



## Planning Bulletin: December 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.*

### Legislation and Matters Arising

#### *Emerging Legislation*

#### *Government Bills*

- **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](#). The promoters' (HS2 Ltd, the Department for Transport etc.) [response to the Select Committee's second special report](#) and the [response to the Select Committee interim report](#) have also been published.
- **Agriculture Bill**: amongst other things, the Bill authorises new expenditure for certain agricultural and other purposes; makes provision about direct payments during an agricultural transition period following the United Kingdom's departure from the European Union; and confers power to modify retained direct EU legislation relating to agricultural and rural development payments and public market intervention and private storage aid. The Bill concluded report stage on 20 November, the details of which can be found [here](#). The Bill as amended in Committee is available [here](#), explanatory notes [here](#), and a briefing paper [here](#).
- **Fisheries Bill**: amongst other things, the Bill makes provision about grants in connection with fishing, aquaculture or marine conservation. Introduced in October, the Bill has now been committed to a Public Bill Committee, which is expected to report to the House by 19 December. The Bill is available [here](#), and explanatory notes [here](#).
- Defra has [consulted](#) on the development of an *Environmental Principles and Governance Bill* (Historic England's response is available [here](#)). The Bill will mark the creation of a new statutory and independent environmental watchdog to hold government to account on environmental ambitions and obligations once the UK has left the EU. Defra recently [announced](#) that it is working towards publishing the consultation response before the 26 December deadline set in the *European Union (Withdrawal) Act 2018* for the draft Bill and the establishment of a new environmental authority.

#### *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. The [second reading](#) took place on 27 April; the committee stage has yet to be scheduled. A briefing is available [here](#).

- *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 2017.
- *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. The second reading took place on 24 November 2017, and the 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. The first reading took place on 13 July 2017, and second reading has yet to be scheduled. Explanatory notes are available [here](#).
- *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. Its first reading took place on 5 September 2017; second reading is expected to take place on 15 March 2019.
- *Clean Air Bill*: the Bill requires the Secretary of State to set, measure, enforce and report on air quality targets; to make provision about mitigating air pollution; to make provision about vehicle emissions testing; and to restrict the approval and sale of vehicles with certain engine types. Its first reading took place on 22 November 2017; second reading is scheduled for 25 January 2019.
- *Planning (Appeals) Bill*: the Bill limits the grounds of appeal against decisions on planning applications consistent with a neighbourhood development plan or local plan. It was introduced on 4 December, and second reading is scheduled to take place on 25 January 2019.

### *Secondary Legislation*

#### *Case Update*

- The *Dill v Secretary of State for Communities and Local Government 2018* case related to the question of whether an Inspector at appeal could query the listed building status of the limestone piers and lead urns which were on the statutory list. The Court of Appeal in its [judgement](#) concluded that the intention of the legislation was that for the purposes of applications or appeals for listed building consent or enforcement, being on the list is determinative of the status as a listed building. The Inspector dealing with the appeal was correct to say he could not question the validity of the listing of the piers and urns. The rule of law is that listing can be the subject of challenge through judicial review. There are three distinct ways in which something may qualify as a listed building under [section 1 \(5\)](#) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*. The first by being included on the statutory list under the main text of the section, the second by being an object or structure fixed to a building which is on the list and the third is being an object or structure which lies within the curtilage of a building which is on the list and has done so since 1 July 1948. In this particular case the piers and urns had been included on the statutory list from 1986 in their own right.

## *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**

### *House of Lords Constitution Committee – The Legislative Process: The Delegation of Powers*

- A report by the Committee noted ‘an increasing and constitutionally objectionable trend for the Government to seek wide delegated powers, that would permit the determination as well as the implementation of policy’.

### *Business, Energy and Industrial Strategy Committee: Energy Efficiency Inquiry*

- The Business, Energy and Industrial Strategy Committee has launched an inquiry (with the deadline for submissions being the 17 January) into whether the Government’s current delivery of energy efficiency improvements within residential, commercial and public-sector buildings is consistent with meeting targets set out in the Clean Growth Strategy, and the fourth and fifth carbon budgets. This inquiry is also likely to focus on action to upgrade the energy efficiency of fuel-poor homes and the Government’s work to drive demand for energy efficiency measures within able to pay households.

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

- MHCLG’s Technical Consultation on Updates to National Planning Policy and Guidance closed on 7 December. From the commitments in the consultation document, and in the Government’s response to the Environmental Audit Committee Heatwaves: Adapting to Climate Change report, it is clear that there will be revisions to the new NPPF.

### *Draft National Policy Statement for Water Resources Infrastructure*

- Defra has launched a consultation on the Draft National Policy Statement for Water Resources Infrastructure (NPS) (closing date 31 January), in response to the goal in the Government’s 25 year environmental plan regarding clean water supply. A twin-track approach is proposed, including both demand management and new water supplies. The NPS sets out the need and government’s policies for the development of nationally significant infrastructure projects relevant to water resources in England.

### *Biodiversity Net Gain: Updating Planning Requirements*

- Defra has launched a consultation on Biodiversity Net Gain: Updating Planning Requirements (closing date 10 February). Views are sought on how the planning system in England can be improved to protect the environment (biodiversity net gain) and build places to live and work. The consultation’s proposals would require all development to achieve a biodiversity net gain, or, if a loss is unavoidable, then the developer would have to pay a charge. In particular, Defra is interested in hearing views on:
  - Standardising the approach so that it is simpler and clearer for developers
  - Whether the Government should add this requirement
  - How the Government could implement the net gain approach
  - How the Government should measure and monitor the net gain approach.

## Guidance

### *Planning Practice Guidance (PPG)*

- MHCLG has advised that it is continuing to review the PPG following the publication of the revised NPPF, and that it anticipates issuing updated guidance in December and March.

## 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.

### *Forthcoming Historic England Advice*

- Following earlier public consultation, a revised edition of *HEAN 1: Conservation Areas: Designation, Appraisal and Review* will be published in coming weeks.

## 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. Visit the webpages for details of courses on (amongst others):
    - NPPF Decoded: Plan Making (places available in Ely on 7 February 2019 and Leeds on 28 March 2019)
    - NPPF Decoded: Development Management and Archaeology (this course is fully booked, but please contact [helmbookings@historicengland.org.uk](mailto:helmbookings@historicengland.org.uk) if you would like to be placed on the waiting list).
  - Heritage Practice: training courses for heritage specialists in technical subjects and techniques. Visit the webpages for details of courses on (amongst others):
    - Understanding Setting within the Context of Heritage Assets (25-26 March 2019).
  - 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:
    - Section 215 Notices (13 December 2018 at 13:00)
    - Article 4 Directions (26 February 2019 at 14:00).
  - All courses, and further information can be accessed here on the Historic England website: <https://historicengland.org.uk/services-skills/training-skills/>.

## Infrastructure

### *HS2 Property Price Support Scheme Technical Consultation*

- The Government consulted upon the *HS2 Property Price Support Scheme (PPSS) Technical Consultation* between May and July 2018. This looked at introducing a PPSS (a tool that ensures no financial loss is suffered by property owners due to generalised blight) for HS2. On 13 November the government published its consultation response analysis. The conclusion was that due to the favourable response to a PPSS, there could be an opportunity for a further phase in which specific questions about the structure of a PPSS could be asked, from which an estimated cost could be derived.

## Other Initiatives

### *The Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*

- The UK Government and European Commission issued a document on 14 November that, inter alia, stated that environmental protection laws, including those covering environmental impact assessments (EIAs), will not be weakened following the UK's departure from the EU during the period of the proposed 'backstop'.
- As part of the 'backstop', the document states that 'the level of environmental protection provided by law, regulations and practices is not reduced below the level provided by the common standards applicable... at the end of the transition period'. This would apply to EIA and strategic environmental assessment (SEA), and would mean that current regulations would remain following the transition period after the UK's withdrawal from the EU (ending in December 2020), if the 'backstop' takes effect at that stage.
- The agreement follows the Government's publication of a series of statutory instruments which confirm that the laws governing the requirement for EIAs and SEAs would remain after the UK leaves the EU.

### *Principles of Selection for Listed Buildings*

- DCMS has updated the *Principles of Selection for Listed Buildings*. The document includes new and expanded definitions for architectural and historic interest (paragraph 16), makes reference to the 'character and appearance of conservation areas' (paragraph 17), shifts the 1840 date for the age and or rarity of buildings to 1850, and refines the considerations for buildings under 30 years old (paragraph 19).

### *Planning 2020: Raynsford Review of Planning in England: Final Report*

- The final report of the Raynsford Review (an independent review of planning in England commissioned by the Town and Country Planning Association in 2017) has been published (an executive summary can be found here). The report states that the planning system is in need of reform and makes twenty-four recommendations which would result in six characteristics of a revised system. This revised system would:
  - Have a clear purpose, prioritising the safety and wellbeing of people within a framework of long-term sustainable development, so as to create places of beauty, safety and resilience.
  - Offer greater certainty and predictability to all parties, enabling investors, developers and communities to feel more confident in a genuinely plan-led system.

- Provide a clearer definition of the rights and responsibilities of citizens in relation to planning, and a more logical framework for decision-making at the most appropriate level.
- Achieve a better alignment between the various government departments and their agencies, as well as local government, in planning for the needs of the whole nation.
- Secure a fairer balance between the interests of landowners and the public in terms of sharing the uplift in land value derived from development.
- Attract sufficient people with energy, talent and commitment into both the public and private sectors to ensure an adequate supply of imaginative, skilled and committed planners who can help deliver inspirational place-making.

#### *Coastal Revival Fund*

- MHCLG has made further awards from the Coastal Revival Fund totalling almost £1 million to restore coastal landmarks and bring economic growth to coastal communities. This will assist 25 coastal projects (a list of these can be seen here), of which six are classed by Historic England as ‘at risk’.

#### *Proposal for a New Approach to Building: Call for Evidence*

- As announced in the 2017 Budget, the Infrastructure and Projects Authority (and HM Treasury) has launched a call for evidence on a proposal that five departments should operate a ‘presumption in favour of offsite construction’ (closing date 17 February).

#### *Heritage Counts 2018*

- Historic England has published further information in relation to its Heritage Counts 2018 research, which focuses on the commercial uses and business occupiers of heritage. This includes information on Heritage in Commercial Use, a series of Case Studies, data on various Heritage Indicators and Regional Reports.

#### **Current Consultations**

- Defra’s call for evidence for its independent review of National Park and AONB landscapes (closing date 18 December).
- HS2’s consultations on the working draft Environmental Statement for HS2 Phase 2b (Crewe to Manchester and the West Midlands to Leeds) and Equality Impact Assessment (closing date for both 21 December).
- MHCLG’s consultation on compulsory community pre-application consultation for shale gas development (closing date 7 January).
- MHCLG’s Planning Reform: Supporting the High Street and Increasing the Delivery of New Homes consultation (closing date 14 January):
  - Part 1. Permitted development rights and use classes
  - Part 2. Disposal of local authority land
  - Part 3. Canal & River Trust: draft listed building consent order
  - Part 4. New town development corporations: draft compulsory purchase guidance
- Historic England’s consultation on the draft Conservation Management Methodology and Principles for the draft LBCO (closing date 14 January).

- The Business, Energy and Industrial Strategy Committee's Energy Efficiency Inquiry call for evidence (closing date 17 January).
- Defra's consultation on the draft National Policy Statement for Water Resources Infrastructure (closing date 31 January).
- Defra's consultation on Biodiversity Net Gain: Updating Planning Requirements (closing date 10 February).
- The Infrastructure and Projects Authority and HM Treasury's Proposal for a New Approach to Building: Call for Evidence (closing date 17 February).

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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](mailto: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)
  - *HEAN 11: Neighbourhood Planning and the Historic Environment* (October 2018)