

As we end 2022, we take a look back at the year in the world of planning law. From proposed planning reform to landmark decisions, 2022 has not been a quiet year in our specialism, although the political turmoil has often led to delays in needed reform, which will likely mean 2023 will be a busy year for new legislation and revised policy alike. Below is a review of just a few topics of interest that relate not just to 2022, but to the year ahead.

## Planning Reform

The Levelling-up and Regeneration Bill was introduced to Parliament on 11 May 2022. The bill belatedly contains many (but not all) of the planning reforms set out in the 2020 Planning for the Future white paper.

The bill contains a plethora of different measures, which continue to evolve as the political landscape dramatically changes. Key planning reforms include:

- The introduction of an infrastructure levy based on development value, as a transition away from the current Community Infrastructure Levy (which will be restricted to Greater London and Wales). The new levy will, in turn, impact on the use of section 106 Agreements, although such agreements are expected to remain a component of developments going forward (on a narrower basis).
- A further means of varying a planning permission where the change would result in substantially the same development as the existing permission.
- The provision of a condition in planning permissions for residential development requiring development progress reports.
- The power for local planning authorities to decline to determine applications for planning permission in cases where an earlier permission has not been implemented or the development has been carried out unreasonably slowly.
- The introduction of national development management policies, providing a more detailed layer of national policy that should, in turn, slim down the local plan process.
- “Street votes”, which will give local people the power to set their own development rules in suburban areas.
- An increase in time limits for enforcement action, from four years to 10 years, in the case of a breach of planning control.
- The introduction of an enforcement warning notice in order to formalise the scenario where a local planning authority require a planning application to be submitted in order to rectify a breach of planning control.
- Limitations on the appeal process to enforcement notices if a planning application has been submitted, as well as measures to prevent undue delay during the appeal.

The bill is currently being considered by the House of Lords and further changes may, accordingly, take place. It may still be several months before the bill receives royal assent, although one hopes that it becomes law this year. Equally, the bill will only provide the legislative framework for a number of the provisions, such as the infrastructure levy. Further secondary legislation will, accordingly, be required, which will mean that the actual impact of such reforms won't necessarily be felt for some time.

As part of the legislative reform under the Levelling-up and Regeneration Bill, it is also proposed that the National Planning Policy Framework (NPPF) should be subject to change.

A consultation on changes to the NPPF opened on 22 December 2022 and will close on 2 March 2023. Amendments to the NPPF include:

- Speeding up the plan-making process
- Removing the requirement for local authorities with an up-to-date plan to continually demonstrate a deliverable 5-year housing land supply
- The removal of a buffer of 5-20% on top of the five-year housing land supply
- Highlighting that delivery can be a material consideration in planning applications
- A focus on “beauty” in design and refusing “ugliness”
- Easing of restrictions for onshore wind development



## Biodiversity Net Gain

It has been a year of consultation in relation to this area – from January to September, consultations took place on biodiversity net gain regulations and implementation, environmental targets and the biodiversity metric. They have taken place somewhat quietly in the background, though their impact on development should not be underestimated. The biodiversity net gain provisions will become mandatory for development in November 2023.

A deemed planning condition will be imposed in all planning permissions to require a biodiversity gain plan to be submitted and approved by a local planning authority before the commencement of development. The objective will be met if the biodiversity value attributable to the development is in excess of the pre-development biodiversity by at least 10%.

The criteria are extensive, and a public register is due to be created to provide transparency and facilitate monitoring of biodiversity gain delivery.

At first glance, the extensive provisions are somewhat overwhelming for developers and local authorities alike. If you have any queries or require specific further information, our team is well equipped to assist, and are keeping a keen eye on this area.

## The Hillside Decision

This landmark judgment dealt with the issue of “drop-in” planning applications – a subject which is of particular concern to large developments utilising a multiphased approach. The Supreme Court confirmed the position that “drop-in” permissions – as additions to an original, single permission – should be treated with caution; however, it is not the case that such permissions will result in the loss of the original permission in all circumstances.

The decision of the Supreme Court was highly anticipated, not least because of its effect on both developers and planning authorities. The use of “drop-in” permissions on large developments are often integral to the completion of a project where the scale of such schemes mean that changes are commonplace, particularly where there are a number of different housebuilders on-site. The need for caution remains, as the implications of this judgment on the decisions made by planning authorities is yet to be seen.

[Read our in-depth insight into \*Hillside Parks Ltd v. Snowdonia National Park Authority\* \[2020\].](#)

## Conclusion

It is safe to say that 2022 was a year of consultation and preparation for what could be a very important year in 2023 of planning reform. The intent is clearly to update the NPPF in line with the measures contained in the Levelling-up and Regeneration Bill. The potential introduction of national development management policies is certainly of interest, as this would appear to be a movement back to more detailed national policy (which the NPPF had intended to move away from).

The impact of the infrastructure levy remains a question mark at this stage. When you consider how long it has taken the Community Infrastructure Levy to take hold – and the complexity that surrounds it – one wonders how a new levy would make any difference.

What is for certain is that the year of 2023 will be a year of change, and the consultation in relation to the NPPF does offer persons involved in the development industry a chance to get involved in this reform process.



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