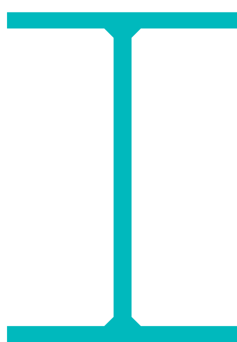
Oliver Wright explains some of the implications of recent adjustments to the planning system

A welcome change?



In a potentially significant move in time and cost, the UK government has reduced the detail required for an outline planning application. 'Scale' and 'layout', although matters that could be reserved for future determination under the outline procedure, nevertheless involved the submission of quite considerable detail. These requirements were, however, deleted under a Statutory Instrument that came into force on 31 January.

Outline planning applications, a feature of the system for many years, enable developers of larger sites to obtain planning permission for the principles of development, leaving the design of details until a later stage when future occupiers emerge and a strategy evolves.

Not just a red line

In the past, an outline application meant little more than a red line around an application site, a specified quantum of development and proposed use classes, and potentially key access points.

This common practice was called into question in 2000 in the context of applications that required environmental impact assessment. In the well-known *Rochdale* series of cases, the courts held that providing the bare minimum of details was insufficient to undertake a credible judgement about the likely significant effects of the proposed scheme on the receiving environment.

In 2006, the then government extended the new post-*Rochdale* approach to all outline applications. The result was a considerably greater level of detail required at outline stage.

In the case of 'scale', for instance, regulations required the submission of the "upper and lower limit for the height, width and length of each building included in the development proposed" (Article 4(4) of the Development Management Procedure Order (DMPO)).

In the case of 'layout', an outline submission needed to provide details of "the approximate location of buildings, routes and open spaces included in the development proposed" (Article 4(3)).

Quite understandably, these requirements led many developers and architects to complain that as much, if not more, design thinking needed to take place to comply with (in the case of scale) the 'parameter' requirement than the final design of an actual building. On schemes such as Wood Wharf and other large redevelopment applications where scale was applied for in outline, there was no easy way of presenting upper and lower limits for three-dimensional buildings, where so many buildings were interacting with one another. The natural conclusion was that the outline scale and layout requirements were defeating the whole purpose of the outline system.

Fast track?

As readers will be aware, Communities Secretary Eric Pickles and his department have come under increasing heavyweight pressure to 'fast-track' planning applications through the system to "get Britain building again". Statistics published by the DCLG tend to suggest that a large number of applications are being held up due both to delay in preparation and local authority cutbacks.

Many measures are emerging or have taken hold in the past six months designed to address this problem. The Growth and Infrastructure Bill, for instance, contains several notable provisions, including: (1) the ability for Pickles to designate certain local authorities 'underperforming', and thereby to give developers the option to apply directly to the Secretary of State for planning permission, avoiding the local authority in question altogether; (2) a complete rebalancing of the much-debated town and village green system, which will make it much more difficult to register development land as greens (the effect of which was to stymie all development); and (3) the ability to seek to renegotiate onerous section 106 affordable housing requirements immediately rather than waiting for the current statutory five years. So, also, in July 2012, the government consulted on the removal of the 2006 requirements for scale, layout and access.

A mixed response

The response to the consultation issued by DCLG last December hardly demonstrates unequivocal support for the proposals. As a percentage of all respondents, 44% expressly did not agree with the proposal to remove the outline requirements for 'layout', while 41% did not agree with the proposed removal of the outline requirements for 'scale'. Never letting democracy get in the way of good decisions, however, the department has pressed ahead undaunted.

Perhaps surprisingly, with 87% support for the proposal, the government has decided not to proceed with the removal of the outline application requirements for 'access'.

Filling the vacuum

What requirements will fill the vacuum left by the deletion of scale and layout outline requirements? In the case of Environmental

Impact Assessment (EIA) planning applications (those which exceed the various thresholds set out in the EIA regulations), it would seem that the *Rochdale* jurisprudence is to return to the fore. Frustratingly for developers seeking EIA permissions, the court's suggested approach has strong similarities to the inflexible 2006 approach, seeking 'clearly defined parameters', and a level of detail to enable a robust and credible environmental assessment to be undertaken.

Taken optimistically, however, these recommendations do not have the prescription of statute and are explicitly to be applied on a case-by-case basis by the local authority having in mind the specific development proposal and potentially affected environment at hand. One can surmise: the more environmentally sensitive the surrounding area, and perhaps the more environmentally damaging the proposal in question, the more detail will be required so that appropriate and specific mitigation measures can be incorporated into any permission.

In cases where no EIA is required, however, the outline requirements appear less clear and potentially more open. Reference is made to the need to deliver documents that address the relevant authority's 'local list' (a list that local planning authorities must now keep up to date specifying what documentation must accompany the various sorts of applications), but these would be unlikely to specify detailed requirements for the substance of the documents themselves, and arguably that would go beyond the statutory provision in any event.

Cause for concern?

There are three matters of ongoing concern about the proposed amendments. First, there is a legal inconsistency in the current amendment Statutory Instrument, which could lead to the current stringent outline requirements prevailing. Article 4(4) of the DMPO, setting out that applications reserving 'scale' for later determination must include upper and lower limit parameters for all buildings proposed, has been deleted – no question. However, the definition of 'reserved matters' (in article 2) remains untouched. That sets out that a reserved matter, "*in relation to an outline planning permission... means any of the following matters in respect of which details have not been given in the application... (e) scale, within the upper and lower limit for the height, width and length of each building stated in the application for planning permission in accordance with article 4(4).*" Without deleting that latter wording, there is the risk that scale parameters could persist by the back door.

Second, there is no stated intention on behalf of DCLG to amend or update Circular 01/06, which set out in more detail how the 2006 outline requirements were to be implemented and construed by developers. Further, it discusses how those requirements are to feed into the preparation of Design and Access Statements, a mandatory document for most application submissions that remains so after these amendments. How Circular 01/06 will affect applications in the future, therefore, remains to be seen.

Finally, on a lighter note, the amending Statutory Instrument achieving the deletion of scale and layout requirements was intended to allow a six-month period for local authorities to revise and update their local list. So far so good. Unfortunately the 'six-month period', commencing on 31 January, ends on '31 June', a date known only to fiction. The errant date has since been consigned to the history books with a further amending piece of legislation.

Overall, therefore, commercial developers will be pleased with the proposed deletion of the onerous 2006 parameter requirements. It should entail less cost in drawing up the necessary outline application documents, and greater flexibility with any permission achieved. Caution in the initial 'bedding-in' period is recommended, however: how well local authorities revert back to the *Rochdale* world will doubtlessly follow some peaks and troughs. C

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