

Planning

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Headlines

- **Planning will become more political** – The outcome of the election is uncertain. Furthermore, many of the new MPs will be ex-local Councillors who have been campaigning against development.
- **New tax on all development is coming** – Do not be fooled by the friendly sounding name, the Community Infrastructure Levy (CIL) is a tax that will be levied on virtually all new development.
- **Wave of renewable energy and sustainability requirements will hit in 2010**
- **Those who can, plan for the upturn** – Conventionally, developers and land owners use recessions to line up planning permissions for the upturn.
- **Renewal of permissions offers a quick and easy route for some**

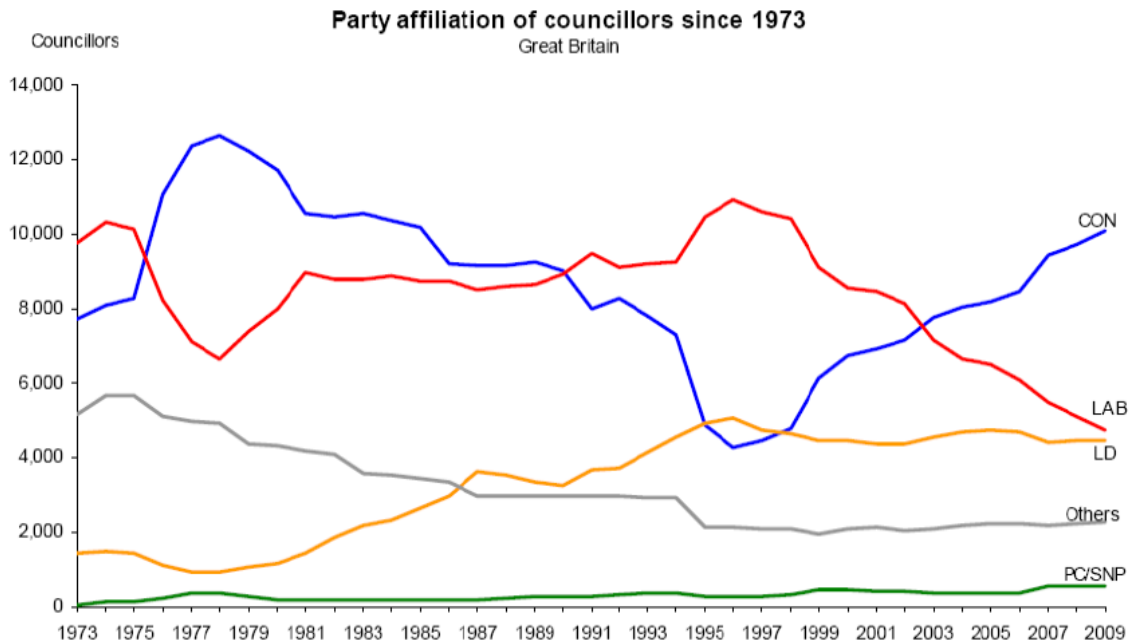
1 Planning will become more political

The Tories need a 6.5% swing to win an overall majority (a gain of 150+ seats). This has only been achieved once in a UK election since the War (Blair in 1997). The Tories are way behind where Blair was at this stage in the opinion polls.

There is a massive opportunity for the Tories to deliver the development they want if they win, as they would then be in power across all levels of government for the first time in 30 years (when Margaret Thatcher first came to power in 1979). In London there is a Conservative Mayor. The Conservatives already hold most local Councils, with Labour holding only 10%. The graph below shows the substantial lead in the number of Tory

Councillors. It also shows that historically such leads have tailed off after that party has got into Government nationally. The Conservatives should therefore make the most of their early years.

The Political Balance



Source: The Saint Consultancy Group

However, there is a substantial risk that the opportunity may be wasted. The bulk of the 300+ Tory MPs that could make up a governing majority would have entered Parliament in 2005 and 2010, with a large number of these being ex-local Councillors. These are the same local Councillors who have spent the last decade trying to win favour at the local level, often by opposing schemes, as there have been few votes in supporting development. National surveys have found that 85% of the population say that they want no new development. Indeed, in London and the South East, these figures are 91% and 92% respectively who are against development.

There is a particular risk in the housing sector with the Tories having stated that they will scrap Regional Spatial Strategies, which set out the housing requirements for each local authority area. Shadow Communities Secretary, Caroline Spelman has already written to Conservative Councils advising them not to “rush ahead with implementing controversial elements that have been foisted on them by Regional Spatial Strategies”, indicating that they will be

able to undo those elements which they consider to be undesirable. Councils may even be left to set their own housing figures!

There is considerable uncertainty as to what would replace the Regional Spatial Strategies, with some suggesting that future housing requirements would be left for individual local Councils to decide, whilst others have indicated that a return of the planning function of County Councils is another option that is being considered. Either way, caution is needed in relying upon major housing allocations set out in the Regional Spatial Strategies. Caroline Spelman has declared that a new government “will not pay a penny of compensation to speculative developers as a consequence to changes in planning policy”. Governments never have compensated developers in the past, so this is nothing new, but it further suggests that a Conservative Government will be pulling back from many controversial housing schemes.

2 New tax on all development is coming

The legislation for the Community Infrastructure Levy (CIL) was introduced in 2008. The draft regulations were consulted upon in July to October. The regulations will be coming out in their final form in April 2010.

Under CIL, virtually all developments over 100 m², excluding householder applications and change of use applications, will have to pay a set charge/tax that is likely to be based on each square metre of development. It will therefore affect many, many more proposals, since at present only an estimated 7% of applications have Section 106 agreements.

Once the new legislation is in place, local planning authorities who wish to charge CIL will need to prepare an Infrastructure Schedule, which will set out the amounts it wishes to charge. This will be calculated on an estimate of the total amount of infrastructure that a Council considers will need to come forward over the plan period and the number of developments anticipated over the same period. This will clearly be an enormous and complicated task for Councils to try and undertake, but as tariff based charges adopted by some Councils are to be removed, many local planning authorities who want to raise additional revenue, will have little choice but to take CIL up.

Although the amounts raised are intended to fund the new infrastructure needed, Councils will actually have complete discretion on how and when the money could be spent. Indeed, it could be used to refund money that Councils have already spent or even could just sit in the local authority's bank account.

Once in place, there is no appeal because a developer thinks the rate is too high. Likewise, a local planning authority will have no discretion to waive or reduce the CIL for development that it wants to come forward. The CIL would have to be charged on implementation, even if that would render a development unviable and thereby prevent it coming forward.

Furthermore, the draft legislation still makes no allowance for major schemes which provide their own infrastructure such as new schools etc on site, as the costs of such works in kind cannot be deducted from the CIL liability.

Developers will still have to pay for planning obligations under S.106 for the site specific requirements that arise from the development itself. The development industry may therefore end up paying twice for some items. The total bill is therefore likely to be substantially greater in the future.

3 Wave of renewable energy and sustainability requirements will hit in 2010

New Government guidance will be rolled out nationally during the course of 2010, imposing ambitious levels of renewable energy and a range of sustainability initiatives that new development will have to comply with. This will include setting minimum levels under the Code for Sustainable Homes and ambitious targets under BREEAM for all commercial buildings. These will be reinforced with the revised requirements under Part L of the Building Regulations that are due to come into effect in October 2010.

4 Those who can, plan for the upturn

Conventionally, developers and land owners use recessions to line up planning permissions for the upturn. Those who are able to afford it will continue to do just that, but with the costs of preparing the considerable amount of information that now has to support larger planning applications

having increased many times since the last big recession in the early 1990s, some can simply not afford to line up permissions for the future.

5 Renewal of permissions offers a quick and easy route for some

During the course of 2010, extensive use is likely to be made of new legislation that came in in October 2009, which allows existing permissions that are nearing the end of their life to be renewed without the need for plans and new supporting reports. This could help provide a lifeline where there have been no substantial changes.