

No5 CHAMBERS

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RE: IXIA: PUBLIC ART AND THE PLANNING
SYSTEM

FURTHER ADVICE

2ND APRIL 2014

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FURTHER ADVICE

1. The purpose of this Further Advice is to record the issues which were addressed in a sequence of lectures given on behalf of ixia in autumn 2013, and to update previous advice given in relation to public art and the planning system. Since those lectures were delivered, the Planning Practice Guidance (PPG) has been issued on the 6th March 2013, and the views expressed in the lectures have been updated in order to reflect the emergence of that document. In addition to updates in relation to the PPG, there is a further update in relation to the Community Infrastructure Levy (CIL).

Planning Practice Guidance

2. Following on from the publication of the National Planning Policy Framework (NPPF) and the incorporation for the first time in

national planning policy of the objective of promoting cultural wellbeing, the PPG has provided further guidance in relation to the approach which should be taken to the NPPF.

3. Firstly, there is reference within the PPG to cultural wellbeing and cultural facilities generally in both urban and rural areas, and the need for the development control system to have regard to these issues and facilities in planning for sustainable development.

4. Particular reference is made to the provision of public art within the PPG. In particular, in the guidance which has been given in relation to well-designed public spaces the PPG observes as follows:

“Public art and sculpture can play an important role in making interesting and exciting places that people enjoy using.”

5. This reference to public art as part of the important details of a development proposal is reinforced by the passage in the PPG which addresses the definition of Reserved Matters and includes, within landscaping, the provision of public art. Thus, as was emphasised in the lectures from autumn 2013, the references to

cultural wellbeing in the NPPF have now been clothed with further guidance which specifically references public art as a material consideration and a factor to be taken into account in the context of the good design of public places and the provision of appropriate landscaping (in its broadest sense) in the layout of open and public spaces within development.

6. The reference to public art and design was entirely foreshadowed by the "beta" version of the PPG which was discussed in the autumn 2013 lectures. A new observation about public art which has found its way into the final version of the PPG but which was not in earlier versions relates to planning obligations. There is an ambiguity about the reference which requires clarification. The reference appears in the PPG in relation to planning obligations, and provides as follows:

"Planning obligations should not be sought – on for instance, public art – which are clearly not necessary to make a development acceptable in planning terms."

7. Obviously, this observation needs to be read in context, and in particular in the context that the PPG promotes the provision of public art, undoubtedly as an aspect of good design and also related to the promotion of cultural wellbeing. Thus, the passage cannot be read as suggesting that public art is not the legitimate object of planning obligations. That is a meaning that the PPG is not capable of bearing in the light of the other passages to which I have already alluded.

8. In reality, the observation within the PPG reinforces the views which I have expressed previously in relation to delivering public art through the planning system. The PPG is drawing attention to the need to establish evidence which demonstrates that public art is a necessary component to make a development acceptable in planning terms. This requires clear evidence of public art policies and programmes, or design requirements, which establish the nexus between the proposed development and the public art for which contributions are being sought. It reinforces the message from my previous advisory work for ixia that policies such as

“percent for art” are not defensible. An evidence base is required in order to substantiate the need for planning obligations.

9. Building on the policies in the NPPF in relation to cultural wellbeing, the production of the PPG reinforces the position which I have consistently presented in relation to the positive relationship between public art and the planning system. Public art is an obviously legitimate expectation of development in circumstances where there is an evidence base in the form of design requirements or established public art policies and programmes which demonstrate the link between proposed development and public art which is required as part and parcel of it.

Community Infrastructure Levy

10. Following consultation, the period for the introduction of the ban on pooling contributions beyond five obligations contained in Regulation 123 of the Community Infrastructure Levy Regulations 2010 has now been extended to April 2015. Thus, the opportunity to seek pooled contributions from a variety of developments will

remain for a little time longer. This is no doubt as a result of the fact that there still remain a very substantial number of local planning authorities that have yet to produce a CIL Schedule.

11. Previously, in 2012, a survey of emerging and adopted CIL Schedules demonstrated that there was limited inclusion of public art and public realm improvements within those emerging documents. An update to that survey undertaken for the autumn 2013 lectures demonstrated that there was a significant increase in the number of authorities who were including public art within their CIL Schedules and, further, were using CIL Schedules to secure funding for cultural assets. It is therefore the case that the extent of use of CIL for securing public art is potentially increasing.

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