there was overall conflict with the development plan, only 4 were allowed (36%).
- Of the 6 cases where the proposal accorded with the development plan, all 6 were allowed (100%).

The effect of a 5-year housing land supply

- Of those 11 cases with a 5-year housing land supply (“5YHLS”), 6 were allowed (55%).
- Of those 6 cases without a 5YHLS, 4 were allowed (67%).

The effect of the “tilted balance”

- The “tilted balance” is where the proposal should be granted permission unless the harms significantly and demonstrably outweigh the benefits: NPPF 11(d)(ii).
- Of those 4 cases where the tilted balance applied, 3 were allowed (75%).
- Of those 13 cases where the tilted balance did not apply, 7 were allowed (54%).

Number 1

**Land at North and South of Fritch Way, Pods Brook Road,
Braintree, Essex (13.6.19)**

- 1,600 homes
- Conflict with development plan
- No 5YHLS
- Less than substantial heritage harm outweighed by public benefits
- Tilted balance applied.

- Permission refused.
- Harms significantly and demonstrably outweigh the benefits.

Number 2

**Land at Chiswick Roundabout, Junction of Gunnersbury
Avenue Great West Road, London (19.7.19)**

- The “Chiswick Curve” – part 32, part 25 storey residential towerblock
- Inspector enthusiastic about the design
- Inspector concluded that the public benefits would outweigh the heritage impact, inc. to Kew Gardens World Heritage site
- Recommended approval

- Permission refused.
- NPPF 196 balance struck differently.
- Challenge in the High Court dismissed: *Starbones Ltd v SSHCLG* [2020] EWHC 526 (Admin) (10 March 2020).

Number 3

Pale Lane Farm, Pale Lane Fleet Hampshire (5.11.19)

- 700 homes, primary school, local centre
- Application submitted in November 2016 – policy context:
 - old plan
 - no emerging plan
 - no neighbourhood plan.
- 3 years later, the appeal decision is made ...

- Permission refused despite “most important policies” being out of date.
- Changes since application:
 - Emerging Local Plan at advanced stage with no allocation of site
 - Made Neighbourhood Plan with no allocation of site
 - 9.2 years housing land supply
- Prematurity objection upheld
- Significant adverse landscape and visual impacts
- Public benefits do not outweigh heritage harm.

Number 4

Land to the West of Burley-in-Wharfdale at Sun Lane and Ilkley Road (5.11.19)

- 500 home extension to Burley-in-Wharfdale
- HLS less than 2 years
- No AONB harm, no significant visual impact, no ecological impact
- Biodiversity net gain
- Public benefits outweigh heritage harm.
- Provision of new school, no medical service shortage, no flood risk, no severe traffic impact.

- Permission refused.
- Green Belt – Very Special Circumstances test not met.
- Clear reason for refusal.

Number 5

**Land at former Westferry Printworks site, 235 Westferry Road,
London (14.1.20)**

- Comprehensive mixed use development in Tower Hamlets – including 1,524 homes.
- Fallback position: 722 homes
- Issue of impact on character and appearance of the area due to scale, height, massing
- Affordable housing policy conflict – only providing 21%

- Permission granted.
- Significant weight to affordable housing despite policy conflict
- Significant weight to market housing despite 5YHLS
- Moderate weight to social and economic benefits
- Less than substantial heritage harm outweighed by public benefits.

Number 6

**North London Business Park, Oakleigh Road South, London
(22.1.20)**

- Hybrid scheme:
 - full planning application for 376 residential units in five blocks reaching eight storeys, secondary school and sports facilities,
 - outline application for up to 824 additional residential units in buildings ranging from two to eleven storeys, with up to around 5k square metres of non-residential floorspace and associated development.
- Impact of elements over 7 storeys high on character and appearance.

- Permission granted
- Acceptable in scale, massing, design
- Significant weight to conflict with local plan due to not being allocated for tall buildings
- 5YHLS depended on the scheme
- Full costs awarded, and decision took over a year from inquiry

Number 7

Land at Fiddington, Ashchurch near Tewkesbury (22.1.20)

- 850 homes, school, local centre
- Relatively recently rejected for an allocation in the 2017 Core Strategy
- Usually a bad sign ...

- Permission granted
- Non-allocation due to highways issue now resolved
- No damage to plan-led system
- Serious HLS shortfall, and little progress to LP review
- Landscape policy-compliant, no highway impact
- Policy-compliant affordable housing provision

Number 8

Land at former car parks, Tesco Store, Conington Road,
Lewisham, London (22.1.20)

Three buildings, 8, 14 and 34 storeys in height, to provide 365 homes, as well as non-resi floorspace.

Key issue was whether affordable housing provision of just over 20% was policy-compliant.

- Permission granted
- AH more than could be viably provided – “very considerable weight” given to this
- No pressing case for late stage review due to single-phase development.
- Public benefits outweighed less than substantial harm.

Number 9

Land off Station Road, Long Melford, Suffolk (1.4.20)

- 150 homes with public open space in open countryside outside the village settlement boundary of Long Melford.
- Inquiry: no 5HYLS.
- Post-inquiry: 5YHLS
- Policy requirement to demonstrate “local housing need” and “exceptional circumstances” for development outside settlement boundaries

- Permission granted
- Local housing need could be demonstrated
- Settlement boundary out-of-date
- “exceptional circumstances” requirement inconsistent with the NPPF
- Limited landscape harm, moderate weight to economic benefits
- Material considerations outweighed development plan conflict

Number 10

**97 (and land adjacent to) Barbrook Lane, Tiptree, Colchester
(7.4.20)**

- Up to 200 homes (inc. 30% affordable), and safeguarded land for school expansion, on undeveloped land outside the settlement boundary.
- Prematurity objection

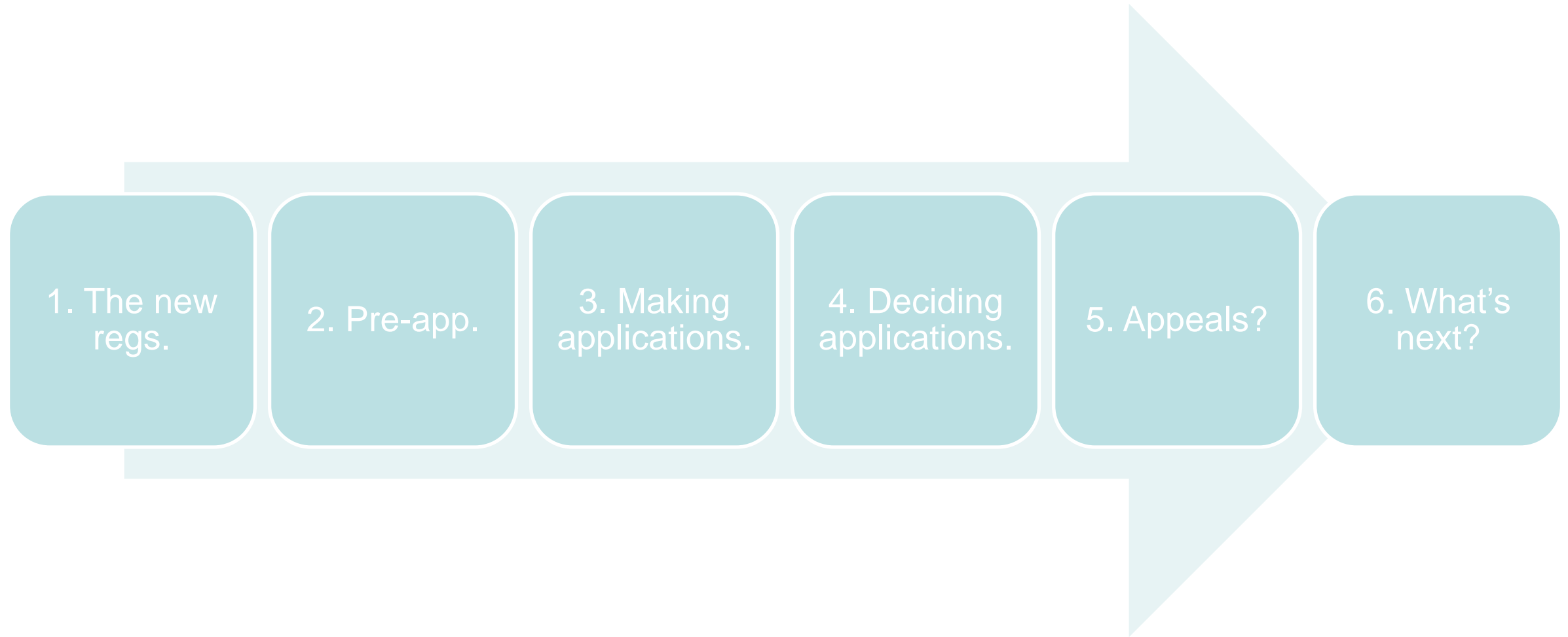
- Permission granted
- Prematurity objection rejected
- HLS = 4.7 years
- No wider landscape impacts, no highway issues, no ecological issues
- Tilted balance engaged.

LPA powers and decision-making during the COVID-19 lockdown



Zack Simons

Planning decisions under the Coronavirus Regs 2020



(1) The new regulations – headlines

- **Title:**

“Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020”

- **Came into force:** 4th April 2020.
- **Covers LPA meetings:** Before 7th May 2021.
- **Scope:** England only (re LPA meetings).

(1) The new regulations – key changes

- **C'tee Members:** - Can attend meetings “**remotely**” (defined in later slide).
- **Public/press:**
 - Can attend and access meetings “**remotely**”.
 - Meetings can be “**open**” to the public virtually.
- **Documents:**
 - “Open to inspection” includes:
“being published on the website of the council”
- Regs on virtual meetings **override** “*any prohibition or other restriction contained in the standing orders or any other rules of the authority*”.
- **NB** as we’ll see, regs are **not compulsory**. They allow. They don’t require.

(1) The new regulations

What has not (yet) changed:

- Legal requirements for making, notifying and consulting on valid applications, and nothing on appeals.
- So no new law yet addressing e.g.
 - *site visits,*
 - *officer meetings,*
 - *need for physical site notices,*
 - *officer delegation,*
 - *CIL,*
 - *appeals,*
 - *preserving expiring consents.....*

(2) Pre-app

- Face-to-face meetings at a standstill.
- But most LPAs still offering pre-app meetings over e.g. video call.
- But can the officer visit site.....?

(2) Pre-app: site visits

- **Are they legal?**

Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

- You can leave home “*to travel for the purposes of work [...] where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living*”: Reg 6(f).

- **In reality?**

Depends on the LPA.

- For now: many are not allowing site visits – either at all, or only in exceptional cases.
- Increased importance on e.g. Google Maps, including pictures in application.

(3) Making an application

- Most procedures unaffected by lock-down

(e.g. online submission, storage of and access to documents, notification / consultation over email / post...). Include lots of site pictures!

- Site notices?

1. **Not always required** - i.e. if no EIA + accords with dev plan + no PROW affected: Art 15(5) DMPO 2015.
2. **Legal position** - LPA officers can post site notices: Reg 6 Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.
3. **In reality** – many are currently asking applicants to post them, and to provide evidence that they've been posted.

(3) Making an application

Legal risk: Statements of Community Involvement

- Many SCIs go further than the DMPO requires on e.g. notification/publicity/consultation requirements.
- SCIs set a legally enforceable “procedural legitimate expectation”:
R (Majed) v. LB Camden [2009] EWCA Civ 1029
- So – unless / until we have new regs / protocols on this issue – follow the SCI.

(4) Deciding applications

Emergency Delegations

- Pre-lockdown, several LPAs already had
 - emergency delegations (e.g. Royal Borough of Windsor and Maidenhead, East Suffolk and Manchester City) or
 - schemes for a quorum to meet at the Council with others taking part online (e.g. LB Waltham Forest and Luton Borough Council).
 - Some schemes delegate “in consultation” with planning c’tee members over video-con.
- Officers - remember to **give reasons**:

R. (Shasha) v Westminster City Council [2016] EWHC 3283 (Admin)

(4) Deciding applications

Committee meetings: members

- 3 tests – under the new regs, members “*attend*” / are “*present*” if:
 1. They can hear, and where practicable see, and be so heard and, where practicable, be seen by, the other members in attendance,
 2. They can hear, and where practicable see, and be so heard and, where practicable, be seen by, any members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting, and
 3. They can be so heard and, where practicable, be seen by any other members of the public attending the meeting.

(4) Deciding applications

Committee meetings: public / press

- “Public access” to LPA meetings now includes “**remote access**” =
“to enable them to attend or participate in that meeting by electronic means, including by telephone conference, video conference, live webcasts, and live interactive streaming”
- LPA meetings being “open to the public” now includes open via:
“video conferencing, live webcast, and live interactive streaming and where a meeting is accessible to the public through such remote means the meeting is open to the public whether or not members of the public are able to attend the meeting in person”

(4) Deciding applications

What's actually happening?

- RBKC held a virtual c'tee meeting on 9th April – 5 days after the new regs came into force! A success – watch it here <https://bit.ly/2USnjOR>.
- On the same night, virtual meetings in Melton and South Somerset (the latter was a meeting that won't be forgotten!).
- **Many** have / are soon to follow suit, e.g. *Bristol, Westminster, Birmingham, Milton Keynes, Charnwood, Cannock, Harborough, Melton, Newcastle under Lyme, Cambridge City....* (thanks to Alastair Bird & Charlotte Cook at Barton Willmore for their very helpful LPA-by-LPA list).
- Other LPAs have cancelled April / May c'tee meetings & most (but not all) are exploring virtual procedures under new regs, often in tandem with emergency delegations.

(5) Appeals?

- Appeals can be lodged. But no site visits (virtual visits being trialled – so pause on Written Reps).
- And currently no hearings or inquiries:
 1. PINS' key concern = fairness / public participation re MS Teams (albeit **NB** now both LPAs and the planning court are already there).
 2. Pilot remote hearings/inquiries – albeit only uncontroversial single-issue cases – in late April / May.
 3. Is the law on “fairness” really such a barrier to remote decision-making? See my 11th April post on planoraks.com. A case for MHCLG assisting PINS with some new regs?

(6) What's next?

- Already of change in a short time:
 - LPAs continuing to adopt virtual c'tee meetings at pace;
 - Planning court already running virtually - I did a planning court virtual hearing in mid-March, well before lockdown.
- To get the wheels moving, 2 points of urgent focus:
 - 1. LPAs:** Rolling out virtual c'tee meetings to more and more LPAs (regs now in place, but some may need constitutional/SO/SCI changes + new protocols), and
 - 2. PINS:** Adopting a procedure for virtual hearings / inquiries.
- Beyond those, MHCLG-led reforms / regs are needed quick on matters outside the 4 corners of this talk, i.e. expiring consents and CIL.

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.

Thank you for listening

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