



## City of Westminster

# Planning & City Development Committee

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**Classification: General Release**

**Title: National Policy & Planning Reform Update**

**Report of: Director of Place Shaping and Town Planning**

**Financial Summary: None.**

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### **1. Executive Summary**

- 1.1 This report provides an update on changes to national planning policy & planning reform that has occurred following the government's Planning White Paper that was published in August 2020. It also identifies the impacts these changes are having in Westminster.

### **2. Recommendation**

- 2.1 Members are asked to consider the contents of this report and to note the recent changes to national planning policy and guidance and the implications these have for planning decision making in Westminster, as identified in the report.

### **3. Background**

- 3.1 The government set out plans for extensive and ambitious changes to the planning system in its 'Planning for the Future' White Paper, published in August 2020. The White Paper received in excess of 40,000 representations in response to consultation held during the second half of 2020 and the Department for Levelling Up, Housing and Communities (DLUHC) has been considering these consultation responses in the period since. To date there has been no firm commitment from government on when a formal response to the consultation on the white paper may be expected. Recent press speculation indicates that that a significant number of the proposals for reform in the white paper may be dropped or scaled back and that planning reform may now form part of a wider package of reforms included in a Levelling Up and Regeneration bill, which is likely to be laid before Parliament later in 2022.
- 3.2 Despite the absence of a full response to the white paper consultation, the government has proposed and delivered a range of amendments to various aspects of the planning system in the intervening period. Typically, they have been implemented through new or adapted secondary legislation or through the publication of new or updated guidance. This report draws together these incremental changes over the last 21 months and considers their impact on future planning decisions in Westminster.

#### **4. Principal Changes to Planning Legislation and Guidance Since August 2020**

##### *Amendments to the Use Classes Order & Associated Permitted Development Rights*

- 4.1 In September 2020, shortly after the publication of the 'Planning for the Future' White Paper, the government used changes to secondary legislation to make amendments to the Town and Country Planning (Use Classes) Order 1987 (the 'UCO') and associated changes to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO'). These significant changes to land use planning were reported in detail to this committee on 26 October 2020<sup>1</sup>. The amendments have reduced planning previous controls on the use of land, particularly for those uses now falling within the new broad Class E use class that contains many types of commercial use including shops, restaurants and offices.
- 4.2 In terms of adaptation to the amended UCO, the most significant change has been the need for development to be more closely scrutinised and conditioned where an applicant is seeking an unrestricted Class E use. In a densely populated urban environment such as Westminster it is rarely the case that all uses within Class E can be accommodated without the potential for adverse impacts occurring to neighbouring occupiers. Accordingly, the council has developed new conditions to restrict uses in new developments to those within Class E that would not cause material harm to neighbouring occupiers or the local environment more widely. Typically, applicants are understanding of the need to balance the flexibility offered by Class E with the need to address the potential adverse impacts of new development.
- 4.3 There is evidence that the advent of Class E has caused significant frustrations for some residents, particularly where shops can now convert to restaurants without the need for planning permission, even in circumstances where the council has successfully resisted such a change of use at appeal in the past.
- 4.3 To date the impact of the associated permitted development right, which came into force on 1 April 2021 and allows Class E uses to change to residential use without the need for planning permission (but still requires prior approval), has been relatively limited. This is likely to be due to the limitations placed on the size of premises that can benefit from this permitted change (not larger than 1,500m<sup>2</sup>) and as the premises must be vacant for 3 months prior to submission of a prior approval application. Allied to this, at the current time the pre-existing Article 4 Direction preventing conversion of offices to residential within the Central Activities Zone remains in effect until 1 August 2022.
- 4.4 The majority of prior approval applications that have been made have been for small numbers of new residential units and have generally been approved, with only two examples of applications being refused. These applications, which related to the same property, were principally refused on grounds relating to the adverse impact on the character and appearance of the conservation area and the vitality of the Queensway/Westbourne Grove Major Centre within which the property is located (see Table 1).

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<sup>1</sup> Planning and City Development Committee report and minutes (see Item 5):

<https://committees.westminster.gov.uk/ieListDocuments.aspx?CId=368&MId=5747>

**Table 1 – Prior approval applications for Class E use to residential received since introduction of new permitted development right on 1 April 2021.**

Reference Number	Site Address	Proposal	Decision Date	Decision
21/05281/P3JPA	John Stewart House 435-437 Edgware Road London	Notification for prior approval of the change of use of the first, second and third floors from Office (Class E) to five self-contained flats (Class C3).	22-Sep-21	Approved
21/05705/P3JPA	7 Porchester Gardens London W2 4DB	Notification for prior approval of the change of use from restaurant (Class E) on ground floor to residential (Class C3) to be connected to first floor existing residential flat and associated works.	08-Oct-21	Refused
21/07438/P3JPA	Basement And Ground Floor 26 Church Street London NW8 8EP	Prior approval application for conversion of lower ground floor into one self-contained unit, modification of ground floor to lower ground floor staircase.	23-Dec-21	Approved
21/07838/P3JPA	7 Porchester Gardens London W2 4DB	Notification for prior approval of the change of use from restaurant (Class E) on ground floor to residential (Class C3) to be connected to first floor existing residential flat and associated works.	01-Feb-22	Refused
21/08336/P3JPA	John Stewart House 437 Edgware Road London	Notification for prior approval of the proposal for change of use of ground floor from Class E (d), (e) and (g) to residential (Class C3) to create two flats.	24-Feb-22	Approved
21/08340/P3JPA	John Stewart House 437 Edgware Road London	Notification for prior approval of the change use of the ground floor from Class E (d), (e) and (g) to residential (Class C3) to create one flat.	24-Feb-22	Approved

- 4.5 To better manage the impacts of uncontrolled loss of Class E uses to residential under the new permitted development right, the council is in the process of introducing new Article 4 Directions to limit the permitted development right within the Central Activities Zone (CAZ) and the majority of the primary frontages in the town centre hierarchy.
- 4.6 With regard to the proposed Article 4 Direction covering the CAZ, the Minister of State for Housing recently wrote to the council asking the council to take a more targeted approach to its assessment of the impacts of the permitted development right within the CAZ so that the Article 4 Direction applies to the smallest possible geographic area. Officers are now working with the DLUHC on how the original proposals for this Article 4 Direction can be refined to meet the Secretary of State's requirements. The Article 4 Direction relating to the town centre hierarchy is already more targeted (for example it omits specific buildings that are listed or not in Class E use within town centres) and therefore officers are confident that this proposed Article 4 Direction, which is due to come into force on 3 December 2022, already meets the tests set out in the NPPF for Article 4 Directions (see also the later section in this report on recent updates to the NPPF).

*Amended Requirements for Removal of Statues, Monuments and Memorials*

- 4.7 In response to events that occurred during the Black Lives Matter protests during summer 2020, on 21 April 2021 the government amended planning requirements for the removal of statues, monuments, and memorials. Using a ministerial Direction, the Secretary of State (SoS) introduced a requirement for the SoS to be consulted for not less than 21 days prior to the grant of permission for the removal of a statue, monument, or memorial.

- 4.8 A second Direction requires that any listed building consent application that proposes *'...the full or part demolition of a statue, monument, memorial or plaque that are, or are part of, a listed building...'* must now be subject to notification to Historic England and any relevant National Amenity Society.
- 4.9 A third Direction excludes statues, monuments, and memorials from the category of structures that do not constitute development. Consequently, any proposal to remove or alter an existing statue, monument or memorial now comprises development requiring planning permission.
- 4.10 Often in Westminster statues, monuments and memorials are listed and therefore their removal would already have required consent prior to the ministerial Directions. There have not been any requests for removal of statues, monuments or memorials in light of the introduction of these changes, but the recently submitted application for amendments to Grosvenor Square Gardens does include removal of the 'Diplomatic Gates' and the removal of this memorial will require consultation in accordance with the new Directions.

#### Introduction of the National Model Design Code

- 4.11 In July 2021 the government published the National Model Design Code (the 'NMDC'), which sets out design parameters to help local authorities and communities decide what good quality design looks like in their area. The NMDC now forms part of the government's planning practice guidance and expands on the ten characteristics of good design set out in the National Design Guide published in January 2021, which reflects the government's priorities and provides a common overarching framework for design.
- 4.12 The introduction of a NMDC featured heavily in the August 2020 planning white paper and it delivers policy changes around design issues that respond to the Building Better, Building Beautiful Commission's 'Living with Beauty' report, which was published in January 2020.
- 4.13 It is intended that local planning authorities (LPAs) will develop their own design codes for different character areas using the methodology set out in the NMDC. These will assist developers and LPAs themselves to better identify and reinforce the beauty and good design that make different places distinctive and unique. In turn this will help to guide decision making so that it results in the refusal of development that is not well designed and supports the creation of healthy, environmentally, responsive, sustainable and distinctive places that have a consistent and high-quality standard of design.
- 4.14 Officers are receptive to the future development of design guidance and codes in Westminster and Design and Heritage SPDs will be developed in due course to support design and heritage policies in the City Plan. It is important to note though that as much of Westminster is located within a conservation area, our Conservation Area Audits already identify the aspects of the townscape that contribute positively to the character and appearance of the conservation area. Therefore, development in the city is already guided by a robust understanding of what elements of a place contribute to its design value and beauty.

#### Amended National Planning Policy Framework (NPPF)

- 4.15 In July 2021 the Government published a new version of the NPPF. The principle focus of the updates were to strengthen requirements on design quality (see also the preceding section on the NMDC), and promote the use of trees in new developments, as well as revise policies on plan-making, removal of statues (see earlier section in this report) and making of Article 4 Directions (see also section in this report on UCO and GPDO changes).

4.16 The main changes to the NPPF made in July 2021, which are of relevance to development in Westminster, are summarised below:

- Introduces measures aimed at improving **design quality**, including a new requirement for councils to produce local design codes or guides. The concept of 'beauty' has been added to the NPPF when assessing design quality. The NPPF now advises design codes should be used to give developers '*maximum clarity about design expectations at the earliest stage*' and significant weight should be attached to '*development that reflects local design policies and government guidance on design*' and '*outstanding or innovative designs which promote high levels of sustainability or help raise the standard of design more generally in an area*'.
- An emphasis on using **trees** in new developments has been added. NPPF now says that '*planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible*'.
- New limits on the use of **Article 4 Directions** to restrict permitted development rights have been added. The NPPF now states that directions, which remove permitted development rights in specific areas, where they relate to residential conversions, should only be used where it is '*essential to avoid wholly unacceptable adverse impacts*', for example the '*loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability*'. In 'all cases', Article 4 Directions should be '*based on robust evidence and apply to the smallest geographical area possible*'.
- Councils should '*retain and explain*' **statues** rather than remove them (see earlier section in this report).
- The **United Nations climate change goals** have been added. The NPPF now states in its section on Achieving Sustainable Development that '*the purpose of the planning system is to contribute to the achievement of sustainable development*'.
- NPPF now identifies that 10% of all major housing schemes should comprise **affordable home ownership** properties (known as First Homes).
- Policies on **improving biodiversity** have been strengthened. Chapter 15 now identifies that '*opportunities to improve biodiversity*' should be integrated into a scheme's design (see also Biodiversity Net Gain discussed later in this report).
- The NPPF now clarifies that **neighbourhood plans can allocate large sites**. The previous version gave the impression that neighbourhood plans could only allocate small or medium-sized sites.

4.17 It can be seen from the topics addressed in the preceding bullet points that many of the changes to the NPPF in July 2021 were necessary to bring it in to line with earlier or subsequent standalone changes to various aspects of the planning system. In this regard further change is expected to the NPPF in 2022 so that it responds to the government's 'Net Zero Strategy: Build Back Greener', which was published in October 2021.

- 4.18 The net zero strategy, which was published by the Department for Business, Energy & Industrial Strategy (BEIS), sets out the government's overarching approach to meeting its 2050 net zero emissions target. The document sets out policy proposals to hit the 2050 target across a range of economic areas including power, heat and buildings, and transport. It identifies that the government recognises *'the importance of the planning system to common challenges like combating climate change and supporting sustainable growth'* and it goes on to identify that the government *'...will make sure that the reformed planning system supports our efforts to combat climate change and help bring greenhouse gas emissions to net zero by 2050. For example, as part of our programme of planning reform we intend to review the NPPF to make sure it contributes to climate change mitigation and adaptation as fully as possible'*.
- 4.19 In principle, future changes to the NPPF to reform national planning policy so that development in Westminster is better able to support the response to the climate emergency would be welcomed and would allow the council to give additional weight to sustainability improvements in future when making planning decisions, in line with our own climate action plan.

#### Fire Safety – Introduction of Planning Gateway One

- 4.20 On 1 August 2021 the government introduced 'Planning Gateway One' as part of the wider legislative response to events that led to the Grenfell Tower fire in 2017. Following the Grenfell Tower fire on 14 June 2017 the Government commissioned the Independent Review of Building Regulations and Fire Safety led by Dame Judith Hackitt. The report highlighted the need to transform the fire and building safety regime and recommended that *'some minimum requirements around fire safety will need to be addressed when local planning authorities are determining planning applications and will require input from those with the relevant expertise'*.
- 4.21 Government made a commitment in 'A reformed building safety regulatory system: government response to the 'Building a Safer Future' consultation' to introduce Planning Gateway One. It has two key elements:
- to require the developer to submit a fire statement setting out fire safety considerations specific to the development with a relevant application for planning permission for development which involves one or more relevant buildings, and
  - to establish the Health and Safety Executive as a statutory consultee for relevant planning applications.
- 4.22 Planning Gateway One applies to 'relevant buildings', which are defined as buildings that contain two or more dwellings or educational accommodation and are 18m or more in height, or 7 or more storeys in height. The gateway requirements are applicable to new development above this threshold and to any planning applications for alterations to relevant buildings (e.g. applications for new windows, air conditioning units, etc.).
- 4.23 The council updated its validation checklists for planning applications in November 2021 and fire statements are now a validation requirement for all development that includes a relevant building. Minor development, such as new windows or air conditioning units, is included in the validation requirement as it is necessary to avoid cumulative changes to buildings resulting in a significant adverse impact on a building's overall fire safety. Officers have observed that in recent months these additional requirements are beginning to have an impact on the speed of determination of applications involving relevant buildings. This is due to increased frequency of applications being invalid for a fire statement (typically for smaller alterations to existing buildings) and because of receipt of more detailed

comments from the HSE (on larger new developments involving creation of a new relevant buildings). Typically, the concerns raised by the HSE can be addressed through revision of the strategy set out in the submitted Fire Statement and/or by amendment to the proposed development.

#### Environment Act 2022 – Introducing Biodiversity Net Gain

- 4.24 The Environment Act became law on 9 November 2021. The act introduces a 10% biodiversity net gain requirement for all new developments by amending the Town and Country Planning Act 1990 (as amended). On sites where these biodiversity gains are secured, they would have to be managed for at least 30 years. Typically, this will be secured via planning conditions, S106 obligations or conservation covenants.
- 4.25 The requirement for biodiversity net gain does not change existing legal protections for important habitats and wildlife species. The act maintains the mitigation hierarchy of avoid impacts first, then mitigate and only compensate as a last resort.
- 4.26 It is expected that there will be flexible mechanisms available to increase the biodiversity value to demonstrate a 10% net gain. Works to enhance habitats can be carried out either on-site or off-site or through the purchase of 'biodiversity credits' from the Secretary of State. However, this flexibility may be removed (subject to regulations) if the onsite habitat is 'irreplaceable'. For such developments, arrangements to minimise their adverse effects and improvements, must be delivered on-site.
- 4.27 Demonstrating biodiversity net gain will require the introduction of an approach to measuring biodiversity, which is not included in the Act. The government has published a metric developed by Natural England titled 'Biodiversity Metric 3' which is designed to provide ecologists, developers, planners and other interested parties with a means of assessing changes in biodiversity value (losses or gains) brought about by development. However, it has committed to laying the biodiversity metric or any revised biodiversity metric before Parliament before bringing it into use. Given this, it is not currently expected that the requirement for biodiversity net gain will become law and become a legal planning requirement until the introduction of secondary legislation in 2023. Notwithstanding this delay in this requirement becoming law, Policy 34 in the City Plan and Policy G6 in the London Plan already require development proposals in Westminster to deliver biodiversity net gains.

#### Permitted Development Rights for Moveable Structures

- 4.28 In January 2022 the government introduced a new permitted development rights for moveable structures within the curtilage of pubs, restaurants and other visitor attractions by amending the GPDO.
- 4.29 The government consulted on changes to permanently allow pubs, restaurants and other visitor attractions to place moveable structures in their curtilage in autumn 2021 and this consultation was reported to the Planning and City Development Committee on 25 October 2021<sup>2</sup>. In response to consultation the council expressed concerns regarding the lack of restrictions proposed by government at consultation stage on the size, number, location and period of use of moveable structures. The council's concerns were principally that the lack of restrictions would lead to harm occurring to the amenity of nearby residents and that moveable structures would have a harmful visual impact, particularly where they would be sited in the curtilage of a listed building.

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<sup>2</sup> Planning and City Development Committee report and minutes (see Item 4):  
<https://committees.westminster.gov.uk/ieListDocuments.aspx?Cid=368&Mid=5747>

4.30 In making the permitted development right permanent, government has listened in part to the concerns voiced by the council and others and has introduced a number of restrictions on moveable structures. These include:

- limiting the right to a single movable structure;
- precluding them from being within 2 metres of a boundary with a residential property;
- limiting their height to 3 metres;
- limiting their footprint to the lesser of 50% of the footprint of the building or 50m<sup>2</sup>;
- precluding any advertisements on the structure.

However, where moveable structures are in the curtilage of an unlisted building there are no restrictions on the length of time they may be erected for, nor is their erection to the front of premises precluded.

4.31 Where a pub, restaurant or visitor attraction is listed the same restrictions as above apply, but in addition the moveable structure may only remain for a period of 120 days within a 12-month period. Additionally, a prior approval application is required, which allows the council to consider the siting of the moveable structure and the method by which it is to be installed.

4.32 It is likely that the new permitted development rights will be utilised by premises with curtilage land, particularly during warmer months and officers will monitor the initial impact of these new rights during 2022. It is likely that the rights will give rise to the need for additional enforcement investigation, particularly in respect of the positioning of moveable structures relative to neighbours and the public highway and in terms of the length of time that structures in the curtilage of listed buildings have been erected.

4.33 The changes to the GPDO also introduced permitted development rights that allow local authorities unrestricted periods during which to hold markets and to expand permitted development rights for the Ministry of Defence land. However, these new and expanded rights will have limited impact in Westminster.

*'Levelling Up the United Kingdom' White Paper*

4.34 The levelling up white paper was published on 2 February 2022 and is a wide-ranging document addressing a significant number of issues that, in combination, contribute to 'levelling up' communities across the country. The white paper contains a number of significant planning announcements which are of relevance to Westminster.

- Local communities will continue to have '*a meaningful say on individual planning applications*'. This appears to confirm that the government has moved away from proposals in the planning white paper to limit consultation on individual planning applications. The levelling up white paper notes that new digital technologies will be used to improve engagement.
- Local plans '*will be made simpler and shorter*'. As well as simplifying future development plans the white paper aims to ensure the data that underpins plans becomes more transparent and understandable and takes into account the environment that will be developed.
- The white paper promises to '*widen the accessibility of neighbourhood planning*'.



- It encourages more accessible hybrid models for planning committees, such as is used already in Westminster, to combine in-person and remote attendance.
- The white paper explains that the Government is to set '*a more positive approach to employment land in national policy to support the provision of jobs*'. Currently the NPPF is largely focused on housing delivery and therefore it can be expected that future iterations of the NPPF will seek to redress this and have a more balanced focus.
- There is support for '*enhance compulsory purchase powers to support town centre regeneration*' in the wake of the rapid changes that have adversely impacted high streets in recent years.
- The paper reiterates that the government is looking at developing a land value capture as part of its proposed new infrastructure levy. It states '*the current planning system enables some developers to benefit disproportionately and unfairly from the land they develop. This is why the UK Government is developing models for a new infrastructure levy which will enable local authorities to capture value from development more efficiently, securing the affordable housing and infrastructure communities need*'.

4.35 It is expected that proposals within the levelling up white paper will form the basis of a Levelling Up and Regeneration bill later in 2022.

*Updated Committee Reports & Pre-Application Fees to Reflect Evolving National and Westminster Policy Context*

4.36 In light of the changing focus of national planning policy, the adoption of the new City Plan and new London Plan in 2021, and the adoption of the Environmental SPD in March 2022, officers are in the process of updating the committee report format to better reflect the council's current planning and wider priorities. The updated format will focus greater attention on material considerations such as energy performance and sustainability, biodiversity gain, community engagement and economic benefits, as well as ensuring that the reports identify relevant policies in made neighbourhood plans.

4.37 The updated format will also support officers to produce more consistent reports in future in terms of the location within reports of particular topics, the signposting of the key considerations within the report summary, and the level of supporting information provided (i.e. photographs, photomontages and plans etc.). It is expected that use of the updated committee reports will commence in April 2022.

4.38 Allied to the update of committee reports, officers are also exploring options to rationalise the current system for reporting late representations to the committee (known as 'blue' and 'red' representations) to ensure late representations are used by interested parties to raise genuinely new issues or concerns and to ensure the process is more transparent and open for those observing committee meetings in person or online. This review may include steps such as introduction of a 'cut off' for submission of late representations that is in advance of the committee meeting. Any changes to current committee processes will be introduced later in 2022.

4.39 The pre-application advice fees charged by the council were amended on 14 March 2022 to align with the council's priorities as set out in the Climate Action Plan and the

recently adopted Environmental SPD. A new reduced fee of £300 (incl. VAT)<sup>3</sup> has been introduced householders considering certain energy performance and sustainability improvements to their homes. The improvements included in this new service are installation of energy efficient glazing, green roofs, solar panels and air or ground source heat pumps. The advice service is available to householders in flats and houses and is applicable to both listed and unlisted buildings.

## **5. Financial Implications**

5.1 None.

## **6. Legal Implications**

6.1 None.

## **7. Conclusion**

7.1 The changes made to the planning system to date following the 'Planning for the Future' White Paper published in August 2020 have been more limited in scope and ambition than the proposals set out in the white paper. Nevertheless, the changes to Class E in particular have had a significant impact on the role of the planning process in land use planning, particularly within our town centres and within the Central Activities Zone and has placed increased importance on the role played by landowners and other regulatory regimes, such as premises licensing, in controlling the impacts of new commercial uses that fall within Class E.

7.2 Other changes to planning policy and guidance have been more limited in terms of their immediate impact; however, it is expected that the role of design codes in defining 'beauty' and the importance of biodiversity net gain will become increasingly apparent in future. These issues will have increased importance in future planning decision making.

7.3 More substantive changes to the planning process lie ahead, most likely as part of a Levelling Up and Regeneration bill expected later in 2022. However, it is unlikely that many of the most radical changes contained within the planning white paper, which had the greatest potential for significant impact in Westminster, will be included. This is likely to include the side-lining of proposals such as limiting public consultation on planning applications in Growth Areas and the concept of 'growth zones'. A revised and more balanced approach to planning reform, retaining the key existing elements of the planning process, is likely to enable the council to better balance delivery of sustainable growth with other key City Plan objectives, including responding to the climate emergency and delivery of affordable housing.

**If you have any questions about this report, or wish to inspect one of the background papers, please contact: Oliver Gibson (ogibson@westminster.gov.uk / 07971026919)**

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<sup>3</sup> Pre-Application Advice Service: <https://www.westminster.gov.uk/planning-building-and-environmental-regulations/planning-applications/request-pre-application-planning-advice>

**Appendix**

N/A

**Background Papers**

None.