

CITY OF LONDON LAW SOCIETY PLANNING AND ENVIRONMENTAL LAW COMMITTEE

**MINUTES FOR MEETING ON TUESDAY 9 JULY AT 5 PM AT TROWER & HAMLINS LLP, 3
BUNHILL ROW, LONDON, EC1Y 8YZ**

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
Jacqueline Backhaus	Trowers & Hamlins LLP
Claire Fallows	Charles Russell Speechlys LLP
Valerie Fogleman	Stevens & Bolton LLP
Robert Garden (substitute for Ashley Damiral)	CMS Cameron McKenna Nabarro Olswang LLP
Ian Ginbey	Clyde & Co LLP
Helen Hutton	Michelmores LLP
Rupert Jones	
Richard Keczkcs	Slaughter and May
Charlie Reid (substitute for Claire Dutch)	Ashurst LLP
Gary Sector	Addleshaw Goddard LLP
Robert Share	Allen & Overy LLP
Ben Stansfield	Gowling WLG
Christopher Stanwell	Fieldfisher LLP
Nina Pindham (observer)	Cornerstone Barristers

APOLOGIES FOR ABSENCE

Duncan Field	Town Legal LLP
Fleur Francis	City of London Corporation
Brian Greenwood	Clyde & Co LLP
Tim Pugh	

1 MINUTES OF THE LAST MEETING

The Minutes of the last meeting were approved.

2 RESPONSE TO CITY PLAN 2040 CONSULTATION

The Committee acknowledged and expressed thanks to Brian Greenwood for preparing the Committee's consultation response. The Committee is encouraged to read the response in full at their leisure.

3 CASE UPDATE

3.1 CG Fry & Son Ltd v SSLUHC - judgement handed down on 28 June 2024 (Paul) – the Committee discussed the Court of Appeal's decision to dismiss the appeal concerning nutrient neutrality requirements which it was acknowledged has garnered a huge amount of interest. The Court of Appeal has therefore upheld the High Court's decision that the Conservation of Habitats and Species Regulations 2017 could require an 'appropriate assessment' at discharge of conditions stage and so up to implementation (detailed permission only). The view of the Committee is that this case is problematic, albeit not surprising and that there are inconsistent decisions being made by Inspectors.

3.2 Finch v Surrey County Council – judgement handed down on 20 June 2024 (Paul) – the Committee discussed this groundbreaking Supreme Court decision which concludes that downstream, scope 3 emissions should be included within the EIA assessment. It is acknowledged that the significance of the case extends beyond the UK to Europe and further it is significant beyond the oil and gas sector and should be tracked carefully. The Committee further discusses the extent to which the decision should apply to housebuilding and whether this is taking the principle too far. The Committee also discussed reading this judgement in conjunction with the Mozambique judicial review Court of Appeal [judgement](#) and highlight Justice Thornton's views on scope 3.

3.3 Manchester Ship Canal Co v United Utilities Ltd No 2 – judgement handed down on 2 July 2024 (Richard). The Committee discussed the implications of this unanimous Supreme Court judgement, which addresses the laws of nuisance and is relevant to EIA, including that it leaves sewerage undertakers open to private nuisance claims by owners of private watercourses in circumstances where sewerage undertakers discharge untreated sewage into private watercourses and that a historic exemption in the Water Industry Act 1991 in such circumstances does not, in fact, prevent such claims being brought. The Committee discussed possible significant increases in Thames Water bills.

4 LONDON/LOCAL AUTHORITY UPDATES

4.1 Retrofit first policies in central London – the Committee discusses the topic and the new planning policies in place in Westminster and the City of London meaning developers have 'retrofit first' before demolishing buildings. It is acknowledged that the Westminster policy is qualified such that they will accept demolition as long underground infrastructure is kept in situ. The Committee discusses an early experience of how this is being handled with reference to the Addleshaw Goddard building and where the developers were intending to demolish, a refurb is now being looked at. The Committee acknowledged that the demolition vs retrofit debate depends on the building in question (it is noted that

glass has a different profile to brick/concrete) and that some demolition developments are being granted permission.

- 4.2 BNG in practice – S106 agreements/conservation covenants – types of obligations being requested (e.g. decommissioning obligations). The Committee acknowledges that most in the sector are now alive to this but it remains to be seen how it will pan out. The Committee discusses the template section 106 agreement which has been produced by Dentons and is available on the Planning Advisory Service [website](#). The Committee discusses various obligations included in the onsite section 106 template, including step-in rights which are local authority friendly. It is acknowledged that they do not require the freeholder to be party which is positive but that it does not currently deal with phased developments.

- 4.3 The Committee further discusses the implications of the BNG regime, including the capability for local authorities to deal with this issue, the potential delays to section 106s being completed where ecologist assessments are awaited and the BNG regime therefore holding up housebuilding.

5 **ENVIRONMENTAL UPDATES (PAUL)**

A sub-group of the Committee is working on a practice note on climate change and the first iteration has caused consternation and the Law Society is responding to comments received. It is noted that the re-drafting of the practice note is taking longer than anticipated and the exercise is ongoing. The Committee expressed its thanks to Paul Davies for his update and involvement with this.

6 **GENERAL ELECTION – LOOK AHEAD FOLLOWING OUTCOME**

- 6.1 The Committee discusses the key planning reforms highlighted in Rachel Reeve's first speech as Chancellor, including: a new draft NPPF by the end of the month to address mandatory housing targets (1.5m in 5 years), a review of the green belt boundaries and the intent to prioritise brownfield land and the grey belt, private sector investment to be unlocked, the immediate lifting of the de facto ban on onshore wind development in England, recruitment drive to hire 300 planning officers into local planning authorities across the country, the New Town's initiative, 50% of new houses on green belt land to be affordable, the relaxing of CPO compensation for hope value.
- 6.2 The Committee noted that the following issues were not addressed in the speech: no community right of appeal, no direct mention of regional plans, utilities not being re-nationalised, bringing railways back into public ownership, what is happening with the Levelling Up and Regeneration Act and related to this, the future of CIL and section 106 agreements now that the proposed Infrastructure Levy is not being introduced.
- 6.3 The Committee discussed the possible definition of the grey belt. It is noted that various barristers are involved in re-drafting the NPPF, including Christopher Young KC and Russell Harris KC.
- 6.4 The Committee acknowledged the host of pressures the new government must balance, including energy regulations, retrofit v demolition debate, nimbyism and the use of regulations to slow the planning process - small niche areas frustrating politicians beyond the larger pressures, e.g. housing and BNG/environmental tension, revision/unbundling of EU legislation and the increase in use of DCOs is raised in connection with onshore

wind, data centres, prisons which will take a long time to come to fruition as the system is not flexible.

7 DATE / VENUE FOR NEXT MEETING

Gary Sector agreed to host the next meeting on 1 October at Addleshaw Goddard.

8 AOB

8.1 The Committee discusses allowing more than a week to carry out the service of documents in respect of section 288 claims. It is acknowledged that there is no interest in uniting the judicial review and section 288 systems.

8.2 The Committee discusses the allowance of eight weeks in conditional contracts and the issues with the online system at the Administrative Court concerning section 288 claims. It is mentioned that there are no plans to move the Administrative Court to a newer system.

Jasmine Ratta

Hon Secretary CLLS PELC