

Essex Planning Officers' Association 2020 Planning Skills Series

E2 Understanding Planning Law and National Planning Policy

Wednesday 22nd January 2020 ARU Chelmsford

Notes and References - John Dagg

1. **Introduction** - Law and Policy distinguished - law 'binds' - policy 'indicates' how discretion in decision making is likely to be exercised - it has a flexibility.

Law : Parliament - **statutes** - ie 'Acts of Parliament' , **statutory instruments** - orders and regulations made by Ministers using powers given in Acts - these are the basic legal framework of the planning system - see

*The Town and Country Planning Act 1990 - much amended by succeeding Acts - Planning Authorities , the concept of 'development' - 'operations' and 'material changes of use'(s.55) the requirement for **planning permission**(s.57), ways of granting planning permission , the 'considerations' and requirements in granting or refusing planning permission (ss 70, 72), conditions etc. enforcement , appeals, High Court challenge.*

Note also Planning (Listed Buildings and Conservation Areas) Act 1990 'heritage' ss 66 ,72 The Planning and Compulsory Purchase Act 2004 (regarding plan making and the role of plans) -also amended, see in particular s.38(6)-

the primacy of the development plan unless material considerations indicate otherwise.

The Development Management Procedure Order 2015- detailed requirements for planning applications and appeals;

The General Permitted Development Order 2015 - permissions granted by the Ministers ;

the Courts - the role of the High Court, Court of Appeal and the Supreme Court in interpreting Acts and statutory instruments and providing for challenge as to legality of decisions of Ministers, Planning Inspectors and Local Planning Authorities.

The Ministry for Housing , Communities and Local Government / The Secretary of State /The Planning Inspectorate , Planning Inspectors

Policy : ' **Development Plan** ' policies - contained in Authorities' local plans and neighbourhood plans according to the legal framework set out in Acts and statutory instruments ;

National Policy - The National Planning Policy Framework '**NPPF**' (last revised Feb.2019); National Planning Practice Guidance - frequently revised - currently 56 categories.

Note also the importance of guidance issued by other national bodies - eg. Historic England and Natural England.

2. Recent Changes

BREXIT - the preservation of relevant European environmental law - The Environment Bill; 'Permission in principle' - a new simpler process to establish the basic principle of a proposal (followed by a need for approval of technical details);

Amendments of the General Permitted Development Order ;

Amendments to the Community Infrastructure Levy ('CIL') - a tax on development; (note the role of 's.106 Obligations' and requirements for specific payments for schools, open space , affordable housing).

Important recent updates to PPG : on CIL , Viability and Design (with National Design Guide).

The gradual re-emergence of 'Regional / Sub-Regional Planning after the (in my view) Coalition Govnt. error in removing the regional planning strategies in the Localism Act 2011. See now eg. the Cambridge area , South Essex , North Essex.

Enforcement outlined

'Breach of Planning Control', time limits and 'immunity' , 'immunity' equals 'lawfulness'; the four years and ten years rules , note 'deception / concealment' , enforcement notices and appeals , certificates of lawfulness of existing use or development , criminal liability - the Magistrates' and Crown Courts - Proceeds of Crime Act proceedings.

4. Learning from Appeals , High Court challenge to Inspectors' Decisions and judicial review of planning authority decisions

Imagine the Independent Inspector or Judge reviewing your work!

Appeals and High Court challenges distinguished - an appeal to an Inspector can open up all of the merits of the case - factual , policy , technical assessments and opinions.

In the High Court - in a challenge to an Inspector's decision or in a judicial review by a Third Party to an Authority's decision - the issue is whether the decision is lawful. The Court will not reconsider matters of planning opinion.

In an appeal the outcome is a fresh decision on the merits , either allowing it (and granting permission etc) or dismissing ; in a High Court challenge if the grounds succeed the outcome is a 'quash' of the original decision and the matter is 'remitted' to the Secretary of State or the Planning Authority for re-consideration.

Planning Appeals - see Planning Inspectorate Website : Appeal Procedure Guides; PPG;

Types of appeal - Written Representations , Hearings and Inquiries.

Common Issues and examples.