



Planning Bulletin: February 2018

This monthly note highlights some of the recent and forthcoming developments in the world of planning from a heritage perspective. For further information about any of the items, please follow the links provided or use the contact information on the last page. Please note that this is not necessarily a complete review of matters and is not intended to provide any legal advice on the issues raised. Unless otherwise stated, it does not comprise the formal position of Historic England on these matters.

Government Departments

- There has been further clarification of Ministerial roles since the Cabinet reshuffle.
- Ministry of Housing, Communities and Local Government (formerly DCLG):
 - Sajid Javid remains the Secretary of State (also Ministerial Champion for the Midlands Engine).
 - Dominic Raab becomes Minister of State for Housing (replacing Alok Sharma, former Minister of State for Housing and Planning); his responsibilities include planning policy and casework oversight, and 'quality and design'.
 - Jake Berry remains Parliamentary Under Secretary of State and Minister for the Northern Powerhouse and Local Growth. His responsibilities include Mayors and devolution, place-based initiatives, and Local Enterprise Partnership policy.
 - Heather Wheeler becomes Parliamentary Under Secretary of State, Minister for Housing and Homelessness, and Minister for Secondary Legislation.
 - Rishi Sunak becomes Parliamentary Under Secretary of State and Minister for Local Government. His responsibilities include parks and green space.
 - Lord Bourne of Aberystwyth remains Parliamentary Under Secretary of State (now Minister for Faith).
- Department for Digital, Culture, Media and Sport
 - Matt Hancock (former Minister of State for Digital) becomes Secretary of State for Digital, Culture, Media and Sport (replacing Karen Bradley, now Secretary of State for Northern Ireland).
 - Margot James becomes Minister for Digital and the Creative Industries.
 - Tracey Crouch remains Parliamentary Under Secretary of State for Sport and Civil Society.
 - Michael Ellis becomes Parliamentary Under Secretary of State for Arts, Heritage and Tourism (replacing John Glen, now Economic Secretary to the Treasury and City Minister).
 - Lord Ashton of Hyde remains Parliamentary Under Secretary of State.

- Department for Environment, Food and Rural Affairs
 - Michael Gove remains Secretary of State for Environment, Food and Rural Affairs.
 - George Eustice remains Minister of State for Agriculture, Fisheries and Food.
 - Thérèse Coffey remains Parliamentary Under Secretary of State for the Environment; her responsibilities include the natural environment, resource and environment management, and the 25 Year Environment Plan.
 - Lord Gardiner of Kimble remains Parliamentary Under Secretary of State for Rural Affairs and Biosecurity. His responsibilities include broadband and mobile, Kew Gardens, and landscape (including national parks).

Legislation and Matters Arising

Emerging Legislation

Government Bills

- *European Union (Withdrawal) Bill*: the Bill seeks to repeal the European Communities Act 1972 and make other provision in connection with the withdrawal of the United Kingdom from the EU. Second reading concluded on 31 January, and Committee stage begins on 21 February. Explanatory notes are available [here](#), and a library briefing [here](#).
- *High Speed Rail (West Midlands - Crewe) Bill*: the hybrid Bill makes provision for a railway between a junction with Phase One of High Speed 2, near Fradley Wood in Staffordshire, and a junction with the West Coast Main Line near Crewe in Cheshire. Second reading took place on 30 January; a date for committee stage has not yet been scheduled. Explanatory notes are available [here](#).
- *Telecommunications Infrastructure (Relief from Non-Domestic Rates) Act*: the Act gained Royal Assent on 8 February. It provides powers for the Secretary of State to award relief from business rates to providers of telecommunications infrastructure.
- *Automated and Electric Vehicles Bill*: the Bill makes provisions about automated vehicles and electric vehicles, including in relation to charging points. First reading in the Lords took place on 30 January, and second reading is scheduled to take place on 20 February. An explanatory memorandum is available [here](#), and a briefing note [here](#).
- Another Bill mentioned in the Queen's Speech which is of potential interest is the Agriculture Bill (to support UK farmers and protect the natural environment).

Private Members' Bills

- *Bat Habitats Regulation Bill*: the Bill makes provision to enhance the protection available for bat habitats in the vicinity of a building site, and to limit the protection for bat habitats in buildings used for public worship. First reading took place on 3 July; second reading is yet to be scheduled.
- *Bat Habitats Regulation (No. 2) Bill*: the Bill makes provision to enhance the protection available for bat habitats in the non-built environment and to limit the protection for bat habitats in the built environment where the presence of bats has a significant adverse impact upon the users of buildings. The Bill was presented to Parliament on 5 September; second reading is expected on 6 July.

- *Equality Act 2010 (Amendment) (Disabled Access) Bill*: the Bill amends the Equality Act 2010 to improve access to public buildings by introducing six- and twelve-inch rules for step-free access. Second reading took place on 24 November, and Committee stage has yet to be scheduled.
- *Kew Gardens (Leases) Bill*: the Bill provides that the Secretary of State's powers in relation to the management of the Royal Botanic Gardens, Kew, include the power to grant a lease in respect of land for a period of up to 150 years. First reading took place on 13 July, and second reading has yet to be scheduled. Explanatory notes are available [here](#).
- *Planning (Agent of Change) Bill*: the Bill requires specified planning controls in relation to developments likely to be affected by existing noise sources. It was introduced on 10 January, and is expected to have its second reading on 16 March.
- *Green Belt (Protection) Bill*: the Bill provides for the establishment of a national register of Green Belt land in England, the restriction of the ability of local authorities to de-designate Green Belt land, and provision about future development of de-designated Green Belt land. First reading took place on 5 September 2017; second reading is scheduled for 23 November.

Secondary Legislation

- *Improving the Use of Planning Conditions*: MHCLG has launched a consultation on draft *Town and Country Planning (Pre-commencement Conditions) Regulations 2018*. The draft regulations set out the circumstances when a pre-commencement condition can be imposed without the written agreement of the applicant (closing date 27 February). Applicants are to be given ten working days to indicate whether or not they agree with the pre-commencement conditions proposed by the local planning authority.
- *The Neighbourhood Planning Act 2017 (Commencement No. 3) Regulations* were made on 15 January, and bring a number of the provisions in the *Neighbourhood Planning Act 2017* into force:
 - *16 January 2018*:
 - *Section 8(1) and section 8(3)*: local planning authorities are required to identify the strategic priorities for the development and use of land in their area, and to make clear in monitoring reports the extent to which they are relying on policies in a spatial development strategy to deliver their strategic priorities, as well as where the relevant policies are to be found.
 - *Section 9*: provisions enabling the Secretary of State to direct two or more local planning authorities to prepare a joint development plan document where that will facilitate the more effective planning of the development and use of land in the area of one or more of those authorities.
 - *Section 10 and Schedule 2*: the Secretary of State is enabled to invite a county council to prepare a development plan document for a local planning authority in their area.
 - *31 January 2018*:
 - *Section 2*: requires a local planning authority to notify neighbourhood planning bodies of planning applications (or alterations to applications) in their area, where there is a neighbourhood plan which forms part of the statutory development plan, or which is a post-examination neighbourhood development plan

- *Section 4:* Enables a local planning authority to modify a neighbourhood development order or plan (with the consent of the qualifying body for the neighbourhood area) if the authority considers that the modification does not materially affect any planning permission granted by the order or the policies in the plan
 - *Section 5:* facilitates the modification of a neighbourhood area and provides for what is to happen to a neighbourhood development order or plan that has already been made in relation to that area.
- *31 July 2018:*
- *Section 6:* requires a local planning authority to set out their policy for discharging the duty to give advice or assistance to qualifying bodies to facilitate proposals for neighbourhood development plans
 - *Section 13(2):* requires local planning authorities to set out in their statements of community involvement policies for involving interested parties in the preliminary stages of plan-making.
- *The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2017:* in a related vein, and as reported in January's Planning Bulletin, these Regulations came into force on 31 January 2018. They amend the *Neighbourhood Planning (General) Regulations 2012* and the *Town and Country Planning (Development Management Procedure)(England) Order 2015*. Key provisions include the following:
 - The existing procedure for making a neighbourhood plan is applied to the modification of a neighbourhood plan
 - The requirements in respect of the notification of planning applications to neighbourhood planning qualifying bodies are updated.
 - *The Town and Country Planning General (Amendment) (England) Regulations 2018* come into force on 23 February. Generally, planning permission runs with the land, but there has been an exception where planning authorities grant themselves planning permission for their own development. The Regulations remove the exception, so that planning permission granted by any interested planning authority in England to itself will now run with the land.
 - *The Town and Country Planning (Local Authority Consultations etc.) (England) Order 2018* was made on 30 January and laid before Parliament on 1 February (Articles 7 and 9 come into force on 1st April; the remaining articles come into force on 1st June). It amends the following to extend periods of public consultation on various application types by one day for each bank holiday or public holiday which occurs during the prescribed periods:
 - *The Town and Country Planning Order (Permission in Principle) Order 2017*
 - *The Town and Country Planning (Development Management Procedure) (England) Order 2015*
 - *The Town and Country Planning (General Permitted Development) (England) Order 2015*
 - *The Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013*
 - *The Planning (Listed Buildings and Conservation Areas) Regulations 1990.*

Heritage Planning Case Database

- Historic England maintains a searchable online database of appeal and call-in decisions relating to planning permission (that affects a heritage asset) and listed building consent. Cases have been summarised using a standard list of search terms, for ease of use; searches can also be carried out by address, date or decision reference.

Committees

Communities and Local Government Committee: Planning Guidance for Fracking Inquiry

- The Inquiry examines whether guidance for local authorities taking planning decisions on hydraulic fracturing or shale gas extraction ('fracking') applications needs to be updated or improved. It will also focus on whether there needs to be a comprehensive document bringing all existing guidance together, for all those involved in the planning process, and whether applications for fracking should be determined by the national planning regime rather than at a local level. Written submissions are invited by 14 March.

Communities and Local Government Committee: The Effectiveness of Current Land Value Capture Methods

- The Inquiry examines the effectiveness of current land value capture methods and the need for new ways of capturing any uplift in the value of land associated with the granting of planning permission or nearby infrastructure improvements and other factors. Written submissions are invited by 2 March.

Environmental Audit Committee: 25-Year Environment Plan Inquiry

- Following the Government's publication of the 25-Year Plan for the Environment, the Inquiry will examine key decisions around the Plan's overall ambition and approach. Written submissions on ambition and reporting, implementation, and principles and oversight are invited by 28 February.

Policy

National Planning Policy Framework (NPPF)

- MHCLG has confirmed that:
 - It is currently revising the NPPF in order to implement the planning reform package outlined in the Housing White Paper, the Planning for the Right Homes in the Right Places consultation, and the announcements in the Autumn Budget.
 - A draft NPPF will be published for consultation before Easter; MHCLG's intention is to publish a final revised Framework in the summer.
 - MHCLG will 'consult on both new policies from the Budget, and the text of the Framework, to make sure the wording is clear, consistent and well-understood'.
- MHCLG has further confirmed that proposals for upwards extensions will be included in the revised draft NPPF. In a press release, the Secretary of State advised that 'we are looking to strengthen planning rules to encourage developers to be more innovative and look at opportunities to build upwards where possible when delivering the homes the country needs':
 - The new policy will make it 'easier to build upwards on existing blocks of flats and houses as well as shops and offices'.

- An example given is the addition of two levels to a property, ‘provided it was in keeping with the roofline of other buildings in the area’.
- ‘These developments must remain in keeping with the character of the local area, including the preservation of listed buildings and conservation areas’.

In a written statement, the Secretary of State has advised further on the proposed policy changes:

- ‘Planning policies and decisions should respond positively to suitable opportunities to use the airspace above existing residential and commercial premises for new homes. They should allow residential and commercial premises to extend upwards, where such extensions would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, are well-designed (including complying with any local design policies and standards), respect the privacy of neighbours and can maintain safe access and egress for occupiers’.
- ‘Policies and decisions on upwards extensions should take into account national and local policies, as well as relevant legal requirements, including relating to the conservation of heritage assets such as listed buildings and conservation areas. This will ensure councils can continue to protect valued areas of open space and the character of residential neighbourhoods, and stop unwanted garden grabbing’.
- ‘The Government will be consulting on changes to the National Planning Policy Framework, including changes to incorporate building up to ensure effective use of land for current and future homeowners. Appropriate guidance will be produced in due course’.
- The Government has also advised that the NPPF will be revised to include detailed reference to the ‘Agent of Change’ principle, whereby developers will be responsible for identifying and solving any sound problems, if granted permission to build, and avoid music venues, community and sports clubs and churches being expected to resolve noise issues as a result of complaints from new neighbours.
- Clarification of Green Belt policy within the NPPF has also been suggested by the Housing Minister, during a parliamentary debate.

National Policy Statement for Geological Disposal Infrastructure

- The Department for Business, Energy & Industrial Strategy (BEIS) has issued a draft National Policy Statement (NPS) for Geological Disposal Infrastructure (GDI) for consultation (closing date 19 April). The draft NPS focuses on the high level assessment principles against which development consent applications will be considered for any geological disposal infrastructure for higher activity radioactive waste in England.
- BEIS is running a parallel consultation on the policy for Working with Communities: Implementing Geological Disposal (closing date also 19 April). This sets out the Government’s proposed policy on how communities should be engaged and represented in a siting process for a geological disposal facility.

Guidance

- The Planning Practice Guidance has been updated to confirm that local planning authorities should submit local plans and supporting documents electronically to the Planning Inspectorate (whilst noting that, on an individual basis, it may be necessary

for local planning authorities to provide the Planning Inspectorate or Inspector both electronic and paper copies of some key documents on request).

MHCLG Planning Update Newsletter

- MHCLG's Chief Planner issued a further Planning Update Newsletter on 30 January, covering the following topics:
 - NPPF timetable update (see NPPF, above)
 - Local housing need transitional arrangements
 - Community Infrastructure Levy regulations
 - Consultation on pre-commencement regulations (see Secondary Legislation, above)
 - Plan-making regulations.

Advice

Historic England Advice

- Good Practice Advice notes (GPAs) and Historic England Advice notes (HEANs) are all available on the Historic England website, and listed in Appendix I to this Bulletin, for ease of reference.
- *HEAN 10: Listed Buildings and Curtilage* will be published on 21 February, and a link to it provided in the list of HEANs here. It updates and replaces the curtilage note produced in 2016, and is issued as a HEAN (following public consultation) to provide greater clarity regarding its status as Historic England advice. The new document provides greater explanation, and includes an additional worked example.

Forthcoming Historic England Advice

- Following earlier public consultation, a HEAN on neighbourhood planning and the historic environment will be published in coming weeks, and a final version of the updated national and regional *Streets for All*.
- A revised edition of *HEAN 1: Conservation Areas: Designation, Appraisal and Review* will be published shortly for consultation.
- Consultation has now closed on an updated version of *Conservation Principles*; consultation responses are being assessed, and further updates will be provided in due course regarding next steps.

Training

- Historic England provides training and guidance to help local authorities, heritage professionals, owners and voluntary organisations look after England's heritage. Training currently available covers a wide range of topics, many directly linked to planning matters and Historic England advice:
 - Historic Environment Local Management (HELM): training on managing the historic environment for local authorities, regional agencies and national organisations. There are only a handful of places left on courses to the end of March. The NPPF Decoded course in Leicester on March 22nd might be of particular interest – please email helmb bookings@historicengland.org.uk to go on the waiting list to attend.
 - Heritage Practice: training courses for heritage specialists in technical subjects and techniques. Four courses on *Curating the Palaeolithic*, *Understanding Setting*, *Historic Area Assessments* and *Understanding Historic Buildings* are currently available to book.

- Online training: webinars and other resources to help supplement the short course training opportunities and make them more widely available. The online training includes recordings of webinars and other, longer courses to work through.

Infrastructure

Transport for the North's Strategic Transport Plan and Integrated Sustainability Appraisal Consultation

- Transport for the North has launched a consultation on its Strategic Transport Plan, and related Integrated Sustainability Appraisal (closing date 17 April). The 30-year Strategic Transport Plan explains the need for investment in transport across the North and identifies the priority areas for improved connectivity.

Housing Infrastructure Fund

- The Government has announced 133 council-led projects across the country which will receive £866 million from the £5 billion Housing Infrastructure Fund to support local work in support of housing delivery. A map of the project locations is available here, and a list here.

National Infrastructure Commission: Annual Monitoring Report

- The National Infrastructure Commission has issued its first Annual Monitoring Report. It considers the Government's progress on the six studies so far produced by the Commission, and the twelve infrastructure priorities it identified in June 2017.

Other Initiatives

Fixing Our Broken Housing Market: Government Response to Consultation

- MHCLG has issued its response to one of the proposals in the Housing White Paper consultation, specifically the proposal to allow all local authorities to dispose of land with the benefit of planning permission they have granted themselves (question 5). The Government concluded that the proposal should be taken forward as consulted upon: The Town and Country Planning General (Amendment) (England) Regulations 2018 will come into force on 23 February (see Secondary Legislation, above).
- The Government's response to the other proposals in the Housing White Paper will be published in due course.

Independent Review to Tackle Barriers to Building

- An independent review to investigate the lag between planning permissions and houses completed in areas of high demand was announced in the Autumn Budget, and is now underway. The review is led by Sir Oliver Letwin, and will seek to identify the main causes of the gap between consents and completions, and make recommendations on practical steps to increase the speed of build out. It will also consider how to avoid interventions which might discourage house building or hinder the regeneration of complex sites.
- The review will be conducted in 2 phases:
 - Phase 1 – currently under way – will seek to identify the main causes of the gap by reviewing large housing sites where planning permission has already been granted. This will include information-gathering sessions with local authorities, developers, non-government organisations and others. Early findings will be published in the interim report.

- Phase 2 will make recommendations on practical steps to increase the speed of build out, which will be published in the full report.

Housing, Planning and the Green Belt

- A debate took place on 6 February in the House of Commons on Housing, Planning and the Green Belt, including statements by the Housing Minister on the forthcoming review of the NPPF. A related briefing pack is available here.

Department for Digital, Culture, Media and Sport (DCMS) Single Departmental Plan

- DCMS has issued its single departmental plan, with five strategic objectives:
 - Global: promote global Britain, demonstrating that the UK is a great place to live, work, visit and invest
 - Growth: grow an economy that is creative, innovative and works for everyone
 - Digital: make the UK the best digital economy in the world and drive its digital transformation
 - Participation: maximise cultural and sporting participation and social action
 - Society: support our media, a free press and a shared society
- Heritage actions are found under the auspices of ‘participation’. Promoting the historic environment so that people can appreciate and enjoy heritage assets is to be achieved by:
 - Sponsoring world heritage sites in the UK, using them to promote tourism and soft power
 - Delivering sustainable development and management in the heritage sector
 - Working with Historic England to support the delivery of large infrastructure projects, such as new housing, HS2 and Crossrail.

Land Release Fund

- MHCLG has announced the award of £45 million from the Land Release Fund to 79 projects across 41 authorities (the schemes are listed here). The funding will support the delivery of housing on council-owned land.

Current Consultations

- MHCLG’s consultation on Improving the Use of Planning Conditions (closing date 27 February).
- The Communities and Local Government Committee’s Inquiry into the effectiveness of current land value capture methods (closing date 2 March).
- The Department for Business, Energy & Industrial Strategy’s consultation on amendments to the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 for domestic properties (closing date 13 March 2018).
- The Communities and Local Government Committee’s Inquiry into planning guidance on fracking (closing date 14 March).
- The Department for Business, Energy & Industrial Strategy’s consultation on a proposed process and criteria to designate potentially suitable sites as part of a new National Policy Statement (NPS) for nuclear power (closing date 15 March 2018).
- The Marine Management Organisation’s engagement period (29 January to 29 March 2018) on four emerging marine plans (North West marine plan, South East marine plan, South West marine plan, and North East marine plan).

- Transport for the North's consultation on its Strategic Transport Plan and Integrated Sustainability Appraisal Consultation (closing date 17 April).
- Transport for the North has launched a consultation on its Strategic Transport Plan, and related Integrated Sustainability Appraisal (closing date 17 April).
- The Department for Business, Energy & Industrial Strategy's consultation on a draft National Policy Statement for Geological Disposal Infrastructure (closing date 19 April).
- The Department for Business, Energy & Industrial Strategy's consultation on the policy for Working with Communities: Implementing Geological Disposal (closing date 19 April).

Recent Consultation Responses

- Historic England's response to the Department for Transport's consultation on Shaping the Future of England's Strategic Roads (RIS2) is available here.

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If you did not receive this edition of Planning Bulletin direct from Historic England, you may find the current edition online here. If you would like to sign up for notifications when a new edition is issued, please contact governmentadvice@HistoricEngland.org.uk.

APPENDIX I: HISTORIC ENGLAND PLANNING ADVICE

Good Practice Advice notes (GPAs)

- The GPAs provide information on good practice, particularly looking at the principles of how national policy and guidance can be applied. They are the result of collaborative working with the heritage and property sectors in the Historic Environment Forum, and have been prepared following public consultation:
 - *GPA 1: The Historic Environment in Local Plans* (March 2015)
 - *GPA2: Managing Significance in Decision-Taking in the Historic Environment* (March 2015)
 - *GPA3: The Setting of Heritage Assets* (December 2017)
 - *GPA4: Enabling Development* (forthcoming)

Historic England Advice Notes (HEANs)

- The HEANs include detailed, practical advice on how to implement national planning policy and guidance. They have been prepared by Historic England following public consultation:
 - *HEAN 1: Conservation Areas: Designation, Appraisal and Review* (February 2016)
 - *HEAN 2: Making Changes to Heritage Assets* (February 2016)
 - *HEAN 3: Site Allocations* (October 2015)
 - *HEAN 4: Tall Buildings* (December 2015)
 - *HEAN 5: Setting up a Listed Building Heritage Partnership Agreement* (November 2015)
 - *HEAN 6: Drawing up a Local Listed Building Consent Order* (November 2015)
 - *HEAN 7: Local Heritage Listing* (May 2016)
 - *HEAN 8: Sustainability Appraisal and Strategic Environmental Assessment* (December 2016)
 - *HEAN 9: The Adaptive Reuse of Traditional Farm Buildings* (October 2017)
 - *HEAN 10: Listed Buildings and Curtilage* (February 2018)