A long-term plan for housing + consultations galore + a decision for M&S = a jam-packed Town Legal update

It has been a busy week in the planning world with a major speech from the Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities announcing a 'long-term plan for housing'; the launch of consultations on increases to planning application fees, new and amended permitted development rights and the implementation of local plan-making reforms; and the long-awaited decision by the Secretary of State in relation to Marks and Spencer's proposals for a new flagship store on Oxford Street. In this piece, we bring you up to speed with all of these developments in turn. As always, please do get in touch with any of the team at Town Legal if you would like any further information or to discuss any of these matters.

Government announces long-term plan for housing (with some longstanding ideas)

Introduction

This week, the Government has re-pledged to meet its manifesto commitment to build 1 million new homes over this Parliament and also detailed a 'long-term plan for housing' with the aspiration of supplying 'beautiful, safe, decent homes in places with high-growth potential in partnership with local communities'[1]. Unsurprisingly, the planning system has not escaped the clutches of the new plan, with the press release summary referring to 'new measures to unblock the planning system'.

In a speech delivered on 24th July, the Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities, boldly invoked the spirit of Winston Churchill in emphasising the importance of quality housing. He explained that the long-term plan comprises 10 principles:

1. The regeneration and renaissance of the hearts of 20 of our most important towns and cities.
2. Supercharging Europe's science capital.
3. Building beautiful – and making architecture great again.
4. Building great public services into the heart of every community.
5. Communities taking back control of their future.
6. Greener homes, greener landscapes and green belt protection.
7. A new deal for tenants and landlords.
8. Ensuring that every home is safe, decent and warm.
9. Liberating leaseholders.
10. And extending ownership to a new generation.

For the purposes of this piece, we focus on the proposals of primary relevance to the planning sector.

Unblocking the planning system

Starting with the planning measures featured within the plan, the focus is described as being to unleash building on underused sites in high-demand regions. Back to the Government's old friend; permitted development rights. Yet again, the Government's planning reform involves taking steps which effectively seek to remove planning from the planning system. This time, the Government is

[1] The words 'beautiful' and 'decent' might be regarded as rather jarring but it appears that the intent is for 'beauty' to be secured in relation to design and 'decent' to refer to quality.

targeting larger department stores, space above shops and office space, farm diversification and development and homeowner extensions. Another consultation on new and amended permitted development rights has been published to coincide with launch of the plan.

Steps designed 'to unblock the bottlenecks in the planning system that are choking and slowing down development, and stopping growth and investment' are a new £24 million Planning Skills Delivery Fund to scale up local planning capacity; establishing a new "super squad" team of leading planners and other experts charged with working across the planning system to unblock major housing developments (turbo-charged with £13.5 million in financial support) and increasing the amount developers pay in planning fees (following the recent consultation) to which the Government responded on 25 July. The Government laid a draft statutory instrument before Parliament in relation to the proposed planning application fees on 20th July. The first fixture for the "super squad" is away to Cambridge before they take on locations across the eight Investment Zones.

There is also a nod to forthcoming changes to the NPPF which are due to be published later this year alongside the Levelling Up and Regeneration Bill (assuming it passes through Parliament). In a sneak preview, we can expect these to prescribe that development should proceed on adopted sites unless there is a strong presumption against; that local councils should be open and pragmatic in agreeing changes to developments where conditions mean that the original proposals may longer be viable; and that a more permissive planning regime should apply to brownfield land. The plan does not indicate any further tightening of green belt policy.

The lucky 20

The plan picks up on the commitment in the Levelling Up White Paper to 'proactively identify and engage with 20 places in England' to help deliver transformational regeneration projects. The White Paper signalled an intention to start with Sheffield and Wolverhampton and the plan now identifies Cambridge, inner-city London and central Leeds as the next targets on the list.

Following a visit from the "super squad", Cambridge is also to be 'supercharged as Europe's science capital' with a vision to create a new quarter of neighbourhoods for people to live in, work and study along with the requisite supporting infrastructure. A Cambridge Delivery Group is to be established, backed by £5 million in funding, to begin driving forward this project and consider an appropriate delivery mechanism to lead the planning process, land acquisition and engagement with developers. In the meantime, the Cambridge Delivery Group is to focus on immediate issues constraining development such as water scarcity.

Although avowedly Cambridge-centric, the plan also specifies proposals for other locations which the Government has identified as ripe for the guiding hand of state intervention. A 'Docklands 2.0' vision (described as a continuation of the original Michael Heseltine vision) in East London is announced for up to 65,000 homes across multiple sites of significant scale including at Thamesmead, Beckton and Silvertown; £1 billion of the Affordable Homes Programme is to be directed towards regeneration in London and another £1 million is to be used to look at innovative new ways that industrial land can be released for housing in the capital; there is a commitment to work with local partners in central Leeds to regenerate the city centre and explore a West Yorkshire mass transit system and to continue working closely with local partners in Barrow-in-Furness to help make it a new powerhouse of the North; and £800 million from the £1.5 billion Brownfield, Infrastructure and Land fund is to be used to unlock 56,000 new homes across England including in Sheffield.

The Government has picked its winners and then seeks to square this with a so-called 'new philosophy of community-led housing'.

The beauty of taking back control

The plan includes two proposals designed to ensure that communities accept the new homes being thrust upon them. Acceptance is predicated upon such new homes being "beautiful, well-connected, designed with local people in mind and…accompanied by the right community infrastructure and green space".

The first proposal (which was, in fact, announced back in 2021), is the launch of the 'Office for Place' (headquartered in Stoke-on-Trent), a new body with Nicholas Boys Smith as its interim chair. The Office is tasked with leading a design revolution and ensuring that new places are created in accordance with the very best design principles. The body will support residents to 'demand what they find beautiful from developers', acknowledging the potential for a multi-faceted perception of beauty. The second proposal is to support councils to deliver high quality up-to-date local plans (which are simpler, shorter and more visual) by launching a new consultation to seek views on proposals to simplify the system of developing a new local plan.

Common decency

The plan emphasises that the pursuit of a significant quantity of new homes must not come at the expense of quality. Much of the focus on quality is directed towards building safety, specifically with regard to fire risk.

In particular, the plan confirms the intention to mandate second staircases in new residential buildings above 18m which is in contrast to 30m, as proposed in the recent consultation on amendments to Building Regulations. In an attempt to provide comfort to the industry which has undoubtedly been rocked by the uncertainty associated with the implications for already-consented proposals, the Government notes that this new regulation cannot jeopardise the supply of homes that have been planned for years and transitional arrangements will be designed in the summer with the aim of securing the viability of projects which are already underway, avoiding delays where there are other appropriate mitigations. In addition, the Cladding Safety Scheme will be open to all eligible buildings.

In addition, new design codes are to be rolled out for new build homes and the Government will consult on a universal Future Homes Standard 'to deliver comfortable homes built to be zero-carbon: warm in the winter and cool in the summer'.

Conclusion

Notwithstanding the announcement of some new members of the 'lucky 20', the new "super squad", the new 18m threshold for second staircases, some new consultations and the proposed allocation of certain funds, the general themes covered in the long-term plan for housing are not novel. Support for brownfield development, streamlining the planning system, the Office for Place, the 'building better, building beautiful' agenda, the general creep of permitted development rights and changes to local plans are well-worn features of Government policy. Much of the plan represents a reinvention of existing ideas.

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Planning application fee increases imminent

The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023 (the "Draft Regulations") were laid before Parliament on 20th July. The Draft Regulations amend the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 and follow on from the Government's recent consultation on 'stronger performance of local planning authorities supported through an increase in planning fees'. The consultation proposed raising planning fees for major applications by 35% and fees for all other applications by 25%. The consultation included examples of the current and new fees by way of the following table:

Application	Current fee	Proposed fee (35% major applications, 25% all other applications)
Prior Approval	£96	£120
Householder	£206	£258
Non-major (residential - less than 10 dwellings, or sites of less than 0.5 hectares; non-residential, less than 1,000 sqm gross floorspace, or sites less than 1 hectare)	£462 per dwelling or per 75 sqm of non-residential floorspace	£578 per dwelling or per 75 sqm of non-residential floorspace
Major (residential - 10 or more dwellings or sites of 0.5 hectares or more; non-residential, 1,000 sqm or more gross floor space or sites of 1 hectare or more) 10 to 50 dwellings and commercial non-residential between 1,000 and 3,750 sqm of floorspace	£462 per every dwelling or every 75 sqm of non-residential floorspace	£624 per every dwelling or every 75 sqm of non-residential floorspace
Major (residential - 10 or more dwellings or sites of 0.5 hectares or more; non-residential, 1,000 sqm or more gross floor space or sites of 1 hectare or more) Over 50 dwellings or more than 3,750 sqm commercial floorspace	£22,859 + £138 for each additional dwelling in excess of 50 dwellings or additional 75 sqm in excess of 3,750 sqm up to maximum of £300,000	£30,860 + £186 for each additional dwelling in excess of 50 dwellings or additional 75 sqm in excess of 3,750 sqm up to maximum of £405,000

This approach has been taken forward in the Draft Regulations which, the accompanying Explanatory Memorandum explains:

- increase the fees payable for planning applications by 35% for major applications and 25% for all other applications, add an annual inflation indexation of those fees from 1st April 2025 and

introduce a new fee for prior approval of permitted development by the Crown on closed defence sites; and

- also remove the exemptions from fees for repeat applications and reduce the 'Planning Guarantee' period for non-major planning applications to allow an applicant to obtain a refund of the planning fee if the application has not been determined within 16 weeks and an extension of time has not been agreed.

The Explanatory Memorandum notes that the overall cost of the planning application (development management service) is more than the income receieved from planning fees (estimated shorfall of £225m annually), with local planning authorities relying mainly on the wider council budget, principally funded by the taxpayer, to fund the difference. The aim of the Draft Regulations is to reduce the funding shortfall and create greater financial sustainabiltiy for all local planning authorities (resulting in an additional £65m annually for local planning authorities). While the Government estimates that there will remain a funding shortfall of £125m annually, it is not considered appropraite to ask applicants to bear a rise equivalent to the full shortfall. In addition, the Government wants local planning authoriites to be more efficient and to lower the costs of delivering the planning application service.

As noted, the Draft Regulations also remove the so-called 'free go' where, in circumstances where a previous application has been approved, refused or withdrawn, applicants are able to submit a repeat application without charge as long as the proposed development is of the same character and on the same site as the earlier application and submitted by the same applicant within 12 months of the earlier decision or the recevied date in the case of a withdrawn application. The Government's basis for removing the exemption is to ensure that local planning authorities can recover their costs associated with determining repeat applications and to deter applicants from using the 'free go' as a substitute for pre-application engagement by utilising the earlier applications to test lower quality applications.

As regards reducing the 'Planning Guarantee' period for non-major planning applications, the Draft Regulations provide for the current period of 26 weeks after which a refund can be obtained if an application has not been determined to be reduced to 16 weeks. The fee increases introduced are designed to boost resources for local planning authorities to determine planning applications in good time and, as such, the Government considers it appropriate to reduce the time period for non-major applications to reflect the fact that such applications have a shorter statutory determination period than major applications (although, currently the Planning Guarantee period is the same) and to support the more timely decision-making of applications for non-major development which ordinarily take up fewer local planning authority resources.

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Permitted Development Rights consultation

The consultation on changes to permitted development rights runs from 24th July to 25th September 2023.

The Government is seeking views on proposed changes to permitted development rights covering the following areas:

- rights that allow for the change of use to dwellinghouses.
- rights that allow agricultural diversification and development on agricultural units.
- rights that allow for non-domestic extensions and the erection of new industrial and warehouse buildings.
- allowing markets to operate for more days.
- extending the right that applies to closed prisons to also apply to open prisons.

The Government is also seeking views on the application of local design codes to certain permitted development rights.

Finally, there is a call for evidence from DEFRA in respect of the planning system and nature-based solutions, farm efficiency projects, and diversification.

Change of use to dwellinghouses

The first section covers changes to Class MA (Commercial Business and Service uses to dwellinghouses), Class G (Commercial, Business and Service, betting office or pay day loan shop to mixed use residential); Class M (Betting offices and pay day loan shops etc. to dwellinghouses), Class N (arcades etc. to dwellinghouses) and Class Q (Agricultural buildings to dwellinghouses) of Part 3 as well as a proposed PD right to change from C1 to C3;

The Class MA proposals include: a change to the floorspace limit from the current 1,500 sqm either to 3,000 sqm or to remove the limitation altogether; removing the current vacancy requirement; and allowing the PD right to apply in all article 2(3) land (except World Heritage Sites). The PD right does already apply in conservation areas but with an additional prior approval procedure and views are sought on how this procedure is working in practice.

For Classes M and N it is also proposed to double or remove the floorspace limitation and to apply the right in article 2(3) land. There is also currently a requirement that the building was in the relevant use on 20 March 2013 – it is now proposed to amend this to a two-year rolling requirement which requires the building to have been in that use for a continuous period of at least two years prior to the application for prior approval. Laundrettes are proposed to be removed from this PD right.

For Class G, views are being sought on expanding this right to other types of high street or town centre premises while retaining the ground floor business use and to increasing the number of flats that may be delivered from two to four.

In terms of Class Q (Agricultural buildings), it is proposed to introduce a single maximum floorspace limit of either 100 sqm or 150 sqm per dwelling and to increase the 5 home limit to allow a total of 10 homes. At the same time, an overall floorspace limit of 1,000 sqm is proposed. It is also proposed to make the rights available in article 2(3) land (other than World Heritage Sites) and to allow conversion of buildings that are not solely in agricultural use (i.e. those hired out for storage), to buildings that are

no longer part of an agricultural unit and to other rural buildings (such as a building in forestry or equestrian use).

There is also a proposal to allow for single storey rear extensions of up to 4 meters to be added as part of the conversion works (although this would need to be sited on previously developed land (including hardstanding) and it is proposed that it would not apply to buildings with an existing floorspace of less than 37 square meters or in article 2(3) land). It is also proposed that a prior approval process would be introduced in respect of such extensions to allow for consideration of the impacts on the amenity of neighbouring properties.

In respect of Class Q, Government is also consulting on adding a condition that any existing building must already have an existing suitable access to a public highway to benefit from the right. Finally, views are sought on whether any changes are required to the scope of the building operations permitted by the right and on whether the current PPG should be amended.

Agricultural diversification

To allow for agricultural diversification, it is proposed to expand Class R of Part 3 (Agricultural buildings to a flexible commercial use).

The proposed changes include: expanding the right to include other rural buildings; adding outdoor sports, recreation and fitness to the uses permitted (including paintballing but not motor sports); allowing B2 uses to allow the processing of raw goods produced on the site, and to be sold on the site (excluding livestock); allowing for changes to mixed uses (not just a single use under the PD right) and doubling of the floorspace limit to 1,000 sqm. The existing prior approval process would not be changed.

The Government is also asking for suggestions as to any other uses that could be added to this PD right and views on how the prior approval process (which is triggered if more than 150 sqm of floorspace is changing use) is working in practice.

Changes are also proposed to Classes A and B of Part 6 (Agricultural and forestry) of the GPDO to increase the size limits of new buildings and extensions. However, it is proposed to remove the rights in sites designated as a scheduled monument.

Commercial and Industrial extensions

In terms of Class A of Part 7 (Commercial Business and Service use extensions), it is proposed to increase the floorspace limit on non-protected land is increased to either 200 square metres or a 100% increase over the original building, (whichever is lesser) and for Class H of Part 7 (Industrial and warehousing extensions) an increase for new buildings to 400 sqm (from 200 sqm). For extensions, it is proposed that the maximum floorspace of a new industrial and/or warehousing extension on non-protected land be increased to either 1,500 sqm or a 75% increase over the original building, whichever is lesser.

Markets and Prisons

The permitted development right for outdoor markets is currently restricted to 14 days per calendar year under Class B of Part 4. It is proposed to increase this to 28 days per calendar year in line with other temporary uses (or a different number of days).

It is also proposed to extend the existing PD right that allows for development within closed permitter prisons (Class M of Part 7) to apply also to open prisons. Views are sought on whether there should be a prior notification process.

Design Codes

Currently, certain permitted development rights are subject to prior approval on the grounds of design or external appearance for example the rights to extend existing buildings upwards in Part 20, and the change of use from agricultural buildings to residential in Part 3, Class Q. The Government is considering whether the case by case consideration by the LPA should be replaced by consideration of whether the proposal meets the local design code requirement. The stated aim is to reduce uncertainty and support the use of permitted development rights. Views are sought on how best to achieve this objective.

Call for evidence - DEFRA

DEFRA is seeking views on any issues applicants have experienced in securing permission or consent for works on their land and are asking for suggestions on how the process could be simplified e.g., through clearer guidance or support. They are particularly interested in issues associated with:

- nature-based solutions such as ponds, wetlands, reservoirs e.g., for peat re-wetting and other engineering works; and
- farm efficiency projects which improve the use of resources on farms, specifically slurry stores and reservoirs for crop irrigation; and
- diversification of farm incomes beyond what is already covered by permitted development rights.

The consultation includes a specific question as to whether a specific and focused permitted development right expedite or resolve a specific delivery challenge for nutrient mitigation schemes and questions asking for suggestions for guidance, policy or legislative changes which could help to provide a more supportive framework for planning authorities to determine planning applications, new or amended PD rights or diversification projects which should be considered.

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A plan to reform plan-making

The Government has launched a consultation entitled 'Levelling-up and Regeneration consultation on implementation of plan-making reforms'. The consultation seeks views on the Government's proposals to implement the parts of the Levelling Up and Regeneration Bill (the "**LURB**") relating to plan-making and which are intended to make plans simpler, faster to prepare and more accessible. The consultation runs from 25th July to 18th October 2023 with the intention of phasing the roll-out of the new local plan-making system from autumn 2024.

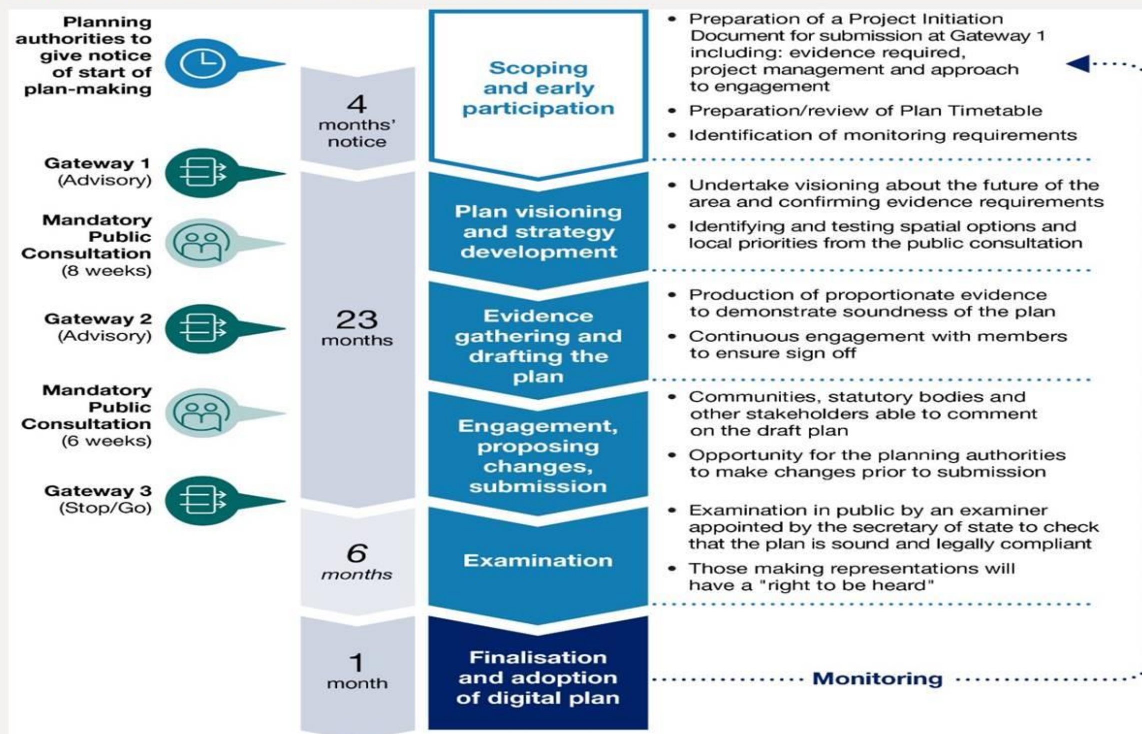
The consultation starts by rehearsing the Government's vision for local plans which is for these to be simpler to understand and use, and positively shaped by the views of communities about how their area should evolve. Plans should clearly show what is planned in a local area and make best use of new digital technology. In addition, they should be prepared more quickly (reducing the current over 7-year average preparation time) and updated more frequently (with the update process beginning within 5 years of adoption of the previous plan) so as to ensure that more authorities have up-to-date plans in place.

This is a lengthy consultation divided up into a number of chapters. A key priority is to simplify and streamline local plans; a local plan is expected to comprise a single document with a clearly specified purpose and a strengthened role for the strategic vision to be developed in collaboration with communities and stakeholders. Plans should focus on locally important matters, with a new suite of proposed national development management policies sitting outside the plan being prepared so as to avoid unnecessary repetition. They should also be shorter, more visual and map-based, as well as built on open, standardised data, thereby enabling communities to engage more easily with their content. The Government is to develop and prepare digital templates to assist in the transition to the proposed new digital format.

In terms of timeframes, the plan preparation, examination and adoption process is proposed to become more standardised and front-loaded, with plans in place within 30 months (2 and a half years). As part of the 30-month timeframe, local planning authorities will be required to undertake two periods of public consultation and also invite early participation on matters that might shape the direction of the plan.

The consultation proposes the introduction of three new mandatory 'gateway' assessments around the beginning, middle and end of the process for preparing a plan, with the final assessment taking place just before examination. This is designed to reduce the length of the examination process to no more than 6 months and provide support to local authorities throughout the process. If a consultation is required on proposed modifications to the plan, this should take no more than 3 months in addition. The Government also proposes to reduce the amount of evidence required to develop a plan and defend it at examination (so as to reduce the burden on local planning authorities), but still ensure that high quality plans are delivered.

The consultation includes the following flow diagram showing the proposed new 30-month timeframe along with the three gateways:



Notwithstanding the proposed consolidation of various development plan documents into a single local plan document, the consultation also proposes the introduction of new 'supplementary plans'. The intention is that these will help local planning authorities react quickly to changes in their areas by producing, more rapidly, a plan that has the same weight as local plans but which will also be subject to consultation and independent examination. These would replace supplementary planning documents.
The consultation also tacks on the Government's proposals in the LURB to pilot so-called 'Community Land Auctions' which involve a new process of identifying land for allocation in a local plan in a way which seeks to optimise land value capture.

Overall, there is plenty to digest in this consultation which adds a layer of detail to the local plan-making proposals which are already familiar from the LURB.

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The M&S Oxford Street decision letter – potential implications

On 20 July 2023 the Secretary of State issued his long-awaited decision in relation to Marks and Spencer's proposals for a new flagship store on Oxford Street. The decision has attracted industry attention due to its interaction with local and national policies relating to redevelopment vs refurbishment, carbon impact (net zero, embodied and whole life cycle), and potential implications on other similar proposals - M&S favouring a demolition (of the existing Orchard House building) and rebuild approach over refurbishment, on the basis that a refurbishment option was not deliverable or viable.

The Secretary of State refused the application, contrary to his inspector David Nicholson's recommendation and Westminster City Council's resolution prior to the application being "called-in", finding overall conflict with the development plan and that material considerations indicated that permission should not be granted.

In making sense of this decision it is important to note that the primary difference between the Inspector's recommendation and the Secretary of State's decision is their conclusion as to the extent of overall compliance with the development plan (Westminster's City Plan and the London Plan):

(1) the Inspector placed considerable weight on the extent to which the proposal would comply with the development plan taken as a whole – noting that refusal would be against various recently adopted development plan polices aimed at improving Oxford Street, the International Centre, the CAZ and the SPA;

(2) the Secretary of State on the other hand found that because the proposal conflicted with heritage and design policies, which were deemed to be central to the decision, this resulted in the proposal conflicting with the development plan as a whole.

These starting points set the decision makers on different paths, section 38(6) Planning and Compulsory Purchase Act 2004 requiring that where regard is to be had to the development plan, that determination must be made in accordance with the plan unless material consideration indicate otherwise. Both the Inspector and Secretary of State gave primacy to the development plan and concluded that material considerations did not indicate that a decision should be made otherwise than in accordance the development plan. However the starting point of overall compliance vs non-compliance with the plan resulted in conflicting final recommendations.

The key policies cited by the Secretary of State in his finding of non-compliance with the development plan as a whole were:

1. Design Polices D3 (London Plan) and 38 (Westminster City Plan) – concluding that a conflict arose due to the impact upon heritage assets which he afforded great weight (both design policies requiring that proposals respond to existing heritage assets); and

2. Heritage Policies (HC1 London Plan) and 39 (Westminster City Plan) – concluding that a partial conflict arose due to proposals failing to conserve the heritage assets in a manner appropriate to their significance (noting particularly the harm to the setting of Selfridges and the CAs, and the total loss of the non-designated Orchard House).

The Secretary of State noted that unlike the NPPF, which the Inspector placed reliance upon in his finding general compliance with the above policies, the development plan policies did not in his view permit a balancing exercise against the public benefits of the scheme to be undertaken.

In relation to policies relating to carbon, energy and circular economy, the Secretary of State, while finding that the proposal was clearly not net-zero carbon also concluded, that this was sufficiently addressed in policy terms by the submission of satisfactory energy application documents, and importantly a payment towards Westminster's carbon offset fund (secured through S106 agreement). Therefore, the Secretary of Statement concluded overall compliance with these policies.

While they did not indicate that the decision should be made otherwise than in accordance with the development plan, key material considerations which are of interest include:

1. the Secretary of State concluded that the scheme would impede the UK's transition to a zero-caron economy contrary to paragraph 152 of the NPPF due to the substantial amount of carbon which would go into construction of the new building and the failure to explore alternatives to demolition (see point 2 below) – this attracted moderate adverse weight in the Secretary of State's decision. In addition, notwithstanding the sustainability credentials of the new building and carbon offset payments, the extent of embodied carbon carried moderate adverse weight.

2. the Secretary of State concluded that the evidence before him was not sufficient to allow a conclusion as to whether there was or was not a viable and deliverable alternative to demolition, nor that the applicant had sufficiently demonstrated that options for retaining the buildings were fully explored or that there was compelling justification for demolition and rebuilding; and

3. the Secretary of State considered that the Inspector had overstated the scale of the harm to the vitality and viability of Oxford Street and the West End without the scheme. The Inspector concluded substantial weight to this issue whereas the Secretary of State found that wider harm to the West End would not be caused, and that the harm to Oxford Street would be limited.

Implications

The Secretary of State's decision letter states that *the decision turns on its own very specific facts, including the relevant development plan policy matrix, the Inspector's report and evidence which was before the Inquiry, which are all unlikely to be replicated in other cases*. Notwithstanding parallels to this decision are likely to be drawn in relation to similar applications.

For applicants with sites in city centres where proposals will impact upon heritage assets, the seemingly greater weight given to the heritage and related design policies over policies relating to encouraging vitality to key commercial areas (in establishing whether there is overall compliance with the development plan) may cause some concern – which as above, will set the decision maker on a very separate decision path.

Another key issue for projects which involve demolition and rebuild is the extent to the which they will be required to demonstrate that all other options have been exhausted and that there is compelling justification for the demolition – key inferences from the Secretary of State's decision include: (a). evidence against refurbishment should be contemporaneous; (b). justification should not primarily be led by the proposed occupiers' specifications and requirements; (c). there should be evidenced discussions of options explored with the LPA and other key stakeholders (e.g. the GLA); (d). if viability evidence is submitted this should be robust.

In the event that objectors propose alternative refurbishment schemes it is unclear as to the extent the applicant may need to take these schemes into account. In general terms however this decision should encourage applicants to ensure that where a demolition and rebuild option is favoured, this should be robustly evidenced with clear rationale for the merits of this option over refurbishment.

Finally, it is of note that while the decision did not turn on the issue of reducing climate change, the Secretary of State provides a warning shot that this issue is not going away stating:

"Policy in this area will continue to develop and in due course further changes may well be made to statute, policy or guidance."

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JULY 2023

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