

P.E.B.A.

The Specialist Bar Association for Planning,
Environment and Local Government

Dear Colleague

June 2015 Newsletter

This is part of our occasional series of updates on significant forthcoming events and dates of interest to PEBA members, including:

- AGM NOTICE
- CPD EVENT – 30th June 2015, State Aid and Infrastructure
- Chairman's Report on the Planning Court Overview from Lindblom J given at the PEBA Conference

1. PEBA's ANNUAL GENERAL MEETING

The 2015 Annual General Meeting for the Planning and Environment Bar Association will be held at **6pm on Friday 3 July 2014** at Landmark Chambers, 180 Fleet Street, London EC4A 2HG for the purposes of transacting the following association business:

- Chairman's report;
- Treasurers report;
- Election of treasurer (one year)
- Election of secretary (one year)
- Election of members of the committee

At the end of this business we shall adjourn for refreshments. All members welcome.

2. CPD EVENT – 30th June 2015, State Aid and Infrastructure

The Planning and Environment Bar Association and the UK State Aid Law Association are holding a joint seminar on State Aid and infrastructure in the evening of 30th June 2015 at Francis Taylor Building, Inner Temple, London EC4Y 7BY. The seminar will be free of charge, and starts at 6pm (for 6.15pm).

Our Speakers will be: -

Aidan Robertson *QC Brick Court Chambers*
Anneli Howard *Monckton Chambers*
Pavlos Eleftheriadis *Francis Taylor Building*

At a time when there is a great emphasis on the provision of public infrastructure, this seminar is aimed at providing an expert overview and update on the effects of the State Aid rules. Just how cautious do public authorities and those who deal with them need to be? As Article 107 TFEU is broadly-worded and provides that: “Any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market”.

Topics covered will include: -

Infrastructure cases and the application of the Market Investor Economy Principle - a cornerstone of state aid control

Recent cases on Sports Stadia

Selectivity and Tax Relief: Business Rates

Community Infrastructure Levy and State Aid problems

UKSALA’s membership includes barristers, solicitors, academics, students, public servants, and others interested in State Aid law and its implementation in the United Kingdom.

3. The Planning Court overview at the annual PEBA Conference

Morag Ellis QC:

The annual PEBA Conference took place on 15th May and was a great success. In addition to many excellent papers, a short keynote address from our President, Lord Carnwath and a stimulating debate on the future of the Green Belt, we had an extra item about the Planning Court from Lindblom J.

The Judge gave an overview of the Court in its first year and then set out his personal suggestions for ensuring that the speed and quality of the service offered by the Court can be maintained. The Judge stressed that the views which he expressed were entirely his own and must not be seen as an informal practice direction – which they definitely are not. Nevertheless, as his observations on good advocacy were so practical and so important, I felt that they should be circulated to the membership and I commend them to everyone who undertakes advocacy in the Planning Court. Please will Heads of Chambers, planning team leaders and pupil supervisors ensure that this newsletter is passed on to pupils and junior tenants even if they are not yet PEBA members.

Significant and Non-significant Cases

Significant cases are those of importance for local communities, those involving more difficult points of law and those of greater economic significance. Significant cases are heard by those judges who are nominated to sit in the Planning Court. Others are heard by any of the large number of Administrative Court judges. The ‘Planning Court’ is, in fact, part of the Administrative Court to which special resources have been deployed because the economic significance of its (and therefore our) work is recognised by the Government.

The purpose of the dichotomy is to ensure streamlining and there is no further division of cases within the Significant list.

Lindblom J exercises his discretion as to whether or not cases are to be treated as Significant for London and the regions.

Planning Court Users’ Group

This Group has, so far, had one meeting. It comprises Lindblom J and other representatives of the Judiciary, Court listing staff, representatives of solicitors’ firms specialising in planning work including the Treasury Solicitor, those who work mostly for claimants, mostly for defendants and mostly for interested parties, as well as a representative of those working principally in the regional courts. There is a barristers’ clerk member and the Chairman and Vice Chairman of PEBA represent the Bar (as alternates), together with Hashi Mohamed, PEBA’s Assistant Secretary. If PEBA members have observations to make about the operation of the Court, please will they email them to me at moragellis@aol.com. I have already brought a number of such points to Lindblom J’s attention and raised others in discussion at the inaugural meeting. The object of the Group is to make the Court as efficient as possible for all users and, ultimately, to ensure that it offers the best possible service in terms of speed and quality of decision making for our clients. It aims to co-operate in a spirit of openness to achieve this objective.

Good Practice in the Planning Court (and generally)

The Judges can and do make bespoke case management directions and Lindblom J does not envisage any special Planning Court Practice Directions for the foreseeable future. He regards such PDs as unnecessary, given the bespoke power and the Court’s expectation that parties should co-operate to get cases ready for hearing in the right way.

The Judge then outlined what he meant by “*in the right way*”.

The judges welcome the parties' active co-operation between themselves to identify in advance what the true issues in a case are.

In particular, advocates should aim to identify and set out the shape of the case in a sensible way.

Stand offs between parties were deprecated and co-operative discussion about case management encouraged.

Advocates were exhorted to have the courage of their convictions and not clutter up claim forms and skeletons with bad points. 3 good points are better than 3 good points diluted by 5 bad or indifferent ones alongside them.

Planning cases seem to generate disproportionate amounts of paper. This does not help persuade a judge of the merits of the case, particularly at permission stage, where the disparity between planning and other administrative law cases is particularly marked. Usually one file of around 150 pages will suffice at this stage.

Skeletons should be succinct (but not necessarily short – ie. they need to be comprehensive, in the sense of setting out the case as it will be argued, but not prolix or repetitive).

Numbered points are particularly helpful, to enable the judge to understand the shape of the case at the outset.

Choose the best (ie. the highest and most recent) authority for each proposition, rather than citing multiple cases.

Do not hide a point which is against you, rather take it against yourself and deal with it; the judge will respect your courage and therefore the rest of your advocacy too.

Attempt to agree the issues in the case and propositions of law with other parties as early as possible.

Consider drawing up an agreed narrative of relevant events. This will enhance the chances of the judge taking account of everything that you want him or her to and it reduces the chance of issues of disputed fact arising late in the day.

Lindblom J's watchwords were: focus, confidence and engagement.