



LEGAL NEWS

LOCAL AUTHORITIES UPDATE 4.08

Michelmores 

Government Push overturns Development Plan Policy

GOVERNMENT PUSH TO ENCOURAGE RESIDENTIAL DEVELOPMENT

With fears of a slowing down of the housing market, the Government's drive to meet its housing targets in the South West region has never been more evident. One should expect at the very least, inspectors appointed to deal with Planning Inquiries and other appeals to recognise this trend and local planning authorities should be wary of such when refusing applications that do not comply with the development plan.

When submitting applications for residential developments which might be contrary to current Development Plan policy it will be worth taking note of the following.

EMERGING NATIONAL POLICY

The highly intense political drive from central government to meet its housing targets is readily evident in the Housing Green Paper which was published in Summer 2007 and provides a clear indication of future national planning policy. In particular the Paper includes the following comment:

"Where councils have not identified enough land and do not grant sufficient planning permissions, planning inspectors will be more likely to overturn ... decisions [of local planning authorities to refuse planning permission] and give housing applications the go ahead at the appeal stage."

EMERGING REGIONAL POLICY

The housing numbers which will appear in the Regional Spatial Strategy when adopted (probably by the end of 2008), are likely to be significantly higher than those proposed by the Regional Planning Body in the draft RSS published in June 2006. Following the Examination in Public which concluded last year, the EIP Panel published its report in January 2008. The recommendations in the report endorse the view that housing growth should be closely linked to the key cities and towns in the region but at the same time stressed that there was a need to significantly increase the number of houses, including the level of affordable housing provided across the South West.

In particular the annual rate is recommended to increase from approximately 23,000 to 28,000 of which an average of 35% should be affordable. Of the most notable increases are the more urban areas of West Cornwall and what is known as the Polycentric Devon and Cornwall, Torridge and North Devon (the latter of which currently comprises North Cornwall, Torridge and North Devon Districts). These two areas are proposed to be subject to an increase in housing number by some 55% and 70% respectively. In fact only the Isles of Scilly and the

Continued overleaf...

More Inside...



Employment News



Code for Sustainable Homes



Back Page - Latest News and Forthcoming Events

More than just lawyers...

www.michelmores.com

Push for residential homes

The policy specifically promotes residential development that “contributes to the creation and maintenance of sustainable rural communities” and even “in market towns and villages”.

Continued from front page...

Dartmoor and Exmoor National Parks see no increase which given their characteristics presents no surprise.

CURRENT NATIONAL PLANNING POLICY

The most relevant government policy on housing is contained in PPS3. Of course this document should be given considerable weight in the determination of any application for residential development, being the most up to date statement of national housing planning policy.

The policy specifically promotes residential development that “contributes to the creation and maintenance of sustainable rural communities” and even “in market towns and villages”. PPS3 refers to the need for local planning authorities to identify sites for residential development which are deliverable within a five year period. More particularly, it specifies that to be considered deliverable the site should be suitable for development, available, and achievable within five years. Applications for residential development which meet these criteria will stand excellent prospects of approval even though they might be contrary to the Development Plan. This is illustrated by a series of recent decisions on appeal.

RECENT APPEAL DECISIONS

Of the many relevant recent appeal decisions, note should be made of a development by Redrow Homes at Ogwell Cross, Newton Abbot (July 2006), secondly, a development in East Taphouse, Liskeard (August 2006), thirdly, a development by Gleeson Homes in Bedford (August 2007) and finally a development in South Gloucestershire (December 2007).



In each case, the site was outside the development limit for the area and as such contrary to the Local Plan policies. They all provide examples of applications for residential development which might have been refused a couple of years ago, but are succeeding on appeal as a result of the national drive to increase residential development.

They indicate a trend towards allowing residential development even in sites which are outside development limits where there is not a deliverable five year supply of housing and there is a need for affordable housing in the area. The applications were all approved by the Secretary of State contrary to the professional advice of their inspectors who were appointed to determine the appeals.

In the most recent decision for example, an appeal involving a green field residential development comprising 1200 dwellings was approved contrary to the Inspector's recommendation. The Secretary of State agreed with the Inspector's finding that the development was contrary to the Development Plan and was of harm to the green belt, but nevertheless decided with a proposal for 33% affordable housing, the scheme would provide urgently needed affordable housing in an area where the planning authority had not been able to show a 5 years supply of deliverable sites.

FOR MORE INFORMATION PLEASE CONTACT
KAREN TRICKEY, ASSOCIATE
PLANNING TEAM
krt@michelmores.com



Opinions from Europe

ATTENTION ALL EMPLOYERS

We report on a case that is currently proceeding through the European Court of Justice (ECJ) and which is likely to have a significant impact on the rights of workers in the UK.

We report on a case that is currently proceeding through the European Court of Justice (ECJ) and which is likely to have a significant impact on the rights of workers in the UK. The case, *Coleman v Attridge Law*, addresses the question of whether protection against disability discrimination should be extended to workers who, whilst not disabled themselves, care for (or are closely associated with) a disabled person.

On a literal reading, the Disability Discrimination Act 1995 (DDA) only protects a worker from disability discrimination on the grounds of their own disability. However, the European Framework Directive (which the UK is required to implement) refers to prohibiting discrimination "on the grounds of" disability. The issue in *Coleman v Attridge Law* was whether this wording requires the UK to also prohibit discrimination against non-disabled workers on grounds of their association with a disabled person.

Miss Coleman worked as a legal secretary in a law firm and was also the mother of a disabled son. She contended that she was subject to harassment and discriminatory treatment by her former employers in relation to her disabled son. Miss Coleman alleged

that, when she returned to work following maternity leave, she was accused of being "lazy" and using her child to manipulate her working conditions. She also complained that she was denied flexible working conditions, despite colleagues being allowed to work from home.

Miss Coleman contended that the DDA did not adequately implement the EC Framework Directive, and that the Tribunal should imply the words "all persons associated with a disabled person" into the DDA.

The Advocate General has given a preliminary opinion agreeing with Miss Coleman, namely that she should be able to bring a claim under the DDA based on her association with a disabled person. The full decision of the ECJ is expected shortly. If this is in favour of Miss Coleman it could require a major extension of the scope of the DDA.

FOR MORE INFORMATION PLEASE CONTACT
ANDREW TOBEY, PARTNER,
HEAD OF THE EMPLOYMENT TEAM
abt@michelmores.com

Promising to use "reasonable endeavours": what does it mean?

Contracts often require parties to use "reasonable" and sometimes "best" endeavours to get something done by the completion date. The phrases are not precise and are used when it is not certain what exactly will be involved. What comprises "reasonable endeavours" was considered recently by the Court of Appeal in the case of *Yewbelle Limited v London Green Developments Limited* (2007).

The Court of Appeal held that:

- In using reasonable endeavours a party is not required to sacrifice its own commercial interests.
- When the point has been reached where all reasonable endeavours have been exhausted, a party is not required to start again where to go on would be a repetition of what that party had already sought to do.
- If, after making such endeavours there is nothing that the party can reasonably do that would have a real or significant chance of

success, then the undertaking would be released.

Obligations to use "reasonable" or "best" endeavours will continue to be used by contracting parties. However, to avoid some of the difficulty associated with these obligations where any steps to be taken can be identified, these should be set out expressly in the contract. Taking those steps will then be part of the exercise of using reasonable endeavours even if they are detrimental to the party's commercial interests. For example if a party is to use reasonable endeavours to obtain a required consent, is it to appeal if that consent is refused? If a party is to procure the performance of another, what is it expected to do and if that is to include laying out money to achieve the desired result then this must be made clear.

FOR MORE INFORMATION PLEASE
CONTACT EMMA HONEY, PARTNER
COMMERCIAL PROPERTY TEAM
eeh@michelmores.com



Corporate Governance

CHECK LIST FOR CHANGES IN STANDARDS FRAMEWORK

With the local assessment of complaints, MOs will need to check that the Standards Committee's terms of reference are sufficiently wide.

With the various amendments to the LGA 2000, Monitoring Officers (MOs) will have much on their plate over the coming weeks to ensure that their Standards Committees are prepared for the changes to the Standards Framework. Here's a quick check list of 4 things which should be addressed in the coming weeks:

UPDATE EXISTING CONSTITUTION AND PROCEDURES:

With the local assessment of complaints, MOs will need to check that the Standards Committee's terms of reference are sufficiently wide. Do they allow for joint standards committees for example as well as local assessment of complaints? In addition, the committees' investigation procedures / protocols may need amending to reflect the numerous amendments to the relevant sections of the LGA 2000.

TRAIN STANDARDS COMMITTEES ON LOCAL ASSESSMENT OF COMPLAINTS:

Committee Members should be encouraged to attend some form of training on how to assess whether complaints should be referred for investigation. As decisions not to investigate a complaint will be subject to a review and thereafter potential for judicial challenge, it's clearly important that members have appropriate training, if only to minimise the potential for appeal and legal challenges. The Standards Board's training exercise was published in February and provides numerous examples of complaints for members to work through.

PUBLICISE LOCAL ASSESSMENT OF COMPLAINTS:

Councils should ensure that they publicise the new complaints system and in particular how complaints can be made and to whom complaints should be directed. The Standards Board has produced a template complaint form and has produced a toolkit which provides a wide range of template documents, forms and process maps designed for use in local assessments. Local Assessment Guidance is also pending.

APPOINT ADDITIONAL INDEPENDENT AND PARISH COUNCIL MEMBERS:

Standards Committee are now required to have an independent chairperson. In practice many committees already had such arrangements in place. However, in view of the assessment and review of local complaints as well as the local determination role of Standards Committees under the new arrangements, the Board is recommending that each committee has a minimum of 3 independent members and where appropriate at least 3 parish/town council representatives. In the case of independent members of districts / borough councils, committees have tended to require applicants for such positions to live in the district concerned, which given the legislative restrictions in the case of less densely populated districts has not led to a huge choice of applicants. Whilst the calibre of independent members is usually very high, committees may need to consider loosening their locality requirements.

FOR MORE INFORMATION PLEASE CONTACT
KAREN TRICKEY, ASSOCIATE
PLANNING TEAM
krt@michelmores.com



Code for Sustainable Housing

The Housing Minister Caroline Flint announced at the February Eco Build 2008 conference that all new homes will require a rating against the Code for Sustainable Homes from May 2008. She also stated that all Government-funded new homes will be built to Code level 3.

If developers do not wish to use the Code for Sustainable Homes and do not have to, for

example, for planning reasons, then developers have to issue a NIL rating certificate. This applies to all new building regulation applications made from May onwards.

FOR MORE INFORMATION PLEASE CONTACT
MARK HOWARD, ASSOCIATE , ENVIRONMENTAL
TEAM mth@michelmores.com

New Guidance for Local Authority Charitable Bodies



Many local authority principal officers are charity trustees or are otherwise involved with charities. From time to time local authority lawyers are asked to give advice to such organisations and their trustees. If you work with charities, you will need to be familiar with the guidance on public benefit recently issued by the Charity Commission. As acknowledged by the Charity Commission "most charity trustees will already be meeting the public benefit requirement". However, charity trustees will have to respond to a number of new legal obligations.

WHAT ARE THE NEW OBLIGATIONS?

The new obligations require trustees to:

- ensure that they carry out their charity's aims for the public benefit;
- have regard to the Charity Commission guidance on public benefit when taking significant decisions; and
- include in their Annual Report information on the public benefit provided by their charity.

WHAT NEEDS TO BE DONE TO MEET THE NEW OBLIGATIONS?

In order to meet the above obligations, trustees will need to be able to demonstrate that:

- they are familiar with, and understand, the guidance;
- in making a decision where the guidance is relevant, they have taken it into account; and
- if they have decided to depart from the guidance, they have good reasons for doing so.

The new guidance outlines two principles of public benefit:

- Principle 1: There must be an identifiable benefit or benefits
- Principle 2: Benefit must be to the public, or a section of the public

It will be necessary to give careful thought to the manner in which the charitable organisation will address the new public benefit requirements. The charity trustees will need to consider collectively the way in which their organisation provides public benefit and the manner in which that benefit should be communicated in the Annual Report.

WHAT HAPPENS IF THE NEW OBLIGATIONS ARE NOT DEMONSTRATED?

Where the Commission is not satisfied by the information provided by a charity, it may for example suggest that the trustees alter the objects or activities of the charity or remove it from the register.

Charities which ignore the need to demonstrate public benefit, or make token gestures are likely to come unstuck. The Commission has made clear its intention to review Trustees' Annual Reports to identify charities which merit further investigation. It is clear that attention is likely to focus on the public benefit of educational institutions and other charities that charge high fees. The public benefit test will also provide another source of scrutiny for charities which deliver public services.

FOR MORE INFORMATION PLEASE CONTACT
SHIVAJI SHIVA, HEAD OF CHARITY LAW
tss@micelmores.com



Latest News and Forthcoming Events



Commercial Property Awards 2007

The sixth Commercial Property Awards Dinner will take place at Sandy Park Conference Centre on Tuesday, 13th May 2008. Sandy Park itself won the award for the Project of the Year in 2006 hence this choice of venue. This event will bring together the best Westcountry commercial property projects, buildings and people of 2007.

Michelmores Director of Marketing Andrew Maynard said: "The Awards are now established as the region's premier commercial property competition and because of our partnership with the Western Morning News,

shortlisted candidates and the eventual winners are assured of huge publicity for their efforts as well as the prestige of recognition by their peers.

"Each year we receive more entries of greater quality and diversity within a wider geographic spread. The winning entries can come from a wide range of projects and even the smallest has a great opportunity to win. A community led project in Cornwall came within a whisker of winning one of the top prizes last year."

The most expensive development deal in Britain

Michelmores has acted in the sale of Chelsea Barracks to Project Blue (Guernsey) Ltd.

Project Blue revealed they had paid a staggering £959 million for one of the most important development sites in Europe.

Michelmores' Philip Page, a leading expert in public sector property and advisor to several Government departments, led the Michelmores team who acted for the Ministry of Defence (Defence Estates) throughout. Commenting on the sale Philip said "This 13-acre site is undoubtedly the most important

residential development property to come on to the London market in more than a decade.

"A site of this size and significance represented a highly complex legal challenge taking many months of diligent work to bring it to fruition. Having said that, from appointing the preferred purchaser to exchange of contracts was achieved in just 48 hours."

Proposals for the scheme, which will be subject to final planning approval by Westminster City Council include a sustainable mix of luxury apartments and affordable units in a green setting, close to the Thames.

Local Government Group Seminars

Our Local Government Group is holding a series of short seminar over the coming months on "Top Tips" on a range of subjects for local authority lawyers. The series covers Procurement, Contracts for IT Outsourcing, Planning & Environment Law Update and Property Law for Regeneration projects.

FOR MORE INFORMATION PLEASE CONTACT KAREN TRICKEY AT krt@michelmores.com

Michelmores LLP

Woodwater House, Pynes Hill, Exeter EX2 5WR DX 135608 Exeter 16
Tel: 01392 688688 Fax: 01392 360563 mail@michelmores.com www.michelmores.com

Clarges House, 6-12 Clarges Street, London W1J 8DH DX 140549 Piccadilly 5
Tel: 020 7659 7660 Fax: 020 7659 7661

Harston, Church Street, Sidmouth EX10 8LT DX 48704 Sidmouth
Tel: 01395 512515 Fax: 01395 578422

Michelmores LLP is a Limited Liability Partnership, regulated by the Solicitors Regulation Authority and registered in England and Wales under Partnership No. OC326242.