

CITY OF LONDON LAW SOCIETY PLANNING AND ENVIRONMENTAL LAW COMMITTEE

**MINUTES FOR MEETING ON TUESDAY 1 OCTOBER AT 5 PM AT ADDLESHAW GODDARD
LLP, 60 CHISWELL STREET, LONDON, EC1Y 4AG**

ATTENDANCES (SOME VIRTUALLY) AND DETAILS OF SUBSTITUTIONS

Matthew White (Chairman)	Herbert Smith Freehills LLP
Paul Davies (Vice Chairman)	Latham & Watkins LLP
Jasmine Ratta (Hon Secretary)	Trowers & Hamlins LLP
Ashley Damiral	CMS Cameron McKenna Nabarro Olswang LLP
Claire Fallows	Charles Russell Speechlys LLP (virtual)
Duncan Field	Town Legal LLP (virtual)
Fleur Francis	City of London Corporation
Sara Hanrahan	Blake Morgan LLP
Helen Hutton	Michelmores LLP (virtual)
Richard Keczkcs	Slaughter and May
Josh Risso-Gill	CMS Cameron McKenna Nabarro Olswang LLP
Louise Samuel	Town Legal LLP
Gary Sector (sub Marnix Elsenaar)	Addleshaw Goddard LLP
Robert Share	Allen & Overy LLP
Christopher Stanwell	Fieldfisher LLP

APOLOGIES FOR ABSENCE

Jacqueline Backhaus	Trowers & Hamlins LLP
John Bowman	Fieldfisher LLP
Claire Dutch	Ashurst LLP
Valerie Fogleman	Stevens & Bolton LLP
Ian Ginbey	Clyde & Co LLP
Brian Greenwood	Clyde & Co LLP

Kevin Hart	City of London Law Society
Nigel Howorth	Clifford Chance LLP
Rupert Jones	
Tim Pugh	
Ben Stansfield	Gowling WLG (UK) LLP
Stephen Webb	Brecher LLP
Nina Pindham (observer)	Cornerstone Barristers
Nick Wrightson (CLLS liaison)	Kingsley Napley LLP

1 MINUTES OF THE LAST MEETING

The Minutes of the last meeting were approved.

2 CASE UPDATE

- 2.1 CG Fry - an application for permission has been made to the Supreme Court to appeal the Court of Appeal's decision to dismiss the appeal concerning nutrient neutrality requirements.
- 2.2 Marks and Spencer – the Committee noted that a decision by the SoS is due next week concerning the proposed demolition and re-development of its flagship store on Oxford Street.

3 LONDON/LOCAL AUTHORITY UPDATES

- 3.1 London Plan – the Committee noted that a proposed request for a partial review of the London has been withdrawn by the Deputy Prime Minister with a partnership approach favoured aimed at boosting housebuilding in London.
- 3.2 Wimbledon Championships expansion given the go-ahead – the Committee discussed the SoS' holding direction which was issued by Angela Rayner earlier this week but subsequently withdrawn confirming the decision was not going to be called in on the morning of 27 September. Later that day, planning permission was granted.
- 3.3 The Committee briefly discussed the proposed pedestrianisation of Oxford Street. The intention being for the government awarding the Mayor of London new planning powers to create a 'Mayoral Development Area' around Oxford Street. The Mayor would therefore take control of the area from Westminster City Council. The Committee discussed this being a show of joined upness with the GLA. The Committee noted that the proposed area is quite large and that the boundaries are not yet clear.

4 PINS GUIDANCE ON GENAI

- 4.1 Fiona Sawyer (PSL from Herbert Smith Freehills LLP) led a discussion on the new PINS guidance concerning AI. Representatives at PINS have been consulted. The Committee

discussed the fact that AI is not defined and that systems have AI embedded which are updated without any person's knowledge and the ensuing practical difficulties of ensuring that the guidance is complied with.

- 4.2 The Committee discussed the inconsistency of the government guidance concerning AI and that law firms will struggle to make the declarations the guidance requires concerning the AI content which are broad/onerous and the legal difficulties which will follow.
- 4.3 The Committee further discussed various concerns with the scope of the guidance and that this goes beyond catching wrong use of AI. These include why this is different from falsifying evidence and that PINS is not going to be able to enforce this and prove otherwise. It was queried whether any guidance has been issued by the Administrative Court concerning AI and that it would be odd if the High Court was taking a different approach.
- 4.4 The Committee discussed the possibility that the guidance is aimed at dealing with smaller enforcement issues, e.g., falsified images/plans/identification documents.
- 4.5 To date, given the guidance was only issued in early September it's not yet been raised by an inspector.
- 4.6 The Committee decides that it's worth raising these concerns with *planning* representatives from PINS and to enquire as to whether the guidance is withdrawn while clarifications are addressed, albeit it is guidance only.
- 4.7 The Committee agrees that HSF will produce a document and circulate to the Committee for input and that HSF will feedback the Committee's comments on the guidance back to PINS.

5 **NPPF CONSULTATION/PLANNING REFORMS**

- 5.1 The Committee discussed the consultation for the proposed updated NPPF which closed on 24 September.
- 5.2 The Committee discussed producing a roster for Committee members responding to consultations on behalf of the Committee.
- 5.3 The Committee discussed the PEBA consultation response and various planning reforms proposed in the written ministerial statement issued in September 2023 which further clarification/detail is still awaited on including:
 - 5.3.1 location for new towns to be identified further to the establishment of the New Towns Taskforce;
 - 5.3.2 the role of planning committees and whether this becomes a planning officer-led system (this was very briefly mentioned in the statement);
 - 5.3.3 the Planning and Infrastructure bill – that the changes are more procedural;
 - 5.3.4 schemes of delegation being expanded; and
 - 5.3.5 upzoning as a strategy - likely resulting in more development orders and more permitted development coming forward.

- 5.4 The Committee discussed the discretionary nature of the planning system and that it has arguably fallen behind other common law authorities in respect of 'zoning', New Zealand being an example. The Committee then discussed the possible impact on heritage issues.
- 5.5 The Committee discussed whether planning is a scapegoat and further whether the system needs a complete overhaul or whether it needs tweaking only, that it's the resourcing/practicalities of the regime which needs investment/reform, rather than the architecture of it.
- 5.6 Further discussion followed concerning the amount of time the both the validation and post-decision process takes. In respect of the latter, this is primarily the discharging of conditions - a lot of information must be reviewed in order to discharge a standard condition. The Committee discussed how conditions being drafted as compliance conditions could be helpful, rather than as matters required to be discharged.
- 5.7 The Committee noted that the New Homes Accelerator programme may have more to say on the matters mentioned above and the details of this are awaited with interest. The MHCLG issued a call for evidence which closed on 31 October.

6 **BNG**

- 6.1 The Committee discussed BNG conditional contract wording further to PAS templates having been published. The statutory requirement is that you cannot commence until the BNG condition has been discharged but can only take place after the grant of satisfactory planning permission. However, such a BNG condition may not be resolved until long after the judicial review period for the relevant permission expires. It is suggested that BNG needs to be built into the "onerous condition" drafting in contracts conditional on planning.
- 6.2 It is proposed that there may be a benefit to forming a working group within the Committee to produce standardised wording which will assist clients and their funders. It is suggested that this matter is revisited in the next Committee meeting.
- 6.3 The Committee noted that the template wording address BNG for single phased development only, not multi-phase BNG developments. Many Real Estate teams will not be accounting for this in their conditional contracts (also a general Hillside point).

7 **ENVIRONMENTAL UPDATES (PAUL)**

- 7.1 The Committee noted that Landmark is working with Natural England – the Vice Chairman confirms he will connect the Committee Secretary with Landmark to arrange for them to speak at the next meeting.
- 7.2 Further to Finch, government guidance is to be provided. There are currently 14 oil and gas projects at various stages of seeking development. The consultation is to conclude by Spring 2025.
- 7.3 It is noted that the guidance would not have applied to the decision in Friends of the Earth & SLACC v SSLUHC & West Cumbria Mining [2024] EWHC 2349 (Admin) – a coal project. The guidance to be provided will apply to the oil and gas sector only.
- 7.4 The Committee discussed how the substitution displacement in the abovementioned Whitehaven project (please see the judgement [here](#)) is at odds with the Mozambique gas project - there was particular scope with the latter for the gas produced to displace coal in

power generation in China, India and Indonesia and result in a net reduction in global emissions (this Court of Appeal judgement can be found [here](#)).

- 7.5 On the climate guidance, a meeting is to be held on 10 October to discuss the practice note currently being drafted by a sub-group, including a number of people from the ESG Committee. The draft note now looks very different but needs finalising. The Committee noted that this is a good example of how working groups can have a positive impact.
- 7.6 The ESG Committee is currently considering listing rules revisions, particularly to update risk factors. This will also involve consulting with the Company Law Committee.
- 7.7 The Vice-Chairman also mentions that the ESG Committee is hosting a screening created by the World Wide Fund for Nature (WWF), the RSPB and the National Trust with a panel event on 4 November and that an invite will be circulated for those who wish to attend.

8 **DATE / VENUE FOR NEXT MEETING**

Louise Samuel provisionally agreed to host the next meeting on 21 January at Town Legal.

9 **AOB**

- 9.1 The Committee discussed the implications of *Finch* for the Gatwick Airport Northern Runway Project and including looking at upstream gas emissions and that CO2 emissions for inbound flights ought to be assessed as part of the EIA process. This is an example of major developments embracing the principles of *Finch* and it is expected that this will not be confined to the oil and gas sector.
- 9.2 The Committee also briefly discussed the ongoing unrest concerning scope 3 and the implications for determining scope 3 GHG emissions including that the 15 sub-categories and operational boundaries used elicit very different results.

Jasmine Ratta

Hon Secretary CLLS PELC