

# debrief

## The Planning and Compulsory Purchase Act 2004



'The new Act creates a range of new plan documents covering different topics, prepared and reviewed at different times...hardly a simplification'

Following an 18-month parliamentary process that included three defeats in the House of Lords, the Planning and Compulsory Purchase Act finally received Royal Assent in May 2004 and came into force in September 2004.

The various provisions of the Act will be introduced at different times over the next two years. Although some of the finer details remain unclear, the Act represents the biggest single change to the plan-making system in over fifty years.

The new Act is intended to improve a system that is perceived as slow, complex and remote. This 'new dawn' purports to introduce a more flexible planning system that engages with local communities. It places much greater emphasis for plan-making at a regional level, whilst establishing a whole new approach at local level and brings significant changes to the planning application process.

The property industry remains sceptical about some of the practicalities of the new Act. In particular, can the inherent conflict between greater speed and more community involvement be overcome? It is also questionable whether planning authorities have sufficient resources to deliver the new plans and make decisions on planning applications within the tight timetables envisaged by the Government.

**Ian Blacker**

## Summary of the main changes introduced

The main changes that will come into force are summarised as follows:

- New regional planning bodies will prepare Regional Spatial Strategies. Regional Spatial Strategies will form part of the statutory Development Plan, the policies upon which planning applications must be determined.
- The existing Local Plan and Structure Plan or Unitary Development Plan system will be replaced with a 'folder' approach to policy making. A portfolio of documents collectively known as the Local Development Framework will contain the local planning authority's planning policies.
- The portfolio of documents, each called a Local Development Document, will cover development control planning policies, specific site allocations, area plans, a proposals map and requirements for community involvement. Each Document can be prepared and reviewed separately.
- The life of planning permissions will be reduced from five years to three years. There will also be restrictions on the submission of repeat and twin-tracked applications, although outline planning applications have been retained.
- A new approach to planning obligations — renamed 'planning contributions' — is proposed, enabling an applicant to choose between paying a fixed charge or negotiating using the existing Section 106 approach.
- The powers of local planning authorities to use compulsory purchase powers have been widened to enable acquisition if an authority thinks that this will facilitate development, redevelopment or improvement of the land and will contribute to the economic, social or environmental well-being in the area.

## Plan-making at a regional level

### Old

Under the existing planning system, Regional Planning Guidance is prepared by a variety of bodies and formally issued by the First Secretary of State. It is a material consideration in the determination of planning applications.

### New

The new Act will see a strengthening of the role of planning at the regional level with a Regional Spatial Strategy (RSS) prepared for each region. New regional planning bodies (RPBs) will be established for each region, its membership consisting of at least 60% of elected members of County Councils or local planning authorities.

The RSS will extend beyond pure land use planning matters to embrace issues such as transport and will also set housing targets and retail hierarchies. As at present, there will be a public examination into the draft RSS and it will be formally approved by the First Secretary of State.

As the RSS will form part of the statutory Development Plan, the status of regional planning has increased significantly — a major departure from the current system — and it will mean landowners, developers, occupiers and investors will all need to be aware of its contents and should participate in its preparation.

## Plan-making at a local level

### Old

The Development Plan consists of the Structure Plan (prepared by County Councils) and Local Plan (prepared by local planning authorities), or Unitary Development Plan (prepared by former metropolitan authorities). The Plans have a life of 10 years and are adopted following public examinations. Authorities are not required to implement changes proposed by independent Planning Inspectors holding the public examinations.

### New

Under the new Act, Structure Plans are to be abolished (except in respect of waste proposals), and Local Plans/Unitary Development Plans will be replaced by a series of separate Local Development Documents collectively known as a Local Development Framework.

The status of a Local Development Document will depend upon the extent of public consultation involved in its preparation. To become part of the statutory Development Plan, a Local Development Document must be subject to a formal public examination. Any changes proposed by Planning Inspectors holding the public examinations will be binding on the local authority.

Local Development Documents expected to form part of the Development Plan will include the authority's core strategy for land-use and planning, detailed development control policies, specific site allocations, area plans, a proposals map and requirements for community consultation on planning applications. Each Document can be prepared and reviewed separately and to different timescales. All Documents should be reviewed not less than every three years.

If a Document has not been subject to public examination, it cannot form part of the statutory Development Plan and will therefore have less weight in the determination of planning applications. Such documents will now be known as Supplementary Planning Documents and can still be a material consideration in the determination of planning applications.

## Planning applications

### Old

The length of time to implement an outline planning permission is three years (before it expires) and a full planning permission lasts for five years. Applications can be submitted in duplicate (to facilitate appeals), and revised or repeat applications can be submitted following refusal or approval by a local planning authority.

## **New**

Under the new Act, outline planning permissions are retained, but regulation is likely to be introduced requiring certain minimum information to be supplied (such as a design statement and access statement for example) at the outline stage, increasing the level of detail required.

The standard time for implementing a planning permission will be reduced from five to three years. An authority may grant a longer or shorter period at its own discretion.

Authorities will be able to make Local Development Orders to provide Local Permitted Development Rights. Standard application forms for planning applications, listed building consent and conservation area consent applications may also be introduced.

An applicants' ability to submit repeat and twin-tracked applications has been ended. Authorities will be able to refuse to entertain applications if, in the preceding two years, more than one other application of a similar nature has been refused on the site and appeals have not been made. One application is allowed to enable specific reasons for refusal to be addressed. Authorities will also be able to refuse to entertain duplicate applications.

The ability (under Section 73 of the old Act) to extend the life of a planning permission has also ceased. A whole new planning application will have to be submitted and this new planning application will be determined against the latest relevant Development Plan policies.

Planning permission will be required for internal works which increases internal floorspace over a certain threshold, such as mezzanines. An Order will be published in due course establishing the threshold.

## Planning obligations

### **Old**

The old Act established planned benefits through the long criticised practice of negotiations of Section 106 Agreements.

### **New**

Although the Act has not introduced a tariff system, the new system is designed to be more transparent through a new approach to planning obligations — optional planning charges. Applicants will be able to choose whether to pay a fixed planning charge (which will have to be set out by the authority in a Local Development Document) or to negotiate contributions under the existing route.

The timing of the introduction of this new dual system remains uncertain as a result of the Barker Review, which proposed an alternative third system — a planning gain supplement. This issue is unlikely to be resolved until early 2006.

## Compulsory purchase

### **Compulsory Purchase Orders (CPOs) — Old**

The 1990 Act (section 226 — compulsory acquisition of land for development and other planning purposes) originally gave local planning authorities the power to acquire compulsorily land suitable for and required to secure development, redevelopment or improvement.

### **New**

Under the new Act, the test will be much more subjective. A local authority will have the power to acquire land compulsorily if it thinks the acquisition will facilitate development, re-development or improvement on or in relation to the land.

One constraint on local authorities is that they must not exercise these wider powers unless the development is likely to contribute to provision or improvement of the economic, social or environmental well-being of the area.

However, local authorities are no longer required to consider whether land is 'suitable' for development having regard to the Development Plan, extant planning permissions and other considerations material to determining an application for planning permission.

If the relevant minister or other confirming authority has not decided whether the CPO ought to be confirmed in its entirety, it can be confirmed in stages. Where there are no outstanding objections to a CPO, the acquiring authority can confirm the Order itself if the minister or other confirming authority permits.

### **Compensation — Old**

Current provisions allow for 'home loss payments', an additional payment to residential occupiers, on top of compensation, to reflect the 'hidden losses' which they may suffer on a compulsory acquisition.

### **New**

Following extensive campaigning by the RICS and others, 'loss payments' in addition to compensation assessed in the usual way have been introduced in relation to non-residential property. The additional payments fall under three headings:

- basic loss payment — paid to an owner having a qualifying interest, essentially a freehold or tenant's interest held for no less than one year
- occupiers' loss payment — payable where the owner of a qualifying interest is also the occupier
- agricultural occupiers' loss payment — payable to the owner-occupier of an agricultural property

The way in which the amounts will be assessed is not straightforward. They can be based on a percentage of the compensation sum or additionally, in the case of the occupiers' payments, the land area or the gross external area of the buildings. They will equate to 7.5% of the compensation sum (with a ceiling of £75,000) for the basic payment and there is a ceiling of £25,000 for the occupiers' payments. The payments are not mutually exclusive: a qualifying owner may be entitled also to one of the two types of occupiers' payments.

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