



DMH Stallard

September 2021

Property & Planning Webinar

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A new Building Safety Regime

Emily Wood

The Bill's proposals - new roles created

- Mainly England
- Higher-risk buildings
- Building Safety Regulator (BSR)
 - The Building Advisory Committee
 - The Committee on Industry Competence
 - The Residents Panel
- Accountable Person
- Building Safety Manager

The Bill's proposals - duties imposed

- Residents' Duties
 - Not to create a significant risk of a building safety risk materialising
 - Not to interfere with safety equipment
 - Comply with Accountable Person's requests
- Landlords duties
 - Amends the Landlord and Tenant act 1985
 - Implied duties into leases
 - Comply with building safety duties
 - Co-operate with person who has such duties
 - Comply with any Special Measures Order

The Bill's proposals – implied terms

- Implied terms on tenants
 - Allow landlord to enter for relevant building safety purpose
 - Comply with duties as residents of higher-risk buildings
 - Comply with a Special Measures Order

- Building Safety Charge
 - Implied into relevant leases
 - Relevant lease = seven years or more, and includes a service charge
 - Landlord can pass on costs of management of building safety duties to tenant

What about the costs of remediation?

- Costs landlord incurs to remediate / rectify building safety defects
- Nothing in the Bill prevents a landlord recovering these costs through express service charge provisions in leases
- Only protection for tenants is that landlord must first
 - Take reasonable steps to ascertain any grants
 - Take reasonable steps to obtain money from third parties
 - Take prescribed steps relating to any other prescribed funding
- Other avenues for landlords are building insurance, indemnity policies, warranties and claims against developers and designers

Extended Limitation Periods

- Two extensions
 - Defective Premises Act 1972
 - Creates a duty on those who work on buildings
 - Currently limited to original construction or conversion
 - Will be extended to those carrying out work on existing buildings
 - Extends limitation period to 15 years
 - Building Act 1984
 - Will give individuals right to claim damages where breach of building regs.
 - Extends limitation period to 15 years

So, when...

- Government's Transitional Plan Document sets out timetable
- Passage through Parliament - March 2022
- Phase one – March 2023 – includes residents panel and changes to Defective Premises Act and Building Act limitation periods
- Phase two - March to September 2023 – most of the rest including “Accountable Person” and duties on residents
- BUT watch this space – could well take longer

Many holes left to fill...

- Does it provide sufficient protection for leaseholders against large bills for remedial work?
- Are the definitions of higher-risk buildings too narrow?
- Is the cost of the new regime likely to be unsustainable?
- Do the extensions to the limitation periods really help residents who have been affected by building defects?
- Is the much needed reform just too slow?

Repurposing the high street: ground (f) – redevelopment

James Picknell

Setting the scene

- A nation of shopkeepers – end of an era?
- Time for something different?
- Restrictive covenants?
- Landlord & Tenant Act 1954 – ground (f)

Redevelopment – ground (f)

- *“that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding”.*
- Developments in the law - it can't be that complicated, can it?
- The ambitious and impatient developer / the tactical tenant

Dissecting ground (f)

- ***“that on the termination of the current tenancy...”***
 - Section 64 plus a reasonable period of time
 - PD rights for residential and a prior approval application?
- ***“...the landlord intends to...”***
 - Firm and settled, but when?
 - The evidence - get your ducks in a row!
 - Motive and the new ‘acid test’
- ***“...and that he could not reasonably do so without obtaining possession of the holding”.***
 - Not only physical possession but lawful possession – check the lease!

Dissecting ground (f) – the works

- *“...intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof...”*
 - A careful analysis of the works is required before money could be wasted
 - The ‘Eggshell Demise’. Is it capable of being demolished?
 - Shop cases – examples of success with ground (f)
 - The fine line between success and failure

A tenant's right to compensation

- The compensation grounds
- How much?
 - Rateable value of the 'holding'
 - Valuation date?
 - 14 years - double compensation
- Tactics
 - Relying on a non-compensation ground as well?
 - Negotiating a higher amount?

Reinvention of Crawley town centre

Peter Rainier

Planning background

- New town – retail centre – relatively low-rise
- Crawley Borough Council Policy Framework
- 2016 Town Centre Supplementary Planning Document
- Future Local Plan consultation includes Town Centre policy
- Possible additional Conservation Area implications
- National Policy Class E and PD changes

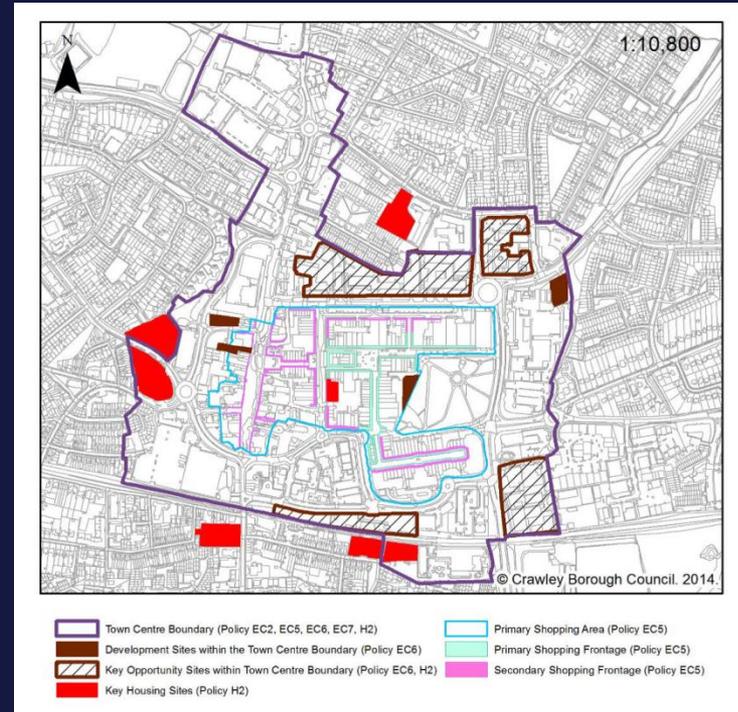
New town – commercial retail centre – relatively low-rise



Crawley Borough Council Policy Framework

The Local Plan sets out; ‘Crawley Town Centre is a sustainable location for residential development, as recognised through the mixed use allocations of Policy TC3 (Key Opportunity Sites within the Town Centre Boundary) and also through its identification under Policy H2 (Key Housing Sites) as a broad housing location. The Town Centre residential population has grown significantly in recent years, both as a result of planned developments and also through Permitted Development. This has meant the number of residents living in the Town Centre has increased significantly and, from a starting point of 214 residential units in 2014, there are now over 1,000 dwellings in the Town Centre, and a residential population of around 1,150 people. It is anticipated that, over the Plan period to 2037, a further 2,200 dwellings will come forward in the Town Centre, bringing the total to just over 3,000 residential units’

2016 Town Centre Supplementary Planning Document



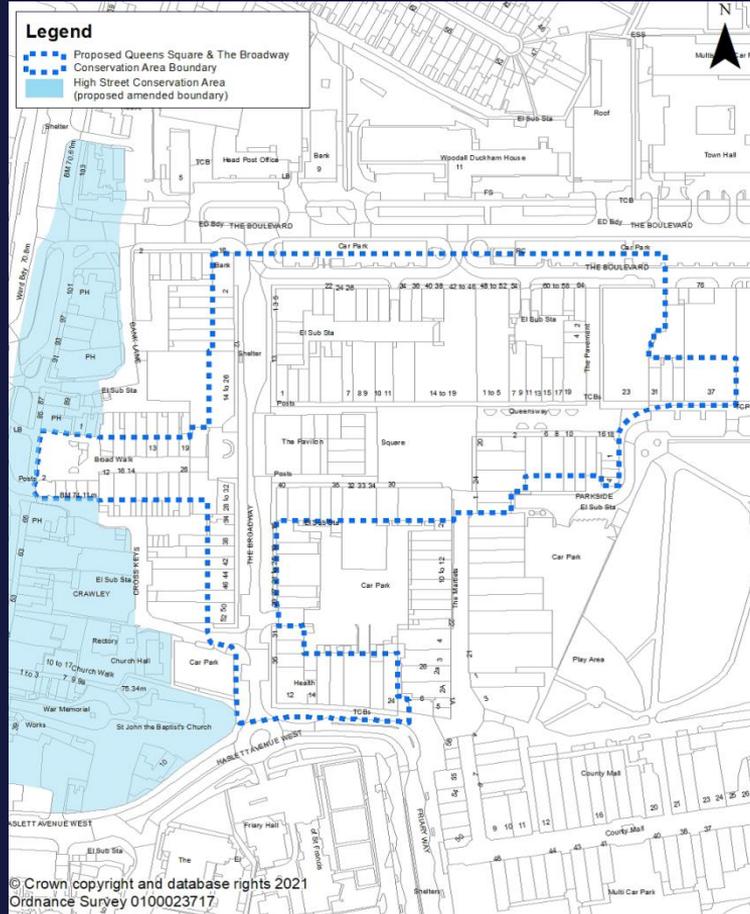
Future Local Plan consultation includes Town Centre policy

Emerging policy seeks

- An enhanced night time economy
- Flexibility in policy and development control decisions within the Town Centre, where change in the retail environment is likely to bring about the need for new uses
- Preservation of the economic and retail functions of the Town Centre
- To encourage the efficient use of upper floors
- The more efficient use of town centre sites to aid sustainability and drive up residential densities
- Enhanced pedestrian/cycling accessibility and public transport provision

Possible additional Conservation Area implications

- Council proposing and have consulted on designating an additional Conservation Area in the Town Centre
- Subject of objections and the Council decision is awaited
- In coming to its conclusion, the Council must be mindful of the purpose of conservation area designation under Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as well as the prime objective of the NPPF which is to promote and achieve sustainable development. To this end the NPPF states in Paragraph 186:
“When considering the designation of conservation areas, local planning authorities should ensure that an area justifies such status because of its special architectural or historic interest, and that the concept of conservation is not devalued through the designation of areas that lack special interest.”
- It should also be noted that Crawley New Town is *not* included on a list of potential 20th century conservation areas identified by the Twentieth Century Society in a recent study supported and promoted by Historic England
- In addition to the above, the proposal for the Local Listing and Conservation Area status, would limit the prospects of town centre renewal and regeneration which has commenced so successfully in Crawley Town Centre over recent years



National Policy Class E and PD changes

- *New permitted development (PD) rights came into force on 1 August 2021 enabling the change of use from the new Class E (Commercial, Business and Service) to residential use (Class C3). The Government hopes this change will help support housing delivery and enable more homes to be created in town centres. However, there is concern that this could have a detrimental impact on the town centre.*

Funding and Support for Crawley Town Centre

- The **Crawley Growth Programme** is the delivery arm of the Crawley Growth Deal - a critical mass of public and private funds aligned to maximise long-term growth benefits
- This growth programme will ensure key infrastructure is in place, making it possible for growth to be maximised

The programme will:

- transform the business & living environment in the Town Centre and Manor Royal
- deliver much-needed new Grade A office space
- unlock private funds for a new Crawley railway station
- enable 1,000+ new town centre homes to be built
- grow new retail investment
- improve sustainable transport infrastructure in the town centre, at Manor Royal and at three railway stations

Will see £60m invested in Crawley

- Govt. has written to the Crawley Town Deal Board to confirm that it can now proceed to the next stage to fully develop 10 project business cases in detail to receive the money from the **Towns Fund** between 2021/22 and 2025/26
- The projects will be guided by the Crawley Town Deal Board, an established group of more than 50 representatives from local businesses, community and public organisations

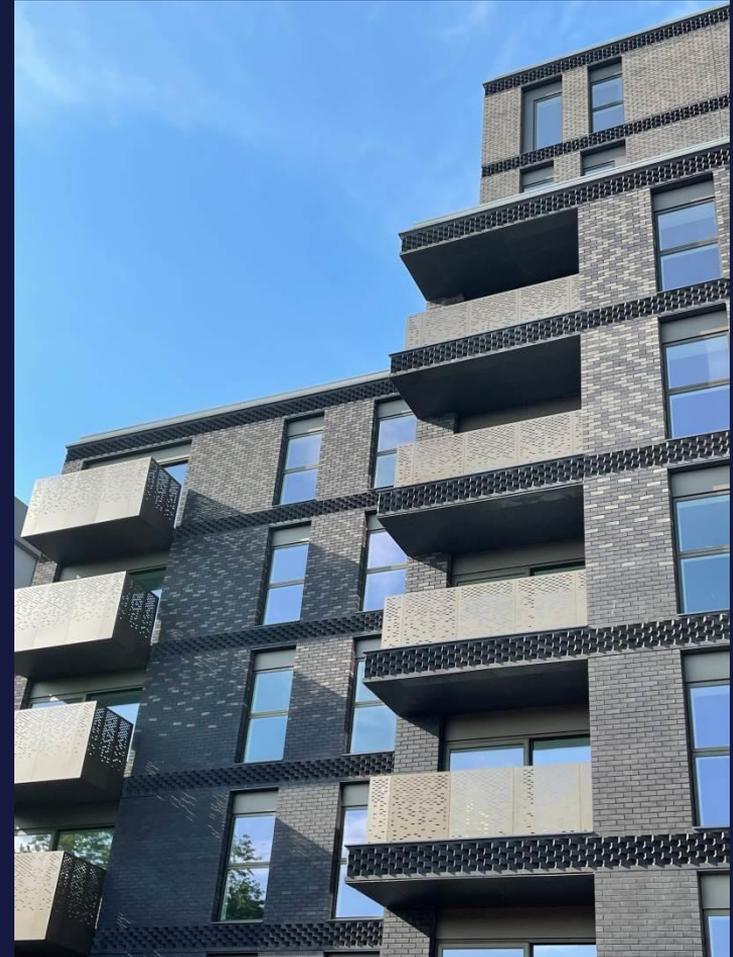
- Crawley now has a Town Centre BID (Business Improvement District) as well as the well established and successful Manor Royal BID
- A Business Improvement District (BID) for Crawley town centre will provide in excess of £2.5 million of levy income over five years and create a real opportunity to deliver a town centre which can capitalise on the proposed new housing and the other substantial physical changes that are already planned or have taken place

What is happening on the ground?

- Redevelopment of Crawley Town Hall and neighbouring sites
- The Create Space is available from 7,000 sq. ft up to 77,000 sq.ft. Each floor will provide column free floors of 14,000 sq.ft a BREEAM Excellent rating, Building situated in the heart of the town centre which once completed in Q1 2022 will provide Crawley Town centre with its first new build grade A offices in seven years
- 180 residential units to follow when CBC offices occupy lower floors of the new building and vacate existing offices



- Former car park to the west now almost completed residential scheme of 90 units



Major plans to redevelop Crawley Station and Overline House have been granted planning permission by CBC

The significant regeneration plans, which will revitalise one of Crawley's key gateways and public realm area, include:

- Upgrading the look and feel of Crawley Station
- The refurbishment and extension of Overline House, providing 83 flats, with two additional floors and new ground level/retail and business units
- Three additional new residential blocks containing 22 flats to the west of Overline House

The Station Gateway scheme will also unlock more than £7 million of public funding investment from the Crawley Growth Programme and the Crawley Towns Fund to upgrade and modernise Crawley Bus Station and the surrounding public realm.



Questions

Speakers



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