

Planning Update

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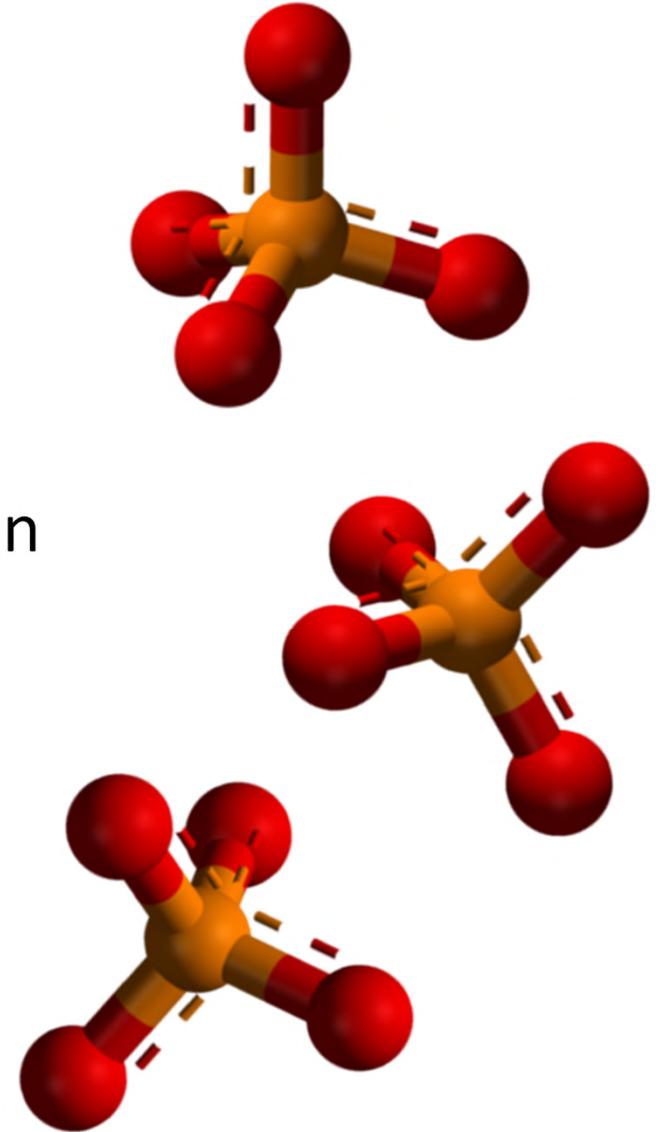
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Planning Law Update

- **Local Plans:** Implications of being out of date
- **Recent national changes:**
 - **Statutory:**
 - Environment Act 2021 - Biodiversity Net Gain
 - Building Safety Bill - Planning Gateway One
 - **Policy and Politics:**
 - Ministerial changes
 - CIL & Design
- **Local issues:**
 - Phosphates



Local Plans – the legal background

“In the land of no plan, the local housing need number is king”

Housing Minister, Christopher Pincher (November 2021)

Legal Framework for determining planning applications:

- Planning applications **must be determined in accordance with the development plan** unless material considerations indicate otherwise (*Section 38(6) Planning and Compulsory Purchase Act 2004*)

Planning Policy - determining applications (The Tilted Balance):

- If local plan policies are out-of-date, **planning permission should be granted unless the development is contrary to the National Planning Policy Framework**
Presumption in favour of sustainable development - paragraph 11, NPPF 2021

From 6th April 2018, there has been a **legal obligation for Local Planning Authorities to review their Local Plan within five years** of the date of adoption (*Regulation 10A, Town and Country Planning (Local Planning (England) Regulations 2012*)



Local Plan – When is it out-of-date?



When is a plan out-of-date?

- To the extent that it **conflicts with national planning policy** made more recently
 - i.e. the NPPF 2021 introduced on **20th July 2021** – local plans made before its publication are given weight in accordance with their consistency with the NPPF (para 219, NPPF 2021)
- If the Local Planning Authority **cannot demonstrate a Five Year Land Supply** of deliverable housing sites, or where the Housing Delivery Test indicates that previous performance in delivering housing is less than 75% of target over the last 3 years (footnote 8, NPPF 2021)
- If it has been “**overtaken by things that have happened since the plan was adopted**, either on the ground or through a change in national policy, or for some other reason, so that they are now out-of-date” - Peel Investments (North) Ltd v Secretary of State for Housing, Communities and Local Government [2020] EWCA Civ 1175

When is a plan NOT out-of-date?

- If the **local plan has time-expired**, the policies are not automatically out-of-date, as confirmed by the Court of Appeal in 2020 - Peel Investments (North) Ltd (as above)

Environment Act 2021

- After nearly 3 years of drafting finally became law on 9th November 2021
- Brings in requires to set a variety of new environmental performance targets for England, and new watchdog – Office for Environmental Protection
- **Biodiversity Net Gain**
 - All new developments will be legally required to demonstrate a 10% BNG, which must then be managed for at least 30 years
 - Pre-commencement planning condition to be automatically imposed on all new permissions requiring a BNG plan to be agreed



Biodiversity Net Gain – what is it?

Existing site: Biodiversity value of a planning application site is calculated in accordance with the ‘biodiversity metric’ published by the Secretary of State

- Site surveyed and split into parcels of habitat type, including built on surfaces
- Different scores for different habitat types, woodland, grassland, etc.
- Quality of habitat based on distinctiveness, condition, strategic significance, and habitat connectivity

Proposals:

- Calculate site biodiversity value expected after completion of the development
- If 10% improvement cannot be found on site, then offsite credit can be provided – i.e. “units” can be purchased



Biodiversity Net Gain - timescales

BUT there is a lot to do before this becomes mandatory:

- Regulations to draft and consult upon, including finalising 'biodiversity metric'
- Government to consider consultation responses
- Realistically expect BNG to be mandatory circa Autumn 2023
- **Opportunities for landowners**
 - The Green Offset – Fisher German database matching landowners and developers – www.thegreenoffset.co.uk



Building Safety Bill

- Main legislation not yet in force, but planning changes came into force on 1st August 2021 through secondary legislation – Planning Gateway One
- Obligation to submit a **Fire Statement** assessing fire safety considerations for the development with planning application
- Applies to any building 18 metres+ in height or containing 7 storeys or more, containing two or more dwellings or educational accommodation

Applies to both change of use of existing buildings and new buildings



Ministerial Changes

Ministry of Housing, Communities & Local Government, now the **Department for Levelling Up, Housing and Communities**

- **Secretary of State = Michael Gove**
 - New Planning White Paper should be with us “before Christmas”
 - Proposed reforms will not be abandoned
 - Changes to how local housing need is assessed
- **Housing Minister = Christopher Pincher**
 - New Planning Bill “early next year”, including proposals for capturing land value to deliver more affordable homes



CIL and Design

Community Infrastructure Levy

- Replacing Section 106 Agreements and CIL (but not with the national charge proposed last year) – potentially **including permitted development schemes**
 - South Worcestershire authorities – CIL introduced in 2017
 - Herefordshire Council: *“Given that the future of CIL in its current format is uncertain, Herefordshire Council have taken the decision to pause progressing the adoption of CIL locally”*

Design

- New emphasis on design quality in NPPF 2021 – **“development that is not well designed should be refused”** (paragraph 134)
- First appeal decisions by Housing Minister on design
 - *“the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve”*
 - *“the concept of beauty or otherwise for this appeal is in the eye of the beholder and that any further discussion is unlikely to be helpful”*





Phosphates

Currently a large proportion of Herefordshire is **sterilised for development** due to the phosphate levels in the River Lugg, a designated Special Area of Conservation (SAC)

- Before deciding to grant planning permission, the competent authority must assess whether the proposed development **is likely to have a significant effect on the SAC** (discounting any mitigation to be provided). If so, a full Appropriate Assessment must be carried out
- Phosphates are a problem as the SAC designation was due to the range of species and natural habitats in the river, and so the nutrient balance must be maintained to protect this
- Nationally, the main source of phosphates in rivers is sewerage, so **any development which would discharge foul water into the River Lugg will not be granted planning permission** until the phosphate levels have been brought under control
- Development which already has full planning permission can go ahead, but particular frustrations with Herefordshire Council's approach to:
 - replacement planning permissions; and
 - discharge of conditions on non-drainage matters



Any questions?

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