

**CITY OF LONDON LAW SOCIETY
PLANNING AND ENVIRONMENTAL LAW COMMITTEE
MINUTES OF MEETING ON 24 OCTOBER AT LEWIS SILKIN AT 5 PM**

1 ATTENDANCES (SOME VIRTUALLY) AND DETAILS OF SUBSTITUTIONS

Matthew White (Chairman)	Herbert Smith Freehills LLP
Paul Davies (Vice Chairman)	Latham & Watkins LLP
Helen Hutton (Hon Secretary)	Michelmores LLP
Jacqueline Backhaus	Trowers & Hamblins LLP
John Bowman	Fieldfisher LLP
Joanna Carless	TfL Legal
Ashley Damiral	CMS Cameron McKenna Nabarro Olswang LLP
Ben Groves	Ashurst LLP as sub for Claire Dutch
Claire Fallows	Charles Russell Speechlys LLP
Duncan Field	Town Legal LLP
Ian Ginbey	Clyde & Co LLP
Brian Greenwood	Clyde & Co LLP
Sara Hanrahan	Lewis Silkin LLP
Kevin Hart	City of London Law Society
Rupert Jones	
Tim Pugh	
Josh Risso-Gill	CMS Cameron McKenna Nabarro Olswang LLP
Gary Sector	Addleshaw Goddard LLP

2 APOLOGIES FOR ABSENCE

Rory Bennett	Linklaters LLP
Claire Dutch	Ashurst LLP
Valerie Fogleman	Stevens & Bolton LLP
Richard Keczkcs	Slaughter and May
Louise Samuel	Town Legal LLP
Robert Share	Allen & Overy LLP
Ben Stansfield	Gowling WLG
Christopher Stanwell	Fieldfisher LLP
Stephen Webb	Brecher LLP

3 MINUTES OF THE LAST MEETING

The Minutes of the last meeting were approved.

4 PLANNING UPDATES

4.1 GOVERNMENT UPDATES:

4.1.1 Biodiversity Net Gain updates

- timings for national regime have been confirmed, so it will apply for most new planning permissions from sometime in January (date not released yet) and small consents from April;
- DEFRA Guidance and the draft Statutory Instruments are expected to be published in November; and
- the Committee discussed the operation of the voluntary regime, where it applies, outside London;

4.1.2 **Levelling Up and Regeneration Bill**

It was returned to the Lords for two sets of amendments –

- i) amendment 45 - climate change (duties about mitigation) and
- ii) amendment 22 - enabling Local Authorities to meet virtually (the Commons had rejected it, on the basis that China can hack into cameras remotely, but the Lords are insisting on it).

It has gone back to the Commons today (24 October 2023), so the above can hopefully be finalised.

The Bill was not listed in the King's speech, so Members of the Committee were confident that it would go through in the next couple of weeks, before Parliamentary recess begins.

If Labour forms the next government, they are likely to halt, review or rescind many of the measures currently in this Bill (by then Act).

4.1.3 **NPPF**

A revised document was issued by the Government in September (just dealing with onshore wind and flooding).

An updated substantive version (picking up on the consultation version which was published in December last year) is expected once LURA has been enacted.

It will hopefully appear before Christmas, but it may be early next year due to the delays with LURB. It may not contain all we had previously expected it would contain, as there has been a certain amount of rowing back on some of the issues by Ministers recently.

4.1.4 **Second staircases**

The 18m height limit was confirmed in July, just after our last meeting. All new residential buildings over 18m high will now require a second staircase. Single staircase buildings over 18m which are currently being built out will not have to be remediated (there will be a 30 month transition period). Awaiting Building Regulations to be brought in. The London Mayor (Sadiq Khan) had imposed the height of 30m, following an announcement in February 2023.

4.1.5 **Permitted Development Rights**

Consultation from July to September. Nothing dramatic is likely to change. Expanded on the types of buildings to be converted into residential use. 1500m² limit to residential use. 14 day limit on markets.

There is a proposal for local design codes to be put in place, then no prior approval would be necessary for schemes following them. This is not confirmed yet.

4.1.6 Increase in planning fees

Regulations have been published in draft for 25-35% increases. From 1 April 2025 fees can be increased annually in line with inflation (or, if lower, by 10%).

LAs will want to avoid planning application extensions from later this year. The new Planning Guarantee is to apply after 26 weeks for major schemes and now after 16 weeks for determination of non-major schemes.

4.2 CASE UPDATES

4.2.1 M&S

Planning permission was refused by the Secretary of State – interesting decision. Carbon was given as the primary reason, but heritage matters were also paramount. This is perhaps an indication of how carbon will be treated in future. M&S has applied to bring a Judicial Review of the decision by the Secretary of State. No permission to proceed has been granted yet.

4.2.2 R (Fiske) v Test Valley BC [2023] – Two JR challenges.

Sara Hanrahan gave us an update on these cases, which she had acted on.

The first one centred on the *Finney* principle, that there should be no change to/no conflict with the operative part of the original permission via the conditions changed in a section 73 permission.

Here the s.73 change conflicted with reference to a substation in the operative part. Based on *Finney*, this change was not allowed.

The Council has however put in application to appeal to the Court of Appeal. The parties are waiting to see if it will get permission to appeal. Council says it should be allowed to vary operative part, as it is a "reduction" to the original permission, but Fiske however says that it is an amendment to/removal of part of the operative part of the original permission, so it should not be allowed.

The Judge said there are two tests which apply. S 73 cannot conflict with the operative part of the original planning permission, and it cannot involve a fundamental alteration of the development authorised by the original permission. If either applies, then it is fatal, on the basis of:

- (i) *Arrowcroft*; and
- (ii) *Armstrong*.

It was fundamental –as it is how it was to be operated. Was the substation therefore an essential part? Yes.

Second case – has already been to the Court of Appeal. Keith Lindblom was the Judge in that case. This was a Hillside issue, involving overlapping planning permissions. Substation – the developer could not build out both permissions, as one permission had one and the other did not. Was Council free to grant the second permission for Developer to decide which one to

implement? Here the second application had been explained to members, as it was necessary to make the first one work.

Connection between first and second was a material consideration.

The Court of Appeal case was heard in October and the parties are still awaiting a decision.

4.2.3 **R (OAO Finch) v Surrey CC (Supreme Court)**

The decision is still awaited. Likely to be in the new year now.

4.2.4 **"Decision date case" in Southwark as mentioned by Richard at our previous meeting.**

There is still surprise at this decision. It means that once planning permission is granted, clients/we must check that a copy is uploaded to the Council's website / planning portal.

4.3 **LOCAL AUTHORITY UPDATES:**

- (a) New Westminster SPD and guidance notes
- (b) New City lighting SPD City – enhance lighting after dark – big focus.
- (c) Draft GLA – London Plan guidance. Purpose built student accommodation. Digital connectivity infrastructure. Consultation until January.

5 **ENVIRONMENTAL UPDATE:**

- 5.1 Engagement with UKELA – Paul is working on how to engage more effectively with that organisation.

5.2 **UK Environmental Law Updates**

Emerging environmental landscape, especially following EU legislative agenda. Continued uptick in engagement re environmental.

Rollback by Government.

Clients are cross – investing in renewable sector. There is now a Divergence between EU & UK worlds.

- 5.3 Engagement with new CLLS ESG Committee. The two committees are working well together Paul will be on that separate Committee for liaison purposes. There are (going to be) three sub groups for ESG – he is involved in rating and climate ones already. ESG ratings – has already setup a working party and it responded to draft code consultation, 3 weeks ago. Another subcommittee is being set up for Biodiversity.

6 **PARTY CONFERENCE UPDATES**

There was a lot of talk about planning at both main parties' conferences.

6.1 **Conservative party:**

Rachel Maclean – Government will continue to intervene in LAs which are slow to produce a local plan.

Michael Gove and Rachel Maclean both threatened to intervene in London – they reserved the right for Government to step in, to encourage Sadiq Khan to provide more homes. London has not delivered as much affordable housing as it should have.

6.2 **Labour party:**

There has been a lot of depth to its discussions. Leaders have said a lot about planning. Examples include:

- (a) Strengthening rules to stop developers getting out of their responsibilities, especially affordable housing obligations. Percentage required is not being achieved;
- (b) Promising a Planning Bill within the first 100 days if it gets in at the next election. The way forward is very much not to replace the planning system, but to improve it;
- (c) Hardwiring net zero into planning;
- (d) Updating all NPSs within first 6 months;
- (e) Promising to recruit 300 new planners – at least that would be a start;
- (f) Promising to build 1.5m new homes. Labour is mentioning Council housing i.e. Councils are to be able to build more easily;
- (g) Labour seems keen on the new town model, so using that concept more effectively;
- (h) Creating more beautiful cities; and
- (i) Building on grey belt – (brownfield within green belt areas).

7 **FUTURE MEETINGS/EVENTS**

- 7.1 It was suggested that we should ask Helen Hayes (Labour) to speak to the Committee.
- 7.2 Matthew Pennycook MP, Woolwich, would also be good – he spoke at Addleshaw Goddard at an event recently. Gary Sector will try to contact him. Ashley is attending an event with him in a couple of weeks.
- 7.3 CLLS – may have PR links with both of the main political parties. Would be good to try to set up connections with both parties now.
- 7.4 Should also approach a Green MP – might be interesting as that person will not be talking to the script. Jenny Jones in House of Lords – formerly of GLA – would be a very interesting speaker.
- 7.5 We should try to follow the PEBA ways of engaging with prominent stakeholders.

8 **AOB**

- 8.1 The CLLS is setting up a new AI committee – it is to be announced soon.

Also reviving the IP committee, with a Chair to be recruited at beginning of next year.

- 8.2 Colin Passmore – Chair of CLLS – wants to build bridges, by having a member of the main CLLS committee sitting on each of the specialist committees. Nick Wrightson, a lawyer at Kingsley Napley, is to be the "bridge" to our committee.

Colin also wants to bring in associates as future members, before they get to partnership level, so they can shadow committee members. They would come to Committees regularly. Fluid pool. Start thinking about 5 or 6 associates in the new year.

- 8.3 Incorporating CLLS as a separate organisation. New website for the new organisation will go live in the New Year.

- 8.4 "Food for thought" ethics event is happening on 21 November. Going live with publicity for forthcoming events in next 6 months

- 8.5 Planning PSL Group has recently been formed. It met this afternoon. Successful meeting. Committee members are to pass on details to Matthew of our firm's Planning PSLs if they would like to join.

John Wachter – would he come to speak to us on the new guidance? It has not changed a huge amount, but would be helpful.

Eric Pickles is speaking on 1st November at the City of London Law Society dinner.

- 8.6 Matthew White has contacted the following about attending future meetings:

- a. City of London Corporation
- b. Transport for London – (Joanna Carless has come along to observe this meeting)
- c. PEBA, RTPI and RICS – and hopefully some joint activities could take place in future, such as joint consultation responses etc.

9 **SOCIAL**

A Social will hopefully happen next year. Offers of help organising it from members of the Committee would be welcome.

Helen Hutton

Hon Sec CLLS PELC