

# Planning Update

15 June 2023



## Speakers

Gregory Jones KC, barrister, Francis Taylor Building  
[gregory.jones@ftbchambers.co.uk](mailto:gregory.jones@ftbchambers.co.uk)

Jamie Wallace, associate director, DLP Planning  
Consultants

David Myers, director, Squire Patton Boggs  
[david.myers@squirepb.com](mailto:david.myers@squirepb.com)



Francis Taylor Building

---

## Breakfast Briefing

Supreme Court's decision in *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30

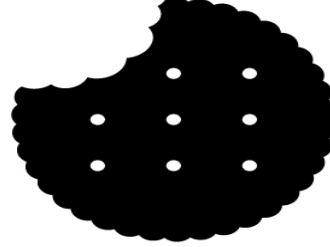
**Gregory Jones KC**

FRGS, LA (RTPI)

Also at KBW Chambers, The Engine House, 1 Foundry Square, Holbeck, Leeds



Francis Taylor Building



## **BITE SIZE BIOG**

**Gregory Jones KC** practises in all aspects of town and country planning and environmental law in which he is a recognised leader in the field. He is one of the very few barristers who is a qualified LA (RTPI) and fellow of the RGS.

He is editor and author of a number of authoritative texts on the habitats Directive and the Strategic Environmental Assessment directive.

Much of his practice is in the north of England where is also an associate tenant of KBW chambers in Leeds and he is also the Chancellor of Diocese of Manchester.

# Overview

- Factual background
- The proceedings and decisions of the High Court and Court of Appeal
- What the Supreme Court decided
  - *Pilkington* and inconsistent planning permissions
  - Multi-unit development and *Lucas*
  - Variation of planning permissions
  - Application in the present case
- Unanswered questions and practical implications



## Factual Background

- Judgment paras [2]-[12]
- 1967 full permission for 401 dwellings: Master Plan
- Slow progress and further permissions
- 1987 Declaration of Drake J – 1967 permission still valid
- 8 Subsequent permissions. Departure from Master Plan

## The proceedings: HC, CoA and issues on appeal

- Judgment paras [13]-[18]
- 2017 – Dispute arose
- Developer brought proceedings for declaration: res judicata and in any event 67 permission was valid and still had life
- HC refused to grant declarations – focus on Pilkington principle and physical impossibility
- CoA dismissed appeal
- Issue: Despite some aspects of Master Plan now being impossible to build out, could further development on vacant parts of site still lawfully be carried out pursuant to 1967 permission? [18]

## Overview of planning law

- Judgment paras [19]-[28]
- Reference to various concepts
- Cl. 98 LURB
- Restatement of law on interpreting planning permission
- Planning legislation is comprehensive code





# Pilkington

- Judgment paras [29]-[45], [69]-[70]
- Pilkington v SSE [1973] 1 WLR 1527:
  - “Whether it is possible to carry out the development proposed in that second permission, having regard to that which was done... under the permission which has been implemented.”
- Pilkington should not be pressed too far: materiality of departure from permitted scheme. No inconsistency with S.96A.
- Present case a straightforward application of Pilkington?

# Pilkington

- Judgment paras [29]-[45], [69]-[70]
- Developer argued:
  - (1) Analogy of abandonment
  - (2) Multi-unit development: severability
  - (3) Subsequent permissions were variations of 1967
- Abandonment: *Pioneer Aggregates (UK) Ltd v SSE* [1985] AC 132



## Multi-Unit Development and the *Lucas* case

- Unlike *Pilkington*, the permission in *Hillside* was for 401 separate dwellings.
- Developer contended that the 1967 permission should be construed as granting freestanding permissions for each unit.
- Reliance on *F Lucas & Sons Ltd v Dorking and Horley Rural District Council* (1964) 17 P&CR 116.



## Multi-Unit Development and the *Lucas* case

- Winn J gave an “*improbable meaning*” to the planning permission in *Lucas*: [49].
- Multi-unit development is applied for and granted planning permission “*as an integrated whole*”: [50].
- Permission for multi-unit development authorises each stage of development for so long as it remains “*practically feasible*” for the whole development to be implemented. There is no condition that the development be completed.



## Multi-Unit Development and the *Lucas* case

*“55. The analytical error made in the Lucas case was to fail to distinguish between two significantly different propositions. The first is that, from a spatial point of view, a planning permission to develop a plot of land is not severable into separate permissions applicable to discrete parts of the site. The second is that, from a temporal point of view, development authorised by a planning permission is only authorised if the whole of the development is carried out. The rejection of the second proposition does not undermine the first.”*



## *Sage* and the “holistic approach”

- The Authority argued that if a proposed development is not, or cannot, be completed fully in accordance with planning permission, the whole development will be unlawful
- No planning permission at issue in *Sage v Secretary of State for the Environment, Transport and the Regions* [2003] UKHL 22
- Cannot be right that any deviation from planning permission automatically renders everything built unlawful
- Remedy is to serve a completion notice under s.94 TCPA
- Comments of Hickinbottom J in *Singh* “misplaced” and “unnecessary”

## ***Sage and the “holistic approach”***

*68. In summary, failure or inability to complete a project for which planning permission has been granted does not make development carried out pursuant to the permission unlawful. But (in the absence of clear express provision making it severable) a planning permission is not to be construed as authorising further development if at any stage compliance with the permission becomes physically impossible.*



## Conclusion on multi-unit development

1. Where planning permission is granted for the development of a site comprising multiple units, it is unlikely to be the correct interpretation of the permission that it is severable
2. Scheme for development in the present case cannot be severed into component parts





## Variation of planning permission

- Local authorities have limited powers to make changes to existing planning permission:
  - Section 73 and conditions.
  - Section 96A and non-material amendments.
- Consequence is that a later permission cannot modify in any material way the development scheme authorised by an earlier permission.



## Application in *Hillside*

- For the developer to make good that the post-1987 permissions modified the 1967 Master Plan.
- Three “categories” of post-1987 permission:
  - 1) Permissions referring to plot numbers
  - 2) Permissions described as variations
  - 3) Final permission
- None of these permissions could reasonably be interpreted as varying the Master Plan.
- The carrying out of the final permission had made it “physically impossible” to carry out the development authorised by the 1967 permission.



---

*100. The courts below were right to hold that the 1967 permission was a permission to carry out a single scheme of development on the Balkan Hill site and cannot be construed as separately permitting particular parts of the scheme to be built alongside development on the site authorised by independent permissions. It is possible in principle for a local planning authority to grant a planning permission which approves a modification of such an entire scheme rather than constituting a separate permission referable just to part of the scheme. The Developer has failed to show, however, that the additional planning permissions under which development has been carried out on the Balkan Hill site since 1987 should be construed in this way. Therefore, **that development is inconsistent with the 1967 permission and has had the effect that it is physically impossible to develop the Balkan Hill site in accordance with the Master Plan approved by the 1967 permission (as subsequently modified down to 1987).** [...] The courts below were therefore right to dismiss the Developer's claim and this appeal must also be dismissed.*

Key  
Takeaways



---

## “*Pilkington* principle.”

Reaffirms the well-established “*Pilkington* principle.”

*F Lucas & Sons Ltd v Dorking and Horley Rural DC* (1964) 17 P & CR 116 -  
“clear that the case was wrongly decided” [para 49].

‘**Mere incompatibility**’ where there is no physical conflict between permissions, and hence only “mere incompatibility with the terms of another permission already implemented” [para. 44], there should be no impediment?

## *Variations*

A later full pp cannot now generally be considered a ‘variation’ of an earlier pp.

**BUT** possible to use ‘drop-in permissions’ alongside other applications to amend conditions (by Sec 73) or by non-material amendments to scheme (under Sec 96(A))? Need to be considered on a case by case basis, but seen as a variation where it is **‘an appropriately framed additional planning permission which covers the whole site and includes the necessary modifications.’**

On other hand, can be argued if you need to utilise a drop-in permission, it suggest that that change itself would be ‘material’.

## ***Problems should not be exaggerated?***

It is necessary to be specific and clear on the structure and approach to phasing in any 'Permission A'. Subsequently, any subsequent proposals on the same site will need to demonstrably fit within the confines of that original pp, when taken as a whole.

But issues exist on all levels:- application scope, timings, application fees, serving notices to new owners, Environmental Assessment? Need for a new Section 106 (whether necessary to seek signatures for existing homeowners on a part completed housing development)?

## Other questions?

*Finney v Welsh Minsters* [2019] EWCA Civ 1868 concluded that it is unlawful to use Section 73 of the TCPA 1990 to amend or contradict the description of the development permitted by a planning permission.

Should developers consider using hybrid consents for multi phased schemes, with flexible phases introduced within the outline element to allow for any future changes?



## The Whole Thing?

In some cases may it be necessary to apply for pp for whole site again (including parts which already been built out and likely sold on).

Whether that applies retrospectively on now completed, or part-constructed schemes is not clarified in this judgment and should be considered on a case-by-case basis with due regard to the materiality of the change, and the extent to which the original permission has clear express provisions which make it 'severable'. [Para 46].

## Levelling up to help slot ins?

*“...clause 98 of the Levelling-Up and Regeneration Bill currently before Parliament will, if enacted, insert a new section 73B into the 1990 Act giving the local planning authority power to grant a planning permission that varies an existing permission but only if the local planning authority is satisfied that “its effect will not be substantially different from that of the existing permission.” [para. 25]*

## And for national infrastructure projects?

- DCOs which overlap with other DCOs
- DCOs overlap with related pp
- Associated development under DCO then modified by pp.
- DCO overlaps with unrelated, third party pps with conditions or development conflicting with works authorised by DCO



Francis Taylor Building

# Thanks

gregory.jones@ftbchambers.co.uk





Francis Taylor Building

## DISCLAIMER

DISCLAIMER NOTICE This oral presentation including answers given in any question and answer session (“the presentation”) and the accompanying Powerpoint slides are intended for general purposes only and should not be viewed as a comprehensive summary of the subject matters covered. Nothing said in the presentation or contained in this paper constitutes legal or other professional advice and no warranty is given or liability accepted for the contents of the presentation or the accompanying paper. Gregory Jones KC, will not accept responsibility for any loss suffered as a consequence of reliance on information contained in the presentation or paper. Barristers at FTB are happy to provide specific legal advice by way of formal instructions.



# Biodiversity Net Gain

David Myers, Director, Squire Patton Boggs  
[david.myers@squirepb.com](mailto:david.myers@squirepb.com)



Paragraph 174 of the NPPF:

Planning policies and decisions should contribute to and enhance the natural and local environment by:

*d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*

# The Environment Act 2021

The Environment Act 2021 places biodiversity net gain on a statutory footing in England, which will come into force in November of this year.

To date, we still await the secondary legislation and government guidance needed to fully implement the provisions.





## Planning Condition

A deemed Planning Condition will be imposed in all planning permissions (with limited exceptions) as follows:

*Development may not be begun unless a biodiversity gain plan has been submitted to the planning authority, and the planning authority has approved the plan*

The biodiversity gain plan will identify the biodiversity net gain calculation and how the net gain objective will be achieved as well as maintenance, management and monitoring requirements.

## Biodiversity Net Gain Objective

The biodiversity gain objective is met if the biodiversity value attributable to the development exceeds the pre-development biodiversity value of the onsite habitat by at least 10%.

This 10% is a fixed minimum amount, which the Secretary of State can increase in the future through further secondary legislation.

Local Planning Authority's will retain the right to impose a higher percentage in local planning policy provided they can justify the same within the Local Plan.



# Biodiversity Value Calculation

---

The Natural England metric (4.0) will be used to calculate net gain.

A “competent person” is required to use the metric.

The biodiversity value comprises a combination of:

1. The post-development biodiversity value onsite;
2. The biodiversity value of any registered offsite biodiversity gain allocated to the development; and
3. The value of any biodiversity credits purchased for the development

# Off-site Biodiversity Net Gain

To benefit from off-site biodiversity net gain the site in question must be registered on a public register operated by Natural England.

There will be an application process to enter a site on the register, with an anticipated determination period of 6 weeks, and an application fee of between £100 and £1,000 is currently proposed. There will also be an appeal process for a refusal to register.

The register is intended to provide transparency.

It will be a pre-condition requirement of any registration that the land is secured by way of legal agreement.

## Private Credits Market

- The government will not determine the price and open market competition will dictate the sale terms.
- Sellers will bear the risk that the price is sufficient to cover the costs of creating, enhancing, monitoring and maintaining the habitat.

## Statutory Credits

- Statutory Credits will be priced at an intentionally uncompetitive rate and it has been made clear that any such acquisition of credits should be a last resort.
- The ultimate intent is to phase statutory credits out at the earliest opportunity once the biodiversity market has matured.

- On-site and off-site biodiversity value has to be secured for at least 30 years after completion of the development.
- On-site provision can be achieved by either a planning condition, section 106 agreement or a conservation covenant.
- Off-site provision can be provided only by either a section 106 agreement or conservation covenant.



Confirmed exemptions:

- Permitted development;
- Irreplaceable habitats;
- Low existing biodiversity value sites;
- Householder applications;
- Biodiversity gain sites; and
- Small scale self-build and custom housebuilding.



# Opportunities and Points to Note

- Applies to England only
- Section 73 Applications transition provisions
- Small Sites and NSIPS transitional provisions
- Mandatory Requirement – so no viability argument
- On-site Management Expertise needed leading to greater costs
- 30 January 2020 is a key date
- Disposal of excess credits
- Habitat banks
- Stacking of Credits is permitted
- Chaos!!



# The Levelling Up and Regeneration Bill – Planning Reforms




**Presented by Name – Jamie Wallace MRTPI – Associate Director**  
**DLP Planning Limited**

[jamie.wallace@dipconsultants.co.uk](mailto:jamie.wallace@dipconsultants.co.uk)

[www.dipconsultants.co.uk](http://www.dipconsultants.co.uk)

June 2023

# Overview

- What is 'Levelling Up'?
  - Government's 12 Key Missions for Levelling Up
  - Levelling Up Fund
  - Levelling Up and Planning Reform
  - Summary of Levelling Up & Regeneration Bill – future changes to planning system
  - NPPF Amendments
  - Housing Need, Supply, Delivery & Plan Making
  - Green Belt, Older Persons Housing Needs, Building Beautiful, Density & Local Character
  - Climate Change, Other changes to note
- 
- A decorative graphic in the bottom right corner of the slide. It consists of a cluster of overlapping triangles in various shades of blue, ranging from light to dark, creating a textured, crystalline effect.

# How did we get here?

- First reference in 2019 Conservative Party Manifesto
- Political object - key 'buzz of Boris Johnson's premiership
- Political strategy to consolidate election success in traditional labour seats in 2019
- Justified by economic and social indicators
- Brexit key influence

## How the country voted

### 2019 seat map

● Con 
 ● Lab 
 ● Lib Dem 
 ● SNP 
 ● DUP 
 ● Other



Data: PA

### 2017 results

● Con 
 ● Lab 
 ● Lib Dem 
 ● SNP 
 ● DUP 
 ● Other



Map: Ben Flanagan | Esri | Esri UK 

643/650 seats declared

# How did we get here (Cont)?

- Planning reform – Planning for the Future White Paper Autumn 2020
- Fundamental reform to Planning System – zoning, new SM
- “Mutant algorithm” – linked to affordability and therefore would have seen more houses in more affluent areas to try and reach 300,000 homes target
- Revolt by Tory heartlands – ‘anti-localism’
- Pressures on Green Belt
- Amersham & Chesham By-Election

## Result =

- Robert Jenrick replaced by Michael Gove in Cabinet reshuffle
- Ditch SM changes in favour of ‘urban uplift’ – 35% increase on housing need in 20 largest cities
- Planning for Future canned in favour of ‘light touch’ reform



# Levelling Up White Paper – Feb 2022

**“Levelling up is a moral, social and economic programme for the whole of government. The Levelling Up White Paper sets out how we will spread opportunity more equally across the UK.”**

Taken from [www.gov.uk](http://www.gov.uk)

Highlights disparities between regions and within regions against economic, social and environmental measures



“We need faster growth, quicker public services and higher wages and we need to allow overlooked and undervalued communities to take back control of their destiny. Because we know that while talent is spread equally across the United Kingdom, opportunity is not.” SoS Michael Gove Feb 22

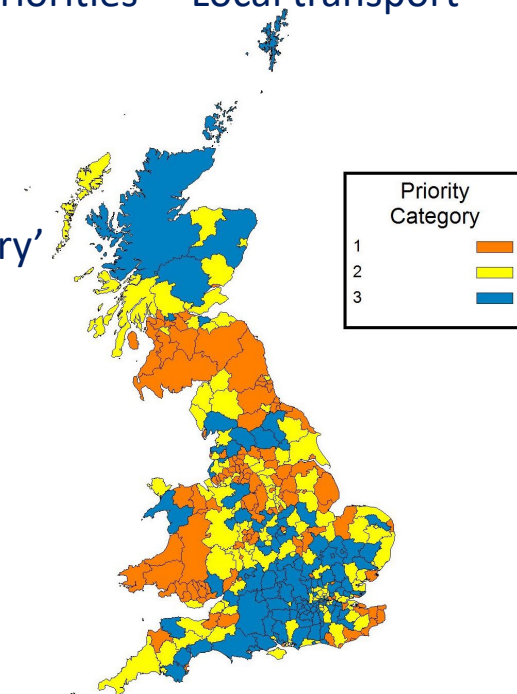
# 12 'Levelling Up' Missions

By 2030 the Government aims to:

1. Increase employment and productivity across the UK with a globally competitive city in each region.
2. Increase investment in R&D outside South East by min 40%.
3. Improve local transport connectivity 'closer to standard of London'.
4. Nationwide gigabit-capable broadband + 4G and 5G for most.
5. 90% of children to meet expected standards in reading, writing and maths in England.
6. Increase in people completing high and low skill training.
7. Raise life expectancy to by 5 years by 2035 and gap between highest and lowest to narrow.
8. Improve well being to improve and gap narrow.
9. Rise in 'pride in 'place' and satisfaction and engagement with local community increase.
10. Increase home ownership, especially first time buyers, reduce number of non decent' rented homes by 50%.
11. Reduce crime, focus on worst-affected areas.
12. Give a devolution deal to every part of UK that wants one.

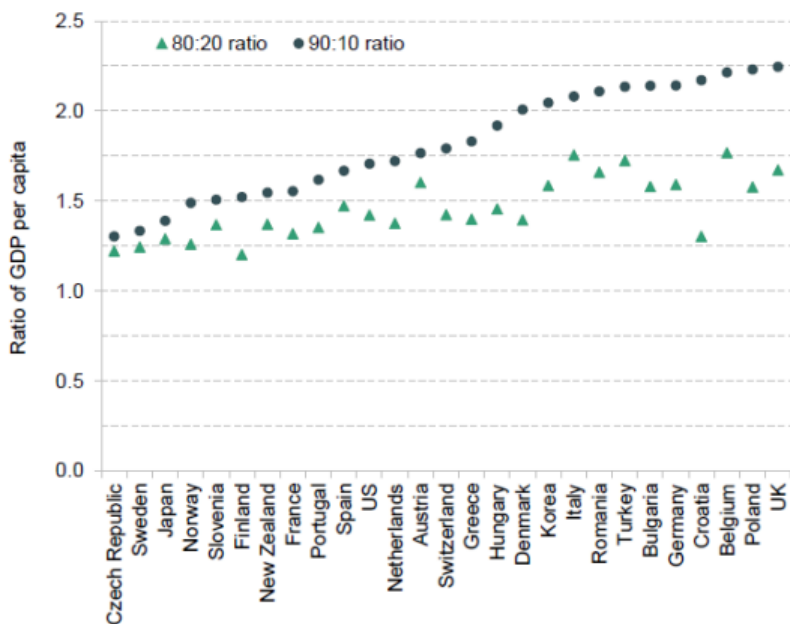
# Levelling Up Fund

- £4bn over period 2021-2024/25 – of which £800m to Scotland/Wales/N Ireland
- Invest in ‘local infrastructure’ and ‘high value investment priorities’ – Local transport schemes – Urban regeneration projects – Cultural assets
- Cross Departmental – Treasury, DfT, MHCLG
- Allocated to LA’s – competitive bid process
- Index of those most in need of levelling up ‘Priority category’
- 4 Assessment criteria
  1. 1. Characteristics of place – level of need
  2. 2. Deliverability
  3. 3. Strategic fit with local priorities
  4. 4. Value for money
- But index does not consider deprivation levels!



# Where and how?

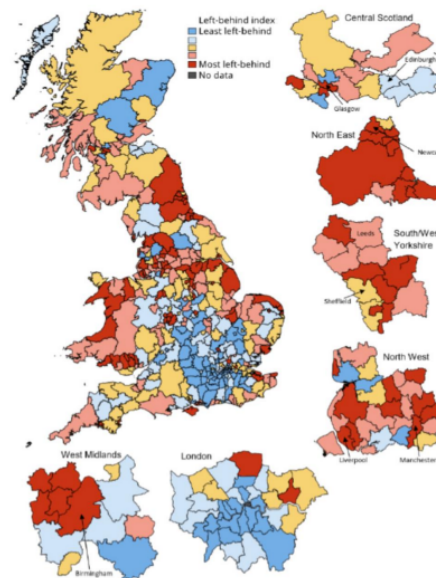
Figure 7.1. Measures of inequality in regional GDP per capita, by country



Note: Figures denote the ratio between GDP per capita in the 80<sup>th</sup> percentile ranked region and the 20<sup>th</sup> percentile ranked region (80:20), and the ratio between GDP per capita in the 90<sup>th</sup> percentile ranked region and the 10<sup>th</sup> percentile ranked region (90:10). Region defined as OECD 'small' (TL3) regions.

Source: Authors' calculations using OECD.Stat regional GDP (accessed 19 August 2020).

Figure 7.2. Quintiles of illustrative left-behind index



Note: Darker red areas indicate areas classified as in the most 'left-behind' fifth, with darker blue areas in the least 'left-behind' fifth. Boundaries are for lower-tier local authorities as of April 2019.

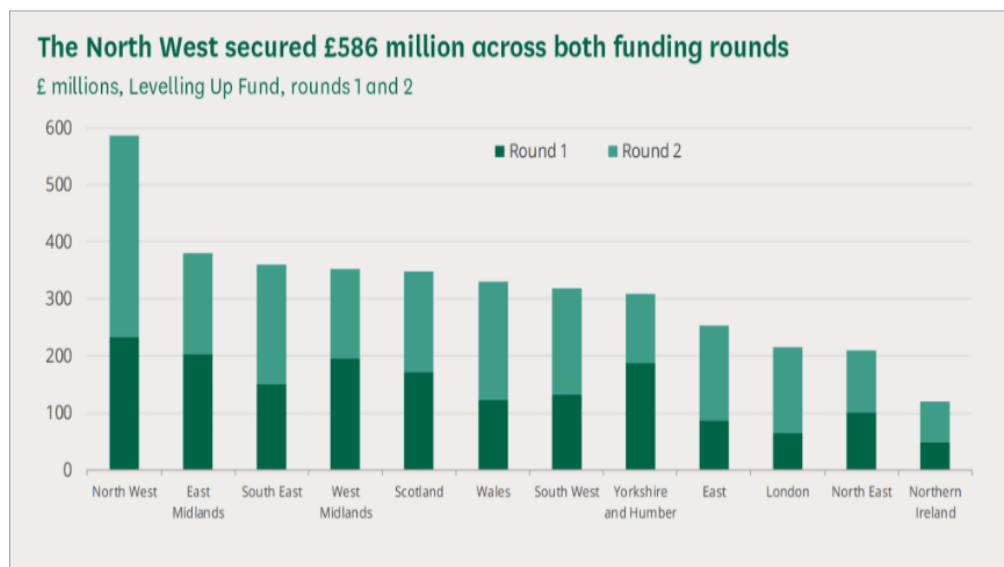
Source: See the online appendix to this chapter for details of components of the index.

Combines measures of pay, employment, formal education and incapacity benefits to identify areas 'left behind'



# Show me the money

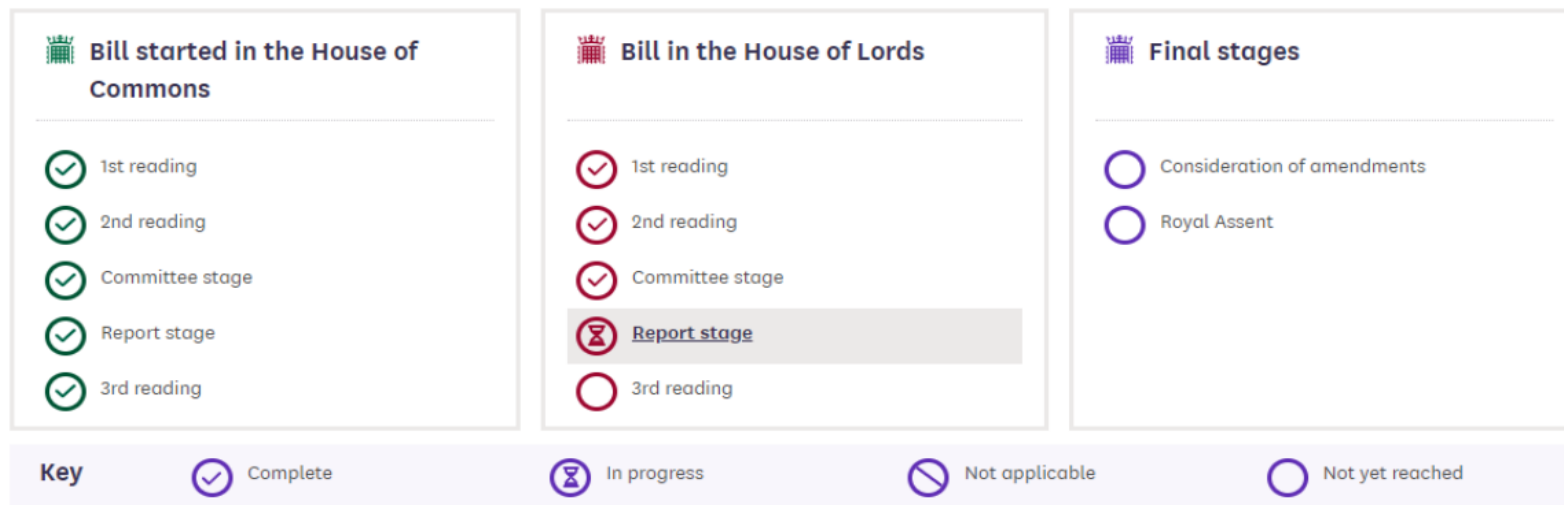
- Two Rounds of Funding so far.
- Successful first round bidders announced on 27<sup>th</sup> October 2021.
- A total value of £1.7 billion awarded. Notable projects include:
  - Aberdeen City Centre
  - South Derby Growth Zone
- Successful second round bidders announced on 19<sup>th</sup> January 2023.
- A total value of £2.1 billion awarded. Notable projects include:
  - West Yorkshire Bus Enhancement Package
  - Eden Project North
- Round three to come – no further details.



# Levelling Up & Regeneration Bill (LURB)

- Currently at Report stage on HoL
- Significant amendments made.

## Bill passage



## i. Plan Making

- Section 38(5) – Role of Development Plan and National Policy
- National Development Management Policies
- Duty to Cooperate
- Test of Soundness
- Design Codes
- Supplementary Plans
- Joint Strategic Plans
- 5 Year Supply protection
- Local Plan Timetable



# National Development Management Policies

- Intention is for a concise set of separate National DM Policies that would cover planning considerations that apply regularly in decision-making across England such as Green Belt matters, heritage assets and high flood risk;
- Current NPPF DM policies are 'material considerations' - do not have statutory status however with the LURB amendments national policy will trump local policy where inconsistent – no more 'tilted balance' (11d)?
- Starting point for National DM Policies - parts of the NPPF which apply to decision making;
- Local policies for shaping development and allocations would still remain matters for local plans;
- Full public consultation to take place following passage of LURB.

## National Development Management Policies - 2

- The case for National DM Policies:
  - 1) Swifter, slimmer local plans;
  - 2) Local plans will be more locally-relevant and easy to digest;
  - 3) Easier for applicants to align their proposals with national and local requirements;
  - 4) Provide greater assurance that important policy safeguards will be upheld statutory weight and applied quickly across the country;
  - 5) National policies can guide decisions even if the local plan is out of date.



## National Development Management Policies - 3

- Scope of the new National DM Policies:
  - 1) Existing policies aimed at decision-making in the NPPF;
  - 2) Selective new additions to reflect new national priorities e.g. net zero;
  - 3) Selective new additions to close 'gaps' where existing policy is silent on matters that regularly affect decision-making across the country.
- Food for thought –
- Timing? Inconsistency tests? Repetition? ....

# Test of Soundness

- The Prospectus proposes a simplification of the tests of ‘soundness’ such that Local
- Plans under preparation are no longer required to be ‘justified’;
- Plan examinations will assess whether a proposed housing target meets local need as far as possible and takes account of other policies of the Framework, and will be effective and deliverable;
- There is no clear guidance on what degree of evidence will be required and how
- Examinations will assess the appropriateness of, and reasonable alternatives to, the spatial strategy;
- Without requiring plans to be justified, there is a considerable risk that ‘ineffectual’ plans, which are short term and fail to meet the objective needs of local communities, could be adopted;
- The consequence of this, will be the ‘postponement’ of development meaning that a range of needs are simply not met.

# Duty-to-Corporate & Urban Uplift

- LURB set to revoke the ‘Duty to Cooperate’, DLUHC is considering implementing an “alignment policy”;
  - Designed to ensure co-operation across authorities where strategic planning considerations are established
- Consultation Report does not indicate any future arrangements to ensure needs are met in full as part of strategic-plan making;
- As a result the Duty to Cooperate is proposed to be removed and unless there is a joint spatial plan or spatial development strategy delivery of the urban uplift will not be required, but significantly still forms part of the Standard Method calculation;
  - This approach in connection with the other justifications for not meeting need (to be considered in subsequent slides i.e., Green Belt and local character) risks rendering the Urban Uplift completely ineffectual.



# Developer Accountability

- Separate to the NPPF changes, the Government is seeking changes to national policy to increase the responsibilities on developers for the delivery of housing intended to address *“previous irresponsible behaviour in decision making”* such as non-compliance or unimplemented permissions;
- Little demonstrable evidence of widespread ‘unreasonable’ behaviour;
- Should negligent behaviour be taken into consideration?

*“bad developers would no longer be able to manipulate the planning system, strengthening local peoples’ confidence in it”*



# Developer Accountability

- Two options being considered for how to account for reckless behaviour:
  - **Option 1:** making such behaviour a material consideration when LPA's determine planning applications.
  - **Option 2:** allowing LPA's to decline to determine applications submitted by applicants who have demonstrated a track record of past irresponsible behaviour prior to the application being considered on its planning merits.
- Further consultation proposed with stakeholders
- Three actions will be implemented in relation to build out rates via potential further modifications to policy following the passage of the LURB:
  - Data on developers not fulfilling their promises will be published.
  - Developers will be required to publish data on rates of build and sale.
  - Developments that would have an unacceptably slow delivery rate might be rejected.
- Second consultation expected on ideas for imposing a fee on developers who are delivering too slowly.

## ii. Development Management

- Increasing planning fees
- Section 73(B) – power to amend description of development, as long as it is ‘substantially the same’
- Development Commencement Notices and Completion Notices
- Charges for Statutory Consultee Advice
- Powers to charge developers and promoters for statutory consultee advice in certain circumstances



## iii. Neighbourhood Planning & ‘Street Votes’

### ‘Neighbourhood Priorities Statement’

- Set out principal needs and prevailing views of the community in the neighbourhood area in a simpler format

### Street Votes

“96 Street votes The Secretary of State may by regulations make provision for a system that permits residents of a street to— (a) propose development on their street, and (b) determine, by means of a vote, whether that development should be given planning permission, on condition that certain requirements prescribed in the regulations are met.”



## iv. Heritage

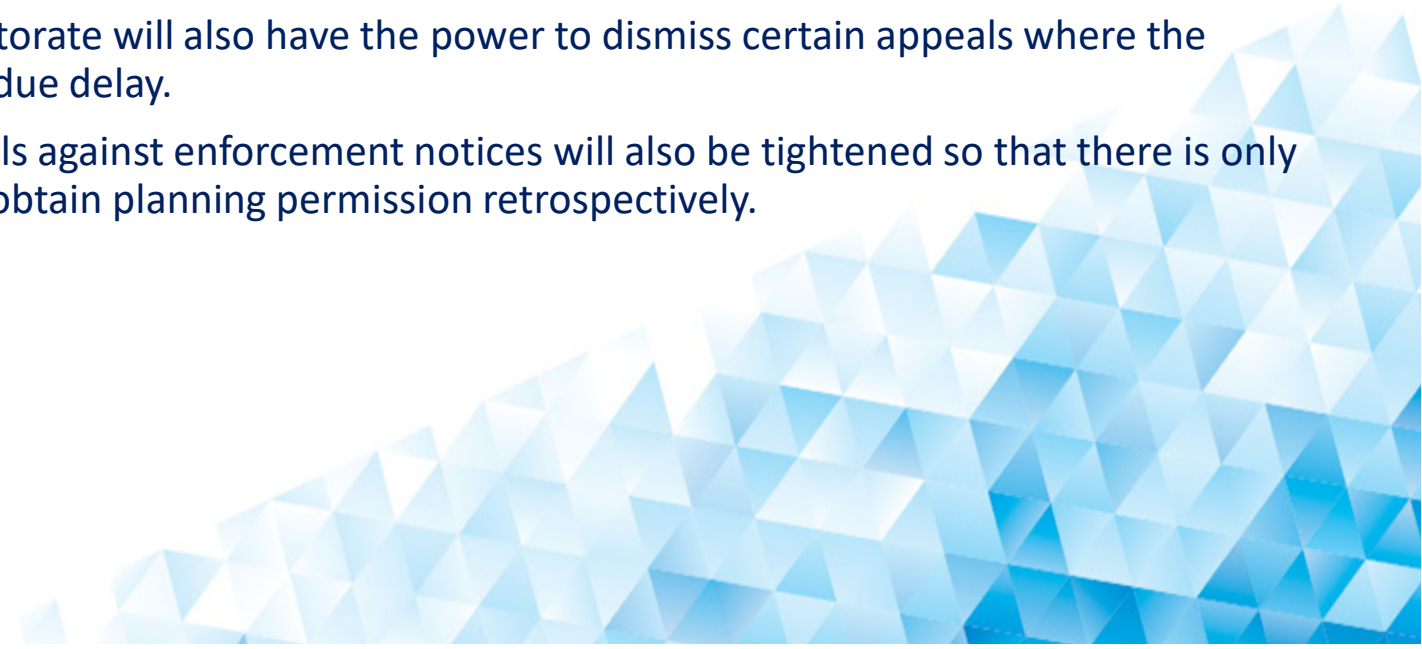


- The Bill also emphasises the role in planning in protecting the historic environment and will require LPAs to maintain Historic Environment Records.
- The Bill also improves the enforcement powers available to protect listed buildings by introducing temporary stop notices to stop unlawful development.

## v. Infrastructure Levy (IL)

- Compulsory for all LPAs
- Will replace CIL (Except in London)
- S106 to be retained, but for 'largest applications only' where large scale on site infrastructure etc is required
- Charges are to be based on the Gross Development Value (GDV) rather than floorspace
- Rates can vary within LPA area
- A new 'Right to Require', will remove negotiations for on-site / off-side Affordable Housing
- LPAs will be expected to produce 'Infrastructure Delivery Strategies'
- Implementation expected to take several years and through a 'test and learn' approach.

## vi. Enforcement

- The Bill intends to make the enforcement of planning breaches more effective and efficient by:
  - Revising the time limit for enforcement to 10 years in all cases (i.e. 4 year rule to be scrapped).
  - The introduction of Enforcement Warning Notices.
  - An increase in fines associated with certain planning breaches.
  - The doubling of fees for retrospective applications.
  - Extending the time period for temporary stop notices from 28 to 56 days.
  - The Planning Inspectorate will also have the power to dismiss certain appeals where the appellant causes undue delay.
  - The scope for appeals against enforcement notices will also be tightened so that there is only one opportunity to obtain planning permission retrospectively.
- 
- A decorative graphic in the bottom right corner of the slide, consisting of a cluster of overlapping triangles in various shades of blue, creating a low-poly, crystalline effect.

## vii. Environmental Impact

- Replace the EU SEA and EIA regimes with a new 'clearer and simpler' system of Environmental Outcome Reports, based on tangible environmental outcomes set by Government.
- Includes a non-regression clause with current EU legislation meaning that the standards of environmental protection currently expected will not be reduced.





## LURB in summary.....

- LURB seeks to set out Government's plan to tackle regional inequality
- Evolution not revolution of planning system - stops short of wholesale changes seen in Planning White Paper
- Re-emphasis on plan-led system
- National DM Policies a sign of increased centralisation, move away from Localism?
- Importance of Design Codes & good design more generally
- Infrastructure Levy will be controversial
- Devil will be in the detail – secondary legislation will be key
- Expect DLUHC to launch further consultations in addition to:
  - Infrastructure Levy – Closed 9<sup>th</sup> June 2023
  - A new approach to environmental assessment – Closed 9<sup>th</sup> June 2023
  - Introduction of a use class for short term lets and associated pdrs – Closed 7<sup>th</sup> June 2023
  - Fees and performance consultation – Closed 25<sup>th</sup> April 2023
- Amendments to the NPPF – Closed 2<sup>nd</sup> March 2023

# NPPF Amendments.....

- 'Prospectus' document + tracked changes version of NPPF
- Follows on from wider reforms via Levelling Up and Regeneration Bill currently going through House of Lords
- Proposes short term 'immediate updates' to NPPF – e.g. tinkering?
- Key driver is to enable LPAs to get plans in place more quickly –
- Government believe this is the key to increasing housing delivery
- Also seeking wider views on planning reform and areas to consider in wider review of NPPF after LURB passed as law
- Role of National Development Management Policies (NDMPs)
- Confirms Government remains committed to delivering 300,000 homes per year!!

# Housing Land Supply & Housing Delivery Test

- DLUHC are proposing to remove the requirement for LPAs with an up-to-date Local Plan, to demonstrate a rolling 5-year housing land supply;
- Government are also consulting on how historic oversupply can be considered as part of five-year housing land supply calculation where there is no up-to-date Plan;
- To further 'simplify' the assessment process, it is proposed to remove the requirement for a 'buffer' to be included within the assessed supply of deliverable sites;
- When LPA's can show "sufficient" deliverable permissions to satisfy the housing demand stated in a Local Plan, "the presumption" will not be applied as a result of underdelivery;
- This includes the 20% buffer as a consequence of a failure to meet the Housing Delivery Test (HDT) in the case of a significant under-delivery in the last three years;
- No details provided of how deliverability will be assessed more rigorously at Examination.

# Green Belt

- Key change is draft paragraph 142 which states:  
“Green Belt boundaries are not required to be reviewed and altered if this would be the only means of meeting the objectively assessed need for housing over the plan period”
- However, where LPA’s wish to review their Green Belt boundaries they are not prevented from doing so;
- Likely to restrict many areas in meeting their housing needs;
- Contradictory approach?
- Where an LPA does not consider it appropriate to undertake a ‘wider assessment’ of Green Belt boundaries, it can, however, undertake a review to consider meeting specific housing needs such as older persons housing;
- A matter of ‘local choice’.

# Pause to emerging Local Plans

The following Local Plans have since 'paused' following NPPF consultation (specifically on Green Belt grounds):

- Mole Valley District Council
- South Staffordshire District Council
- North Somerset Council

**Controversial plan for thousands of homes on green belt 'paused' by council chiefs**

**Mole Valley pauses major 6,000 home blueprint saying it would be 'unwise' to carry on**



# Older Person's Housing Need

- Positive to see the Government's exploration of how the Framework may enhance and support the provision of housing for older people;
- Key change is draft paragraph 63:
  - *“the size, type and tenure of housing needed for different groups in the community should also be assessed and reflected in planning policies (including, but not limited to: those who require affordable housing; families with children; older people **including for retirement housing, housing-with-care and care homes...**”*
- The Government are also launching a 'taskforce' on older people's housing;
- Is it enough?

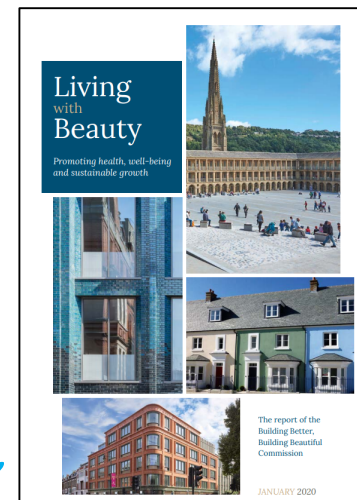


# Building Beautiful - 1

- Stems from the Building Better, Building Beautiful Commission;
- Living with Beauty report 2020;
- Led to the NPPF 2021 revisions and the National Model Design Code;
- NPPF Consultation changes:

Chapter 8 – para 94

*“Planning policies and decisions should aim to achieve healthy, inclusive and safe places and beautiful buildings...”*



- Chapter 12 title – “Achieving well-designed and beautiful places”
- Emphasis on the use of Design Codes in line with the National Model Design Code.

## Building Beautiful - 2

- What does this mean? What will change?
- More responsibility for Local Authorities to produce Design Codes with communities in line with the National Model Design Code;
- Design Codes will set clear minimum standards on development in an area - height, form, density etc.;
- Permitted Development rights where prior approval applies will be amended to take into account design codes that are in place.

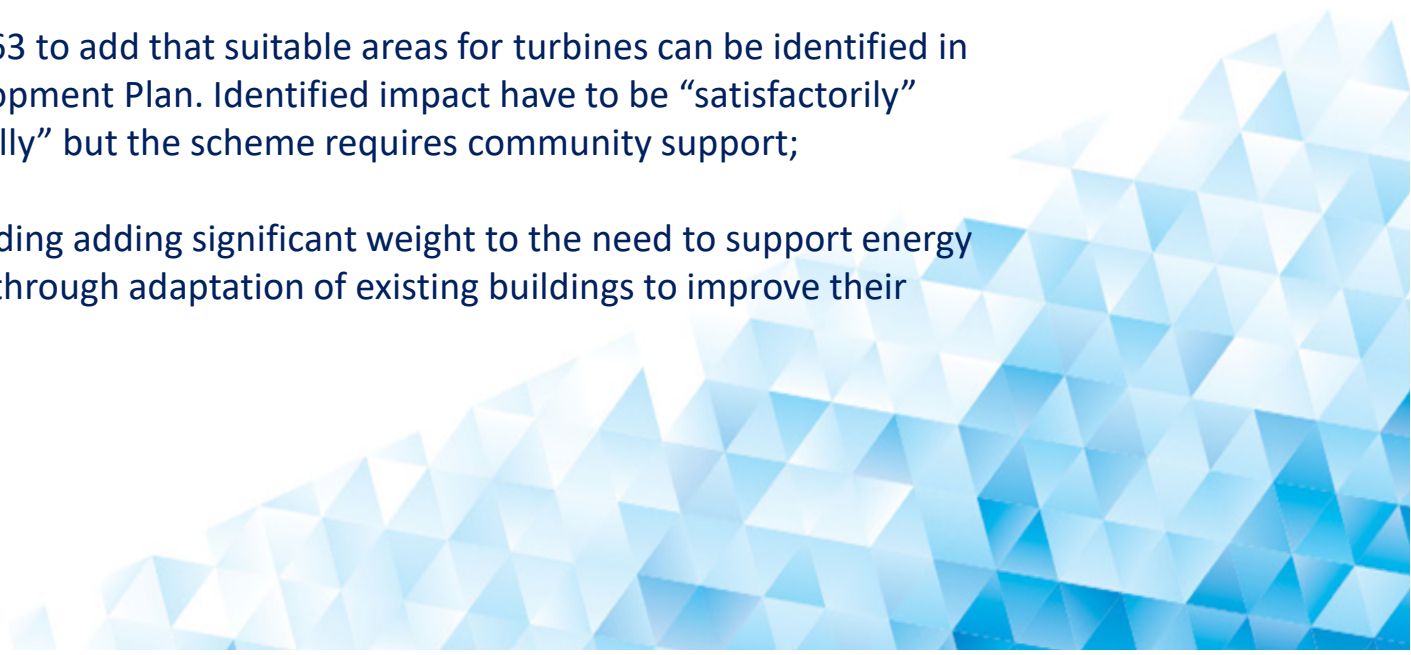




# Other changes to note...

## Climate Change

- Paragraph 160 – point c) support for repowering and life extension of existing renewables sites where the impacts can be made acceptable;
- New footnote 62 – wind energy schemes can be granted through LDO, NDO or CRtBO if the planning impacts identified by communities can be addressed and the community supports;
- Amendment to footnote 63 to add that suitable areas for turbines can be identified in SPDs as well as the Development Plan. Identified impact have to be “satisfactorily” addressed rather than “fully” but the scheme requires community support;
- Paragraph 161 – new wording adding significant weight to the need to support energy efficiency improvements through adaptation of existing buildings to improve their energy performance.



# Other changes to note...

## Conserving and enhancing the natural environment

- Amendment to footnote 67 availability of agricultural land used for food production should be considered, along with other policies in the Framework, when deciding what sites are most appropriate for development.

## Effective use of land

- 122 explicitly refers to Mansard roofs as a form of upward extension



# Transitional Arrangements

- Paragraphs 225-226
- 2024 – reformed plan making system
- June 2025 – deadline for plans under current arrangements
- December 2026 deadline for plan adoption



## To Conclude...

- Consultation set out short term changes to NPPF to align with Government objectives and 'speed up' plan making;
- Immediate impact seems to have had opposite effect – number of LPAs using flux as opportunity to delay or 're-assess';
- And at what cost? Serious doubts over ability to achieve 300,000 homes per annum;
- Politics of GB and local character now a reason to reduce numbers;
- Removal of 5YHLS will also affect delivery if plans aren't delivering;
- Increased burdens on LPAs to produce Design Codes. LPA Resourcing?
- But – NDMPs and policies on Climate Change are positive steps;
- More to come with LURB and more wholesale NPPF changes expected later this year...Watch this space!