



Housing: building plans and headlines

by Joanne Green

Housing seems to be constantly in the news headlines at the moment, but what's reported is often more bleak than positive. Recent housing news has been connected to welfare reform, bedroom tax, house prices, mortgages for rent and ownership. The Council of Mortgage Lenders (2013) statistical release shows increases of lending rose from September 2012 to 2013. The loans went to Microfinance Institutions (up 39%), housing associations (up 79%), mutuals (up 45%) and specialist lenders (up 29%), home loans to individuals (up 2%), and to individuals and housing association (up 30%). This illustrates that current Government Policy is providing the UK with Affordable Housing.

The Affordable Homes Programme has 146 home providers who offer home ownership, supported housing and some social rent. There is an Affordable Homes Guarantee too that

made available additional funding for homes, including in London (Homes & Communities Agency, 2013). These builds are delivering environmental protection to people, species and resources- so why haven't those been celebrated in the news recently?

The majority of the Conservation of Habitats and Species Conservation Regulations 2010 (CHSCR) Statutory Instrument number 490 came into force on 1 April 2010. Overall it extends to England and Wales with exception to adjoining land and sea to neighbouring countries and their pertinent statutory instruments, statements and permissions relative to planning. Parts yet to be brought in relate to the sea, not something the UK tends to build homes upon and consequently irrelevant to this discussion. The rest of this regulation is relevant and so is discussed and compared with current housing policy.

The interpretation of CHSCR includes 3. (1) *land covered by water* and 8(a) *inland waters and not the sea of Great Britain*

. Crudely for the UK this means that residential homes may be built in areas at risk of inland flooding. Natural England for England, Countryside Council for Wales and Scottish Natural Heritage for Scotland are the appropriate nature conservation bodies for the regulations and so are stakeholders for housing built in or near to locations protected by this regulation. Competent bodies are also required and who are Ministers of the Crown- civil servants as defined by Ministers of the Crown Act 1975 Schedule 1 (Legislation UK, 1975). These include public bodies, public offices and local authority. It's worth noting that local authority extends beyond district and other council-led local authorities and includes Queen's Council (QC) the sub-treasurer of the Inner Temple and the under-treasurer of the Middle Temple (Legislation, 2010) of the Inner London Boroughs. The Mayor of London has no power over QC local authorities as they are exempt because of succession to Knights Templar. The functions of the sub-treasurer of the Inner Temple and the under-treasurer of the Middle Temple include environmental protection, planning (not development plans or listed buildings), public health and safety, refuse collection, water supply and licensing (of events and liquor) (Middle Temple, 2013).

QCs, as appointed persons under the UK Public General Act: Health & Safety at Work Act 1974 (HSaWA) section 19 (4) carry their 'instrument of appointment' or duplication to produce it. This is important as this local authority exercise the same powers of the Health & Safety Executive of HSaWA section 20(2) (Powers of inspectors), 21 (Improvement Notice), 22 (Prohibition Notice), and 25 (Power to deal with cause of imminent danger). Relative to housing this means that this local authority in London, 20(1) by producing their instrument of appointment can under HSaWA 20(2) enter a premises at a reasonable time, (b) with a constable needed, 'to apprehend any serious obstruction in the execution of his duty' and (d) examine, (f) measure, (g) take samples, (j) question with declare responses; and (m) create enabling powers for the above to occur (Legislation UK, 1974). Moreover the above illustrates there are different levels of local authority definition and understanding of QCs as enforcement investigators and of whom possess exemplary Learned spoken skills. With regards CHSCR comparative to housing policy these QC inspectors are able to issue Notices upon tenants and owners of properties where invasive species pose health hazards and also where redevelopment has already occurred. Also note their powers are limited to post development; an on-going 'maintenance' of standards rather than pre-application planning development.

For housing policy this proffers a mass of significant impacts- too many to create a definitive list for this article, though includes urban flood alleviation. For the QCs shape decisions in court after the fact and so decide what significant is. Please do note there are two versions (at least) of the term Significant Impact. CHSCR for European sites of special conservation definition for 'likely significant impact' is understood to be a likely damaging occurrence as a result of a project. Whereas Environmental Impact Assessment includes positive impacts from projects such as Annex I infrastructure i.e. roads and railways, economy increase and disposal of hazardous waste and Annex II flood relief in urban development (European Commission, 2013). With regards to CHSCR Biodiversity Europa reports there are currently 120 000 protected sites in 52 EU designated countries, with approximately one fifth from non-member Community countries and African states (Emerald Network) as de facto extensions and four fifths from member countries (The Natura 2000 Network).

Significant Impact Definitions and examples

Jeppesson et al. (2001) note significant impact to manmade lakes whose water levels fluctuate.

They note invertebrates readily respond to salinity, pH, mud and temperature composition changes to lake beds availability which contain macrophytes rather than to water depth. Whereas zooplankton more readily respond to depth than lake beds and so they as a food availability alter the trophic structure; the horizontal layers within a water body. They also note composition change can be a result of; 'eutrophication, acidification, land use and plant cover.' Interpreted this means a small manmade lake with too much shade by plants will significantly alter the composition of that lake bed and significantly impact upon fish's osmoregulation. Mr. Anderson's video (2012) illustrates osmoregulation in fresh and saltwater fish and human kidney osmology and function. Anderson explains the impacts of salinity upon osmoregulation as the amount of water released from a fish's skin into its surrounding water body and vice versa. Also that the volume of salinity within that water body increases or decreases the exchange of water from the fish. Water released from the fish is removed from the blood of the fish, too much water removed and the blood cell shrivels, too much water accepted and the blood cell explodes. Jeppeson et al. (2001) report that the changing climate of the manmade lakes impacts upon those lakes invertebrates, zooplankton and macrophytes by decreasing those populations. Subsequently small fish are predated more often by the larger fish in those lakes. They request further research into the impacts of the reduced fossil volume of those predated fish and note fossils are located in lake mud. Small fish are eaten whole (Malde et al., 2009).

With regards to Environmental Impact Assessment significant impacts encompasses the negative impacts of CHSCR and positive impacts. Is this something for the Red Tape Challenge to review? IEMA's past event webinars provides a plethora of case studies illustrating positive environmental impacts from projects in during and after planning applications and over a timescale of 3 years.

With regards to tort disputes which may arise after a project on a protected site this has precedent of 150 years in English historical law. By comparison French law decisions are arrived at by the Cour de cassation and the Code civil. French costs of going to court are fixed whereas in the UK costs are variable (Europa, 2013). When land has been developed and that development is non-natural, such as residential housing that has a non-natural water body for water storage the owner of the land is strictly liable should anything escape from that non-natural development and cause damage to a neighbour. The reasons for this are because (i) there is an accumulation of something on a land, (ii) which if it escaped could cause a nuisance, (iii) that an escape occurred, (iv) that there was a non-natural use on the land; and (v)

the damage is not too remote. The case-law for this is *Rylands v Fletcher* [1861] UKHL for Acts and *Donoghue v Stephenson* (1932) for Acts and Omissions to Act- in effect negligence. Please note the square brackets illustrate the decision was made after the initial court decision and so the importance to those cases are the decision and not necessarily the date. It is important to note the damage can be underground as well as on the surface (e-lawresources, 2013). As usual, damage occurring from a property would be the responsibility of the property occupier or owner unless it arises from mains drains whereby responsibility falls upon that undertaker. *HTC Corporation v Nokia Corporation* [2013] EWHC 3247 (PAT) illustrates patented designs require novelty to be shown. Where there are failings to protected sites the competent body for CHSCR Part 2 section 34 where terms are reasonable yet no management agreement can be concluded there this land can be compulsory acquired using Compulsory Purchase Act 1965 (CHSCR, 2010).

To summarise, current housing policy is working for the benefit of the general public and for the protection of species and habitats.

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