

LEGAL UPDATE

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LEGAL UPDATE

- Focus – Levelling Up and Regeneration Bill
 - Status of local plan
 - Implications of NDMP
 - What we know, what we don't know
- Relationship with other papers
- 2 parts: plan-making and decision-taking

Plan-Making

- Continued support for Plan-led system
 - Objectives:
 - Encourage greater plan-coverage (only approx. 40% LPAs have up to date plan; 74 LPA's failed to adopt a plan since NPPF introduced in 2012)
 - Keep plans up to date (minimise appeals; maximise local confidence in plan-making process)
 - Certainty and speed of decision-making – everyone wins!

Plan-Making

- Achieving objectives (the 'how'):
 - Shorter more focused local plans
 - Reduce the burden of evidence gathering
 - Accelerate the process of adopting a plan
 - Allow for quicker way of adding to/supplementing plans

Plan-Making

- Shorter/focused plans
 - Bill says plans ‘must’ set out policies for ‘amount, type and location of development’ and timetable for delivering it
 - SoS given power to NDMPs
 - Policy Paper:

To help make the content of plans faster to produce and easier to navigate, policies on issues that apply in most areas (such as general heritage protection) will be set out nationally. These will be contained in a suite of National Development Management Policies, which will have the same weight as plans so that they are taken fully into account in decisions.

Plan-Making

- Shorter/focused plans cont.
 - NPPF restricted to providing guidance on plan-making
 - NPPF policies likely to go into NDMP (back to PPGs?):
 - Heritage
 - Habitats
 - GB
 - National Parks
 - Flood risk
 - Climate change
 - Highways
 - Retail?

Plan-Making

- Evidence gathering:
 - Sheer burden of evidence gathering
 - Vague talk about reducing this but no details
 - Regulations to allow SoS to prescribe content, template and form
 - Two concrete proposals
 - ‘standardized and re-usable data to inform plan-making’
 - Replacement of SEA with Environmental Outcomes:
 - ‘clearer and simpler process’
 - Regulations awaited

Plan-Making

- Accelerated Process

- ‘expectation’ 30 months (but regs awaited)
- Updated every 5 years (wither ‘Review’?)
- Two rounds of public consultation promised/statutory consultees duty bound to help/respond etc
- 30 months to include evidence gathering? Main Mods?
- ‘Gateway checks’ by PINS – consequences? Implications for timetable?

Plan-Making

- Accelerated Process

- DtC removed
- Local Plan Commissioners appointed by SoS to support/take over plan-making (political will?)
- Once submitted cannot be withdrawn unilaterally by LPA (only on direction of Insp or SoS)
- EiP, right to be heard, test of soundness to remain (but will NPPF make tests less onerous? More litigation?)
- If found sound SoS may direct adoption

Plan-Making

- Supplementary Plans

- To be used ‘where policies for specific sites or groups of sites need to be prepared quickly (e.g in response to a new regeneration opportunity)’
- To have same status as LP (i.e part of the DP)
- Explanatory Notes say *“There are certain limits on the allowable scope of SPs (either by subject matter of geography), so that they do not subvert the role of the LP as the principal planning policy framework”*)

Plan-Making

- Supplementary Plans

- Not immediately clear from the Bill what these are (no requirement for consistency with LP)
- Provision that must not be inconsistent with or repeat NDMP
- Preparation, examination etc all left to regulations
- Speed versus safeguards?

Plan-Making

- The Unknowns

- There is silence and/or conflicting messages on the ‘big questions’
- Will SM for housing need be ditched as ‘Stalinist’?
- If so, will there be any targets at all?
- If not, how will we resolve the housing shortfall/meet future needs?
- If yes, who will set targets and what will be the methodology?

Plan-Making

- The Unknowns (cont.)

- Can we leave this to local level and still be pro-growth?
- If meeting ‘need’ to remain starting point, what is to happen with GB authorities if GB is to remain sacrosanct?
- DtC to be replaced by policy of ‘alignment’ – what does this mean? Will there be any enforceable mechanism for exporting residual need?
- Will NDMPs eventually be used by Govt. to impose development if/when localism fails to deliver growth?

Plan-Making

- The Unknowns (cont.)

- Removal of 5YHLS requirement for up to date plans
 - Will there be a requirement to show 5YHLS at plan-adoption stage?
 - If so, why - if no requirement to maintain rolling 5YHLS?
 - If this is ‘carrot’, ‘stick’ means will be 5YHLS requirement where plans not up to date
 - If no targets, how is the 5YHLS requirement to be calculated?
 - How will stick work – PIFSD? If so, full circle with GB authorities!

Decision-Taking

- Key change to section 38 of the PCPA
- Decisions will be made not ‘in accordance with the DP unless material considerations indicate otherwise’
- They will be ‘made in accordance with DP and any NDMP unless material considerations strongly indicate otherwise’
- Any conflict between DP and NDMP to be resolved in favour of NDMP

Decision-Taking

- Is this ‘central power grab’? ‘Attack on plan-led system’?
- Reflects current reality of decision-making
- Currently one of the tests of soundness = consistent with national policy
- Conflict should not materialize
- Better quality DM policies

Decision-Taking

- Much depends on how NDMP evolve and their ambit
- Challenges to procedure for adopting NDMP?
- ‘Strongly indicate otherwise’:
 - Cuts both ways
 - What role for PIFSD? Will out of date DP or lack of 5YHLS be such an indication?

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