



City of Westminster

Planning & City Development Committee

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Report of: Director of Town Planning & Building Control

Financial Summary: None.

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1. Executive Summary

- 1.1 This report provides an update on recent changes to a number of areas of national planning legislation and policy. Where relevant it 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 and their potential future implications in Westminster.

3. Biodiversity Net Gain

- 3.1 Biodiversity Net Gain (BNG) is an approach to development to ensure that habitats for wildlife are left in a measurably better state than they were before the development. [Schedule 7A of the Town and Country Planning Act 1990 \(as inserted by Schedule 14 of the Environment Act 2021\)](#) introduces a 10% biodiversity net gain (BNG) requirement for new development. Through site selection and layout, developers should avoid or reduce any negative impact on biodiversity.
- 3.2 The mandatory BNG requirement applies to all major developments from 12 February 2024 and will be introduced for small sites from April 2024. Householder development is exempt from mandatory BNG, along with permitted development and proposals which have very small (less than a 25-metre squared area or five-metre length) or temporary (under two years) biodiversity impacts.
- 3.3 The government has published a statutory biodiversity metric calculation tool which calculates the biodiversity value of the habitat, and how a development, or a change in land management, will change the biodiversity value. This must be submitted with all applications.

- 3.4 If 10% BNG cannot be achieved within the red line boundary of the planning approval, offsite habitat creation will need to be relied upon. Developers can either make off-site biodiversity gains on their own land outside the development site or buy off-site biodiversity units on the market. If developers cannot achieve on-site or off-site BNG, they must buy statutory biodiversity credits from the government. The land owner is legally responsible for creating or enhancing habitat, and managing that habitat for at least 30 years to achieve the target condition.
- 3.5 All relevant developments will be subject to a general pre-commencement planning condition. This requires that developers submit and have approved by the council a 'biodiversity gain plan' before any works can begin. Given this must be submitted post permission, it would generally be inappropriate for decision makers, when determining a planning application for a development subject to biodiversity net gain, to refuse an application on the grounds that the biodiversity gain objective will not be met. However, decision makers may need to consider more broadly whether the biodiversity gain condition is capable of being successfully discharged.
- 3.6 BNG will be addressed in committee reports going forward. Detailed advice is set out in national planning practice guidance and further advice is also to be provided in the updated Environment SPD.

4. National Planning Policy Framework (NPPF) – December 2023 Update

- 4.1 The National Planning Policy Framework (NPPF) was initially introduced as a single national policy framework to replace the previous collection of Planning Policy Guidance (PPG) documents in different planning topics in 2012. Following its introduction in 2012 the NPPF was not updated until 2018. Since 2018 it has now been updated four further times, in 2019, 2021, and twice in 2023.
- 4.2 The Government made its latest set of amendments to the [NPPF](#) in December 2023. These amendments followed consultation on the draft amendments during late 2022 and early 2023.
- 4.3 The changes made to the NPPF encompass a wide range of areas, but the key changes impacting on planning considerations in Westminster (i.e. excluding changes such as those relating to the Green Belt) are summarised below:
- Plan Making – Greater emphasis is placed on preparing and maintaining up-to-date local plans (para 1) to support efficient delivery of housing and other developments in a sustainable manner.
 - Neighbourhood Plans – Inclusion of greater protection of neighbourhood plans where proposed housing development conflicts with a neighbourhood plan (para 14).
 - Calculating Housing Need – Confirmation that the standard method for calculating housing need in a local authority is advisory (para 61). Local authorities with an up-to-date local plan will no longer need to continually show a deliverable five-year housing land supply.
 - Housing Need – Older people requiring specialist retirement or care accommodation have been added to the list of specific groups for which local authorities must consider meeting their housing need (para 63).
 - Housing Land Supply – New text has been added to identify that local authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if their plan was adopted less than five years ago and the plan identified at

least a five year supply of specific, deliverable sites at the time that its examination concluded (paras 75-81).

- Density of Development – Identifies that uplifts in the average density of residential development may be inappropriate where it would be wholly out of character with the existing area (para 130).
- Design and Local Design Codes – Greater emphasis added to promote the use of local design codes prepared in line with the National Model Design Code to deliver beautiful and well-designed places (para 138).
- Planning Conditions – Text has been added (para 140) to make clear that conditions should refer to clear and accurate plans and drawings to provide greater certainty to persons implementing permissions of what has been approved.
- Energy Efficiency – A new paragraph has been added (para 164) setting out that significant weight should be given to the need to support energy efficiency and low carbon heating improvements to existing domestic and non-domestic buildings.

4.4 The December revisions to the NPPF pick up only a proportion of the changes that have been trailed or consulted on by Government in 2023. A fuller review is expected later in 2024 to introduce changes set out in the Levelling Up and Regeneration Act. It is expected that this will include the introduction of National Development Management Policies (NDMP). Further consultations to are also anticipated in 2024, including changes to the Framework's approach to climate change adaptation and flood-risk management, provision of affordable housing and electric vehicle charging points.

5. Short Term Lets Reforms

5.1 The Government announced on 19 February 2024 that following consultation in 2023, it intends to introduce [new regulations to control short-term lets](#). The announcement signalled the Government's intention in this area, but full details of the approach to be taken have yet to be published and are due to follow in the Government's response to the [2023 consultation](#). The details to be announced will include the timeline for implementation of the new regulations. It is currently expected that the changes will be introduced in summer 2024.

5.2 The regulations that are proposed by Government are split across the planning and licensing regimes, with a new planning use class proposed for short term lets, which will enable their control via local Article 4 Directions, and a new mandatory registration scheme that sits outside the planning regime also proposed. Planning related proposals are being brought forward by DLUHC, whilst the introduction of the registration scheme is being led by DCMS.

5.3 At present the details of the planning changes proposed are understood to be:

- The introduction of a new planning 'use class' for short-term lets that are not used as a sole or main home. Existing dedicated short-term lets will automatically be reclassified into the new use class and will not require planning permission to change to the new use class.
- New permitted development rights will be created allowing a property to be changed from a short-term let to a normal residential dwelling, with a second that would allow a property to be changed to a short-term let.
- Local planning authorities would be able to remove the permitted development right to change to a short term by introducing an Article 4 direction.

- 5.4 Short-term letting is a significant issue for Westminster. Currently there are estimated to be around 12,000 properties in Westminster that are short term lets, more than any other area in the country. Short-term letting can have multiple impacts. Short term lets can have significant impacts on local residents, who often face the impact of noisy parties and dumped rubbish. The use of properties for short letting reduces available housing stock for permanent residents and they can also create an uneven playing field for many of Westminster's hotels which continue to bear the costs of business rates, corporation tax and complying with regulations.
- 5.5 Further details of the Government's intentions are required before the impact of the proposals on Westminster can be fully assessed. For example, issues which are not fully addressed in the February announcement are:
- Legislative context in London: It is unclear whether the Government's proposals would have the effect of superseding London specific legislation on short term letting (Section 25 of Greater London Council (General Powers) Act 1973 as amended by Section 44 of the Deregulation Act 2015), which currently limits the number of days annually that this activity can take place before planning permission is required for a permanent change to a Sui Generis short term let use. Elsewhere in England there is no current legislation precluding the use of residential units on a short term let basis. Officers are seeking clarification from DLUHC on this issue.
 - Transition to new regime: The opportunity to limit the use of the proposed permitted development rights using an Article 4 Direction would be more effective if this could be put in place in advance of the new Use Class for short term lets coming into effect. Not ordering the transition to the new regime in this way would risk additional properties becoming short term lets before an Article 4 Direction (which takes 12 months to take effect) coming into effect. Officers are drafting an Article 4 Direction pre-emptively so that it can be introduced without delay following introduction of the new regime by Government.

6. London Plan Review Recommendations

- 6.1 In December 2023 the Secretary of State for Levelling Up, Housing & Communities wrote to the Mayor of London to announce that a [London Plan Review](#) was being undertaken to identify policy changes which could speed up the delivery of homes in London. The panel of experts, led by Christopher Katkowski KC, was asked to consider whether changes to London Plan policies could facilitate more development on brownfield land to deliver more homes.
- Review Analysis*
- 6.2 The Review considers London's housing needs, how the housing targets in the London Plan were set, and what progress is being made to deliver them. The Review identifies an under-delivery of homes against the adopted London Plan target, resulting in a backlog of 60,000 homes (equivalent to a year's supply). It notes that very few boroughs are meeting their housing targets.
- 6.3 Although there has been some increase in affordable housing starts, this has been accompanied by a downward trend in housebuilding, which, if it continues, would result in a shortfall of more than 150,000 homes by 2028/29 or 29% of the total target.
- 6.4 The Review cites several factors impacting the current housing supply, including inconsistent use of Brownfield Land registers, the ineffectiveness of London Plan monitoring, the ambitious London Plan affordable housing requirements, and the fact that only a third of London LPAs currently have an adopted Local Plan which implements London Plan strategies.

- 6.5 The Review places greatest focus on the London Plan being excessively complex. The current London Plan is over 500 pages and contains 113 policies. The Review notes that “the Plan contains literally hundreds of requirements, exhortations and aspirations and, depending on the circumstances of an individual application, a great many of these bear upon deciding whether to permit residential development on brownfield sites”.
- 6.6 The Review identifies that much of the London Plan is expressed as ‘shoulds’ rather than ‘musts’ and that these are too often applied as ‘musts’ by local planning authorities. The Review concludes that it will be difficult for schemes to achieve all policy goals.

Review Recommendations

- 6.7 The Review acknowledges that wider macroeconomic conditions, fire safety, infrastructure constraints, statutory consultees, viability difficulties, and planning resourcing pressures have all contributed to the current housing delivery position in London.
- 6.8 The Review concludes that the London Plan is missing a “policy mechanism to assist applicants and decision-makers in navigating a path that aligns with the intended goal of boosting housing supply to the level outlined in the London Plan strategy”. It therefore recommends that a presumption in favour of residential development on brownfield land is added to the London Plan.
- 6.9 This means that for qualifying local planning authorities (i.e. those where completions are currently not reaching their required cumulative annualised target), there would be a strong presumption in favour of granting planning permission for proposals which comprise or include residential development on brownfield (previously developed) land. As per similar presumptions in the NPPF, there would be exemptions (for example for development on Metropolitan Open Land), and for developments causing harm to designated heritage assets, the presumption would only apply where public benefits outweigh the harm.
- 6.10 The recommended new presumption could be introduced as a new London Plan policy, or it could be instigated through a written ministerial statement or as an addition to the Planning Practice Guidance (albeit this third option would not afford it statutory weight and it would only be a material consideration).

Next Steps

- 6.11 The Secretary of State wrote to the Mayor on 12 February 2024 following publication of the review. The SoS confirmed he agreed with the conclusions of the Review and explained that he considers there is likely to be benefit in applying the recommendations more broadly across England. The SoS also notified the Mayor that he was concerned that the Review highlighted instances where the planning process was being duplicated by the GLA and that therefore he was also seeking views on whether changes are required to the threshold at which residential planning applications are referable to the GLA, which is currently set at 150 homes or more.
- 6.12 Following his letter to the Mayor, the SoS announced a consultation on changes to national planning policy, which will seek to speed up the building of homes on brownfield land. The [consultation](#) is currently live and runs until 26 March.

7. Financial Implications

- 7.1 The impacts of the changes set out in this report are predominantly to be met by the existing planning budget. In respect of BNG, the council has recently secured £40k of

skills funding from the Department for Levelling Up, Homes and Communities, which is to be utilised to recruit an ecologist during 2024/25 to support the introduction and bedding in of the new BNG requirements, which have begun to come into force during the first quarter of 2024.

8. Legal Implications

8.1 None.

9. Conclusion

- 10.1 The changes that have been made and are to be made to the planning system shortly continue the trend of adding complexity to the overall planning process. There is a risk that this will impact on the time required at pre-application and application stage to negotiate and assess applications of all scales. Requirements for BNG delivery also place significant reliance on the council to record the BNG net gain that is to be delivered and to ensure that the net gain is maintained for the necessary 30-year period. This has future administrative and enforcement resource implications for the planning service.
- 10.2 Whilst proposals such as BNG are welcomed and will bring increased focus to the planning system in respect of securing biodiversity enhancements, there is potential for other announcements covered in this report to have an adverse impact on Westminster, particularly with regard to retention and growth of available permanent housing stock and the delivery of new housing on brownfield land which continues to meet the high standards expected by the London Plan and City Plan.

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)

Appendix

N/A

Background Papers

None.