

Planning Bulletin: November 2018

This monthly note highlights some of the recent and forthcoming developments in the world of planning from a heritage perspective. For further information about any of the items, please follow the links provided or use the contact information on the last page. Please note that this is not necessarily a complete review of matters and is not intended to provide any legal advice on the issues raised. Unless otherwise stated, it does not comprise the formal position of Historic England on these matters.

Budget

- The Chancellor of the Exchequer presented his [Budget](#) to Parliament on 29 October, including a number of planning-related proposals, which are addressed under the relevant section headings below.

Department for Digital, Culture, Media and Sport

- Following Tracey Crouch's resignation, Mims Davies has been appointed as Parliamentary Under Secretary of State for Sport and Civil Society.

Legislation and Matters Arising

Emerging Legislation

Government Bills

- *High Speed Rail (West Midlands - Crewe) Bill*: the hybrid Bill makes provision for a railway between a junction with Phase One of High Speed 2, near Fradley Wood in Staffordshire, and a junction with the West Coast Main Line near Crewe in Cheshire. Second reading took place on 30 January; a date for committee stage has not yet been scheduled. Explanatory notes are available [here](#).
- *Agriculture Bill*: amongst other things, the Bill authorises new expenditure for certain agricultural and other purposes; makes provision about direct payments during an agricultural transition period following the United Kingdom's departure from the European Union; and confers power to modify retained direct EU legislation relating to agricultural and rural development payments and public market intervention and private storage aid. The Bill was introduced on 12 September, and had its second reading on 10 October. It has now been committed to a Public Bill Committee, which is expected to report to the House by Tuesday 20 November 2018. The Bill itself is available [here](#), explanatory notes [here](#), and a briefing paper [here](#).
- Defra has [consulted](#) on the development of an *Environmental Principles and Governance Bill* (Historic England's response is available [here](#)). The Bill will mark the creation of a new statutory and independent environmental watchdog to hold government to account on environmental ambitions and obligations once the UK has left the EU. Defra recently [announced](#) that it is working towards publishing the consultation response before the 26 December deadline set in the *European Union (Withdrawal) Act 2018* for the draft Bill and the establishment of a new environmental authority.

Private Members' Bills

- *Bat Habitats Regulation Bill*: the Bill makes provision to enhance the protection available for bat habitats in the vicinity of a building site, and to limit the protection for

bat habitats in buildings used for public worship. Second reading took place on 27 April; committee stage has yet to be scheduled. A briefing is available [here](#).

- *Bat Habitats Regulation (No. 2) Bill*: the Bill makes provision to enhance the protection available for bat habitats in the non-built environment and to limit the protection for bat habitats in the built environment where the presence of bats has a significant adverse impact upon the users of buildings. The Bill was presented to Parliament on 5 September 2017; second reading is expected on 23 November.
- *Equality Act 2010 (Amendment) (Disabled Access) Bill*: the Bill amends the *Equality Act 2010* to improve access to public buildings by introducing six- and twelve-inch rules for step-free access. Second reading took place on 24 November 2017, and Committee stage has yet to be scheduled.
- *Kew Gardens (Leases) Bill*: the Bill provides that the Secretary of State's powers in relation to the management of the Royal Botanic Gardens, Kew, include the power to grant a lease in respect of land for a period of up to 150 years. First reading took place on 13 July 2017, and second reading has yet to be scheduled. Explanatory notes are available [here](#).
- *Green Belt (Protection) Bill*: the Bill provides for the establishment of a national register of Green Belt land in England, the restriction of the ability of local authorities to de-designate Green Belt land, and provision about future development of de-designated Green Belt land. First reading took place on 5 September 2017; second reading is scheduled for 23 November.
- *Clean Air Bill*: the Bill requires the Secretary of State to set, measure, enforce and report on air quality targets; to make provision about mitigating air pollution; to make provision about vehicle emissions testing; and to restrict the approval and sale of vehicles with certain engine types. First reading took place on 22 November 2017; second reading is scheduled for 23 November.

Secondary Legislation

- [Draft listed building consent order](#) (LBCO): the *Planning Reform: Supporting the High Street and Increasing the Delivery of New Homes* consultation document contains consultation questions and a draft listed building consent order (closing date 14 January). The provisions enabling LBCOs were introduced in the [Enterprise and Regulatory Reform Act 2013](#). The Secretary of State may by order (the LBCO) grant listed building consent in respect of works for the alteration or extension (but not demolition) of listed buildings of any description in England, thereby allowing specified works which would otherwise require a series of separate applications for listed building consent. This first proposed use of the Secretary of State's powers follows detailed discussions between Historic England, the Canal & River Trust, and the MHCLG. If approved by Parliament, it would grant listed building consent for specified works of alteration or extension to certain listed buildings in England owned, controlled or managed by the Canal & River Trust (largely canal locks and lock gates, and canal bridges). Under the terms of the proposed Draft Order, before undertaking any of the specified works, the Canal & River Trust must first agree with Historic England a methodology for how the works will be carried out: a related [consultation](#) is underway on the [draft Conservation Management Methodology and Principles](#) (closing date also 14 January).
- [Permitted development consultation](#): the *Planning Reform: Supporting the High Street and Increasing the Delivery of New Homes* consultation document also contains a

number of proposals to amend permitted development (PD) rights (closing date 14 January):

- *High streets*: new permitted development rights to allow existing premises in typical high street uses to change to a wider range of uses, allowing more leisure and community uses such as gyms, libraries, health care and office use as well as homes.
- *Upwards extensions*: a new permitted development right to extend certain existing buildings upwards to provide additional homes. It would not apply in relation to Article 2(3) land, listed buildings and land within their curtilage, sites that are or contain scheduled monuments, and other defined areas. The PD right would allow additional storeys to be built above certain buildings, in particular those in commercial or residential (C3) use. Height limits are proposed, and questions asked regarding the range of uses compatible with C3 residential use, the inclusion of the necessary physical works to construct or install additional storeys on a building, the extent and nature of prior approval provisions (with a proposal that, given the proposed ‘range and complexity of issues for local authority consideration’, applications for prior approval should be accompanied by an appropriate fee), and whether a permitted development right should also allow for the upward extension of a dwelling for the enlargement of an existing home.
- *Telephone kiosks*: the removal of the permitted development right for public call boxes, and removal of the deemed consent which allows an advertisement to be placed on a single side of a telephone kiosk.
- *Vehicle charging*: an increase in the existing PD height limit to allow a charging point upstand no greater than 2.3 metres high in areas used for off-street parking (in order to protect the amenity and character of residential areas it is not proposed to increase the height limit for a charging point upstand within the curtilage of a dwellinghouse).
- *Making temporary PD rights permanent*: the PD rights in respect of change of use from storage or distribution to residential (as introduced in 2015 and extended for one year in 2018), and larger extensions to dwellinghouses (as introduced in 2013 and later extended) will both be made permanent
- *Demolition of commercial buildings and residential redevelopment*: a new permitted development right that would allow the demolition of commercial buildings and replacement build as residential. Comments are invited on the scope of this right, with particular reference to the size of sites, the height and density of new buildings, the existing use of the site, the relationship with local plan policies for key sites and areas where the right should apply, the role for prior approval, and how developer contributions could be secured.
- Other proposals: [Planning Reform: Supporting the High Street and Increasing the Delivery of New Homes](#) also contains consultation proposals regarding the extension of local authorities’ flexibility to dispose of land at ‘less than best consideration’ where doing so is considered to deliver wider economic, social or environmental benefits, and draft compulsory purchase guidance for all new town development corporations, whether overseen locally or nationally.
- [The Environmental Assessments and Miscellaneous Planning \(Amendment\) \(EU Exit\) Regulations 2018](#): the Government has published a statutory instrument intended to ensure that the environmental impact and strategic environmental assessment regimes

continue to operate after the UK leaves the European Union. The accompanying [explanatory memorandum](#) confirms that the instrument makes the necessary changes to ensure that the law continues to function correctly, without substantive changes. The Government has [advised](#) that provisions within the instrument that update references to other legislation will come into force on 31 December 2018, with the remainder coming into force at the point the UK leaves the European Union on 29 March 2019.

Heritage Planning Case Database

- Historic England maintains a [searchable online database of appeal and call-in decisions](#) relating to planning permission (that affects a heritage asset) and listed building consent. Cases have been summarised using a [standard list of search terms](#), for ease of use; searches can also be carried out by address, date or decision reference.

Committees

Environmental Audit Committee: Heatwaves – Adapting to Climate Change

- The Committee published its [report](#) on adapting to climate change in July, to which the Government has now [responded](#). It notes that Natural England is leading the establishment of a national framework of green infrastructure standards which will be published in 2019, and advises that MHCLG will work with Defra to ‘see how our commitments on green infrastructure can be incorporated into national planning guidance and policy, including how to incorporate them in planning and design guidance for new builds and estate regeneration’. The response also notes the various ways in which the remainder of the NPPF already addresses climate change.

Policy

National Planning Policy Framework (NPPF)

- MHCLG has issued a [Technical Consultation on Updates to National Planning Policy and Guidance](#) (closing date 7 December 2018). The consultation includes proposals in respect of:

- *Local housing need assessment*

The Government considers that the best way of responding to the new ONS household projections is to make three changes:

- For the short-term, to specify that the 2014-based data will provide the demographic baseline for assessment of local housing need
- To make clear in national planning practice guidance that lower numbers through the 2016-based projections do not qualify as an exceptional circumstance that justifies a departure from the standard methodology
- In the longer term, to review the formula by the time the next projections are issued.

- *Housing land supply*

Minor clarifications to the NPPF are proposed to remove any ambiguity about how policy on the standard method for assessing local housing need is intended to be applied:

- Amendment of footnote 37, to add at the end: ‘Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites

exists, it should be calculated using the standard method set out in national planning guidance’

- Amendment of the definition of local housing need in the glossary to: ‘The number of homes identified as being needed through the application of the standard method set out in national planning guidance (or, in the context of preparing strategic policies only, this may be calculated using a justified alternative approach as provided for in paragraph 60 of this Framework)’.

– *Definition of deliverable*

Early experience of applying the new definition of deliverable has suggested that it would benefit from some clarification, and, in particular, the existing text could be clearer that sites that are not major development, and which have only an outline planning consent, are in principle considered to be deliverable. The relationship between the first sentence of the definition (which sets out general considerations in terms of deliverability), and the remainder that explains how particular circumstances should be approached, also needs to be clear.

– *Development requiring a Habitats Regulations assessment*

The effect of a recent European Court of Justice ruling is that appropriate assessment of habitats impacts is required in plan-making and decision-making whenever there is a potential impact on a habitats site, regardless of any mitigation measures proposed. To rectify this, amendments to paragraph 177 are proposed.

- From the commitments in the consultation document, and in the Government’s [response](#) to the Environmental Audit Committee *Heatwaves: Adapting to Climate Change* report (discussed above), it is clear that there will be revisions to the new NPPF.

Guidance

Planning Practice Guidance (PPG)

- The Government’s proposals in the [Technical Consultation on Updates to National Planning Policy and Guidance](#), its [response](#) to the Environmental Audit Committee *Heatwaves: Adapting to Climate Change* report, the Budget proposals in respect of neighbourhood planning (discussed below), and the [Government Response to Supporting Housing Delivery Through Developer Contributions](#) (discussed below) will also have implications for the content of the PPG.
- In the meantime, MHCLG has launched a [short survey on the PPG](#).
- MHCLG has [advised](#) that it is continuing to review the PPG following the publication of the revised NPPF, and that it anticipates issuing updated guidance in December and March.

MHCLG Letters to Chief Planning Officers

- MHCLG has issued a further [Planning Update Newsletter](#), covering:
 - Planning Reform: Supporting the high street and increasing the delivery of new homes
 - Developer Contributions
 - Independent review of build out: final report
 - Neighbourhood Planning:
 - Building Better, Building Beautiful Commission

- Technical consultation on updates to national planning policy and guidance
- Government response to the National Infrastructure Commission study on the Cambridge-Milton Keynes-Oxford Arc
- Shale gas update
- Government consultations on permitted development for shale gas exploration
- European Union (EU) Exit and planning regulations
- Review Deadline for Brownfield Land Registers and Permission in Principle
- Habitats Regulations Assessments
- Onshore Wind Development
- User survey on planning practice guidance.

Advice

Historic England Advice

- Good Practice Advice notes (GPAs) and Historic England Advice notes (HEANs) are all available on the Historic England [website](#), and listed in Appendix I to this Bulletin, for ease of reference.

Forthcoming Historic England Advice

- Following earlier public consultation, a revised edition of *HEAN 1: Conservation Areas: Designation, Appraisal and Review* will also be published in coming weeks.

Training

- Historic England provides [training and guidance](#) to help local authorities, heritage professionals, owners and voluntary organisations look after England's heritage. Training currently available covers a wide range of topics, many directly linked to planning matters and Historic England advice:
 - [Historic Environment Local Management \(HELM\)](#): training on managing the historic environment for local authorities, regional agencies and national organisations. Visit the [webpages](#) for details of courses on (amongst others):
 - Farm Buildings: Policy & Practice
 - NPPF Decoded: Plan Making
 - NPPF Decoded: Development Management and Archaeology
 - [Heritage Practice](#): training courses for heritage specialists in technical subjects and techniques. Courses currently available for booking include *Curating the Palaeolithic* and *Understanding Setting*.
 - [Online training](#): webinars and other resources to help supplement the short course training opportunities and make them more widely available. The online training includes recordings of webinars and other, longer courses to work through.
 - [Essentials training](#): this programme, delivered in partnership with Locus Consulting, covers the building blocks of historic environment management and explores key concepts, methodologies, legislation and policies that govern how the historic environment is understood, protected and managed through the planning system. It is aimed mainly at planners within local authorities.

Infrastructure

Compulsory Community Pre-application Consultation for Shale Gas Development

- MHCLG has launched a consultation on [compulsory community pre-application consultation for shale gas development](#) (closing date 7 January). The consultation seeks views on whether applicants should be required to conduct pre-application consultation with the local community prior to submitting a planning application for shale gas development.

Interim Response to the National Infrastructure Assessment

- The National Infrastructure Commission (NIC) published its [National Infrastructure Assessment](#) (NIA) earlier this year, and HM Treasury has now published an [Interim Response to the National Infrastructure Assessment](#), describing the NIA as ‘an ambitious, credible and long-term vision for the UK’s infrastructure’, with wide-ranging and significant recommendations across all areas of economic infrastructure. The government will respond formally to the NIA in 2019, by publishing the first National Infrastructure Strategy. This will set out the Government’s priorities for economic infrastructure and respond in depth to the NIC’s recommendations.

Draft Road Investment Strategy 2 (RIS2): Government Objectives

- The Department for Transport has issued the [Draft Road Investment Strategy 2: Government Objectives](#), which sets out:
 - The Government’s objectives
 - The resources available
 - The timetable by which participants must provide the Government with more information

The strategy was informed by the consultation on [Shaping the future of England’s strategic roads \(RIS2\)](#), and the Government has also issued a [summary](#) of the consultation responses received.

Other Initiatives

Government Response to Supporting Housing Delivery Through Developer Contributions

- MHCLG has issued its response to the March 2018 consultation on [Supporting Housing Delivery Through Developer Contributions](#). The [Government Response to Supporting Housing Delivery Through Developer Contributions](#) summarises the consultation responses received, and sets out the Government’s views on the way forward. Proposed actions include streamlining the consultation process, changes to the pooling restriction, Infrastructure Funding Statements to increase transparency regarding the value of developer contributions secured in particular areas, and greater flexibility to deliver infrastructure across more than one area, including a strategic infrastructure tariff. Legislation will be required in order to implement the changes set out in the consultation document, and the Government will be consulting on the draft regulations later in the year.

Planning Reform: Supporting the High Street and Increasing the Delivery of New Homes

- MHCLG has published a wide-ranging consultation document: [Planning Reform: Supporting the High Street and Increasing the Delivery of New Homes](#) (closing date 14 January):

- Part 1. Permitted development rights and use classes
- Part 2. Disposal of local authority land
- Part 3. Canal & River Trust: draft listed building consent order
- Part 4. New town development corporations: draft compulsory purchase guidance
- The details of the consultation (and the related LBCO [draft Conservation Management Methodology and Principles](#) consultation) are discussed under Secondary Legislation, above.

Future High Streets Fund

- As part of the Government's [package of measures in support of the high street](#), the [Budget](#) announced a £675 million [Future High Streets Fund](#), including £55 million for heritage-based regeneration, restoring historic high streets to boost retail and bring properties back into use as homes, offices and cultural venues. £40 million of that is to be delivered by [Historic England](#) through a four-year extension of the existing Heritage Action Zone initiative. MHCLG will launch the full prospectus for the Fund later this year.

Landscapes review (National Parks and AONBs)

- Defra has issued a [call for evidence](#) for its [independent review](#) of National Park and AONB landscapes (closing date 18 December).

Draft Clean Air Strategy

- The Government has [announced](#) that it is currently finalising changes to the Clean Air Strategy, based on the responses received to May's [consultation](#), and will publish a summary of the responses received alongside the final Clean Air Strategy by the end of 2018.

Local Industrial Strategies: Policy Prospectus

- Following the publication of the [national industrial strategy](#) in December, BEIS has issued a [Local Industrial Strategies Policy Prospectus](#), setting out the objectives, policy rationale and approach to developing Local Industrial Strategies.

Independent Review of Build Out: Final Report

- Sir Oliver Letwin's [final report](#) on how to close the gap between housing completions and the amount of land allocated or permissioned has now been published. His recommendations include:
 - The adoption of a new set of planning rules specifically designed to apply to all future large sites (initially those over 1,500 units) in areas of high housing demand, requiring those developing such sites to provide a diversity of offerings, in line with diversification principles in a new planning policy document
 - The establishment of a National Expert Committee to advise local authorities on the interpretation of diversity requirements for large sites and to arbitrate where the diversity requirements cause an appeal as a result of disagreement between the local authority and the developer
 - The provision of incentives to diversify existing sites of over 1,500 units in areas of high housing demand, by making any future government funding for house builders or potential purchasers on such sites conditional upon the builder accepting a Section 106 agreement which conforms with the new planning policy for such sites

- Consideration to be given to allocating a small amount of funding to a large sites viability fund to prevent any interruption of development on existing large sites that could otherwise become non-viable for the existing builder as a result of accepting the new diversity provisions.
- Introduction of a power for local planning authorities in places with high housing demand to designate particular areas within their local plans as land which can be developed only as single large sites, and to create master plans and design codes for these sites which will ensure both a high degree of diversity and good design to promote rapid market absorption and rapid build out rates
- Giving local authorities clear statutory powers to purchase the land designated for such large sites compulsorily at prices which reflect the value of those sites once they have planning permission and a master plan that reflect the new diversity requirements (with guidance for local authorities to press the diversity requirements to the point where they generate a maximum residual development value for the land on these sites of around ten times existing use value rather than the huge multiples of existing use value which currently apply)
- Giving local authorities clear statutory powers to control the development of such designated large sites through either a Local Development Company (LDC) or a Local Authority Master Planner (LAMP).

Neighbourhood Planning

- The [Budget](#) included £8.5 million of resource support so that up to five hundred parishes can allocate or permission land for homes sold at a discount. Neighbourhood plans and orders are approved by local referendums, and the government will update planning guidance to ensure that these cannot be unfairly overruled by local planning authorities. The government will also explore how it can empower neighbourhood groups to offer these homes first to people with a direct connection to the local area.

Beauty and the Built Environment

- The House of Commons Library produced a [debate pack](#) on 'Beauty and the Built Environment', ahead of a [debate](#) in Westminster Hall on 30 October.

'Building Better, Building Beautiful' Commission

- MHCLG has [announced](#) a new commission to champion beauty in the built environment. The ['Building Better, Building Beautiful' Commission](#) will develop a vision and practical measures to help ensure new developments meet the needs and expectations of communities, making them more likely to be welcomed rather than resisted. The commission will build on recent policy changes in respect of design quality, community engagement, and local character, and expand on the ways in which the planning system can encourage and incentivise a greater emphasis on design, style and community consent.
- The commission has 3 aims:
 - 'To promote better design and style of homes, villages, towns and high streets, to reflect what communities want, building on the knowledge and tradition of what they know works for their area
 - To explore how new settlements can be developed with greater community consent

- To make the planning system work in support of better design and style, not against it’.

Housing Infrastructure Fund

- The Budget announced an increase of £500 million to the Housing Infrastructure Fund, raising it to a total of £5.5 billion.

Current Consultations

- MHCLG’s [Technical Consultation on Updates to National Planning Policy and Guidance](#) (closing date 7 December).
- Defra’s [call for evidence](#) for its [independent review](#) of National Park and AONB landscapes (closing date 18 December).
- HS2’s consultations on the working draft [Environmental Statement for HS2 Phase 2b \(Crewe to Manchester and the West Midlands to Leeds\)](#) and [Equality Impact Assessment](#) (closing date for both 21 December).
- MHCLG’s consultation on [compulsory community pre-application consultation for shale gas development](#) (closing date 7 January).
- MHCLG’s [Planning Reform: Supporting the High Street and Increasing the Delivery of New Homes](#) consultation (closing date 14 January):
 - Part 1. Permitted development rights and use classes
 - Part 2. Disposal of local authority land
 - Part 3. Canal & River Trust: draft listed building consent order
 - Part 4. New town development corporations: draft compulsory purchase guidance
- Historic England’s [consultation](#) on the [draft Conservation Management Methodology and Principles](#) for the draft LBCO (closing date 14 January).

Recent Consultation Responses

- Historic England’s response to DfT’s consultation on [WebTAG](#) is available [here](#).
- Historic England’s response to MHCLG’s consultation on [Permitted Development for Shale Gas Exploration](#) is available [here](#).
- Historic England’s response to BEIS’s consultation on [Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project \(NSIP\) Regime](#) is available [here](#).

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If you did not receive this edition of Planning Bulletin direct from Historic England, you may find the current edition online [here](#). If you would like to sign up for notifications when a new edition is issued, please contact governmentadvice@HistoricEngland.org.uk.

APPENDIX I: HISTORIC ENGLAND PLANNING ADVICE

Good Practice Advice notes (GPAs)

- The GPAs provide information on good practice, particularly looking at the principles of how national policy and guidance can be applied. They are the result of collaborative working with the heritage and property sectors in the Historic Environment Forum, and have been prepared following public consultation:
 - *GPA 1: The Historic Environment in Local Plans* (March 2015)
 - *GPA2: Managing Significance in Decision-Taking in the Historic Environment* (March 2015)
 - *GPA3: The Setting of Heritage Assets* (December 2017)
 - *GPA4: Enabling Development* (forthcoming)

Historic England Advice Notes (HEANs)

- The HEANs include detailed, practical advice on how to implement national planning policy and guidance. They have been prepared by Historic England following public consultation:
 - *HEAN 1: Conservation Areas: Designation, Appraisal and Review* (February 2016)
 - *HEAN 2: Making Changes to Heritage Assets* (February 2016)
 - *HEAN 3: Site Allocations* (October 2015)
 - *HEAN 4: Tall Buildings* (December 2015)
 - *HEAN 5: Setting up a Listed Building Heritage Partnership Agreement* (November 2015)
 - *HEAN 6: Drawing up a Local Listed Building Consent Order* (November 2015)
 - *HEAN 7: Local Heritage Listing* (May 2016)
 - *HEAN 8: Sustainability Appraisal and Strategic Environmental Assessment* (December 2016)
 - *HEAN 9: The Adaptive Reuse of Traditional Farm Buildings* (October 2017)
 - *HEAN 10: Listed Buildings and Curtilage* (February 2018)
 - *HEAN 11: Neighbourhood Planning and the Historic Environment* (October 2018)