

CITY OF LONDON LAW SOCIETY PLANNING AND ENVIRONMENTAL LAW COMMITTEE

**MINUTES FOR MEETING ON TUESDAY 21 JANUARY 2025 AT 5 PM AT TOWN LEGAL, 10
THROGMORTON AVENUE, LONDON, EC2N 2DL**

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 |
| Rory Bennett | Linklaters LLP |
| Ashley Damiral | CMS Cameron McKenna Nabarro Olswang LLP |
| Michael Dempsey (substitute for Gary Sector) | Addleshaw Goddard LLP |
| Claire Dutch | Ashurst LLP |
| Claire Fallows | Charles Russell Speechlys LLP |
| Duncan Field | Town Legal LLP |
| Valerie Fogleman | Stevens & Bolton LLP |
| Fleur Francis | City of London Corporation |
| Ian Ginbey | Clyde & Co LLP |
| Sara Hanrahan | Blake Morgan LLP |
| Helen Hutton | Michelmores LLP |
| Rupert Jones | |
| Richard Keczkcs | Slaughter and May |
| Carolyn Morgan-Welker (substitute for Brian Greenwood) | Clyde & Co LLP |
| Josh Risso-Gill | CMS Cameron McKenna Nabarro Olswang LLP |
| Louise Samuel | Town Legal LLP |
| Ben Stansfield | Gowling WLG |
| Christopher Stanwell | Fieldfisher LLP |
| Nina Pindham (observer) | Cornerstone Barristers |

APOLOGIES FOR ABSENCE

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|---------------------|----------------------------|
| Jacqueline Backhaus | Trowers & Hamblins LLP |
| Kevin Hart | City of London Law Society |
| Tim Pugh | |
| Robert Share | A&O Shearman |

1 MINUTES OF THE LAST MEETING

- 1.1 The Minutes of the last meeting were approved. A minor query was raised by Helen Hutton concerning paragraph 6.3 (BNG).
- 1.2 In relation to the minutes, the Committee then discussed creating a BNG working group in respect of conditional contracts to produce standardised wording which will assist clients and their funders. Richard Keczkas and Sara Hanrahan agreed to participate in this working group.

2 CASE UPDATE

- 2.1 Fiske (Court of Appeal) – Sara Hanrahan briefly summarised the case for the benefit of the Committee given her involvement in the case, including Holgate LJ's judgement on the scope of section 73 permissions and what is the operative part of a planning permission. The Committee discussed the approach to listing approved plans in decision notices and the importance of including them as part of a planning condition to ensure they can benefit from the use of section 73, as opposed to them being listed underneath the description of development, an approach some local planning authorities adopt.
- 2.2 CG Fry – the Committee noted that the appeal is being held in the Supreme Court on 17-18 February.
- 2.3 The Committee noted that DEFRA's appeal against the Pickering Fishery decision was held in the Court of Appeal on 14-15 January and that a judgement is therefore awaited.
- 2.4 The Committee noted that Nina Pindham has co-authored a book on BNG which has been published and is entitled "A Practical Guide to Biodiversity Net Gain".
- 2.5 Holborn Studios - the Committee noted that a judicial review application to appeal the Inspector's decision to allow an appeal brought by developers to re-develop the studios has been rejected.
- 2.6 *Mead Realisations Ltd v Secretary of State for Housing, Communities and Local Government* [2025] EWCA Civ 32 – the Committee noted that a judgement is awaited.
- 2.7 Claire Dutch mentioned a scheme in Cranbrook, Tunbridge Wells. The Secretary of State granted consent for 165 units within an Area of Outstanding Natural Beauty which is now the subject of a section 288 application. It was noted that the application is based on the enhanced duty of decision-makers under the Countryside and Rights of Way Act 2000 to seek to further the purpose of conserving and enhancing the national landscape. The

Committee noted that the decision states that the delivery of new homes should carry 'significant weight', overriding national policies designed to protect our country's National Landscapes.

- 2.8 M&S decision – the Committee noted that planning permission has been granted for the demolition and re-development of the Oxford Street store.

3 LONDON/LOCAL AUTHORITY UPDATES

- 3.1 New London Plan - the Committee noted that a high-level document outlining the new London Plan is due in March with the draft London Plan consultation to occur by March 2026. The current intention is for it to be adopted in 2027.

- 3.2 Student Accommodation guidance - the Committee noted that London Plan Guidance on Purpose-built Student Accommodation London Plan Guidance was adopted in November 2024.

- 3.3 Euston Housing Delivery Group – the Committee noted the creation of this group to be chaired by Bek Seeley (plus 4 key advisory roles yet to be allocated) to deliver major regeneration proposals in Euston.

- 3.4 GLA Practice Note on viability – the Committee noted that new guidance entitled "Accelerating Housing Delivery" was published in December 2024. The Committee discussed the fact that it is more accommodating, adding flexibility and encouraging increased use of the Fast Track Route. Louise Samuel mentioned an appeal Town Legal is involved in concerning this issue – a decision is expected in March.

4 UPDATED NPPF

- 4.1 The Committee discussed the latest version of the NPPF (December 2024). In respect of the mandatory housing target, the Committee questioned whether or not this is a radical change. The Committee acknowledged that there are 150 infrastructure projects currently awaiting determination. The Committee noted that building safety and planning regimes do not appear to be aligned. The Committee also discussed the future of the BNG regime.

- 4.2 The Committee discussed paragraph 125(c) concerning brownfield land with some opining that the drafting is poor as it does not state whether this overrides the less than substantial *heritage* harm/how these policies interact with one another. The Committee suggested that

this brownfield policy should be treated in isolation, similar to greenbelt policies in the NPPF.

5 CONSULTATION/PLANNING REFORMS

5.1 The Chair mentioned that the Government intends to publish updates to the National Design Guide and National Model Design Code in the Spring. The Chair also relayed the Government's announcement in November 2024 that it is winding the Office for Place.

5.2 The Committee discussed the consultation on CPO and Compensation Reforms. Claire Fallows kindly offered to prepare a response on behalf of the Committee. It is noted that the deadline for submission of consultation responses is 14 February.

5.3 The Committee also noted the existence of the following planning reform working/policy papers:

5.3.1 Development and Nature Recovery which was published in December 2024;

5.3.2 Planning committees which was published in December 2024;

5.3.3 Brownfield passports which was published in September 2024; and

5.3.4 Streamlining Infrastructure Planning which is due to be published.

5.4 The Committee noted the English Devolution white paper which was published in December 2024.

5.5 The Committee returned to the topic of the BNG regime and discussed whether it is under review as a whole alongside various related topics such as exemptions being reviewed, the BNG metric being tweaked, onsite vs offsite BNG and what is the priority. Further discussions were had concerning turning BNG into a payment system. It was noted that the idea of tariffs is not acceptable to Natural England and that there should be no fundamental changes to the BNG regime. The Committee noted that the BNG metric is being exported globally/gaining global attention which supports the notion that there will be no material changes to the current BNG regime. The Committee discussed how the implementation of BNG tariffs may be more likely to be introduced for smaller sites.

5.6 The Committee noted the changes to planning application fees coming into force in England from 1 April.

6 ENVIRONMENTAL UPDATES (PAUL)

6.1 As has been previously discussed, a sub-group of the CLLS is working on a practice note on climate change and property. Paul confirmed that the re-draft of the practice note - addressing responses to the first draft - has been submitted. The Committee expressed its thanks to Paul Davies for his update and involvement with this.

6.2 Paul noted that the UK Green Taxonomy consultation is ongoing, this closes on 6 February.

6.3 Paul noted that the next ESG sub-committee meeting is being held at A&O Shearman's office on 27 February.

7 **AOB**

7.1 The CLLS Chair's meeting was held – Matthew Rous is retiring as Chief Executive of the London Law Society.

7.2 The Chair mentioned the annual CLLS banquet being held at Mansion House on 18 February, open to all CLLS members and their guests.

7.3 The Chair mentioned the PEBA annual conference, being held at Hogan Lovells on 9 May.

7.4 The Committee briefly discussed the different approaches local planning authorities are taking to onsite/offsite BNG requirements in section 106 agreements.

8 **DATE / VENUE FOR NEXT MEETING**

Ian Ginbey provisionally agreed to host the next meeting on 29 April at Clyde & Co, subject to availability of meeting rooms.

Jasmine Ratta

Hon Secretary CLLS PELC