

What can we expect for the planning world in 2019?

Simon Ricketts grapples with many uncertainties to offer some planning predictions for the year ahead



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Let's pretend that there is certainty as to what lies ahead for 2019. Everything is, of course, in the shadow of the looming 29 March date by which the United Kingdom will leave the European Union, unless the Article 50 notice is withdrawn or unless (with the agreement of the other EU states) the notice period is extended. And, if we leave as planned on that date, will there be a period of transition as envisaged in the withdrawal agreement brokered by the prime minister?

There are direct implications for the English planning system. As forewarned in my earlier article "Brexit, planning and the environment: key questions" EG, 12 October 2018, in order to comply with section 16 of the EU (Withdrawal) Act 2018 the draft Environment (Principles and Governance) Bill was published on 19 December 2018 setting out the environmental principles to be followed from 30 March 2019 or from the end of any transition period, whichever is the later, and setting out details of the proposed Office for Environmental Protection which will police those principles. There will inevitably be implications for planning, given the extent to which EU law now provides a framework for the preparation and consideration of plans and projects which may have significant effects on the environment – and given current EU legal jurisdiction over issues such as air quality, flood control and nature

conservation. There are also, of course, indirect implications for the English planning system by way of the degree to which politicians' and civil servants' attention is undoubtedly presently focused on the B-word – and by way of the difficulties that any minority government faces in getting things done.

There is still momentum (using the old meaning of that word) in a number of policy areas, albeit with some worrying delays.

Local plans/local housing need

Local plans submitted to the secretary of state for independent examination from 24 January 2019 will be considered against the policies in the 2018 National Planning Policy Framework (NPPF) and, in particular, against the new standardised methodology for assessing housing need. The January date is much delayed – at one stage it was to be March 2018.

Despite the additional time, there is still much uncertainty as to the precise elements of that methodology. In September 2018, updated 2016-based household projections were published that resulted in the minimum housing need calculated by the NPPF's standard method falling significantly from data published in September 2017 which had been based on 2014 calculations and which had reinforced the government's 300,000 new homes target. In October 2018, the government responded to the new projections by proposing that the new figures be ignored and that the 2014-based figures should continue to be used until a new formula has been arrived at. All of this has been subject to consultation with view to an announcement by now. Given the

uncertainties being caused, this really is urgent.

Community infrastructure levy

When the government announced in October 2018 its proposed changes to the CIL regime it indicated it would consult on draft regulations later in 2018 with a view to enacting the changes in 2019. These were published on 20 December 2018 as part of a further technical consultation on reforming developer contributions.

Most welcome will be the abolition of the pooling restriction. There will also no longer be a restriction on section 106 planning obligations that relate to an infrastructure project or type of infrastructure that is set out in the charging authority's regulation 123 list.

Permitted development changes

The government is consulting until 14 January 2019 on proposed changes to permitted development rights, including:

- Allowing uses in classes A1 (shops), A2 (financial and professional services) and A5 (hot food takeaways) as well as betting shops, pay day loan shops and launderettes, to change to office use.
- Extending the current "pop-up" temporary permitted development rights so that the change of use can be for up to three years, rather than two years.
- Allowing buildings to extend upwards so as to create additional dwellings.

This proposal has been around for some time but is now potentially more far-reaching in at least three ways. First, the dwellings could be built over residential, retail or office buildings as well as, potentially, buildings in other defined uses. Secondly, there could be

a broader right to allow up to five further storeys to be added to purpose-built, free-standing blocks of flats of over five storeys. Thirdly, the right may additionally allow householders to extend their own homes.

■ Allowing commercial buildings to be demolished and for residential development to be carried out.

We may well see a change to the General Permitted Development Order to effect these changes before the end of 2019, although a number of the proposals are undoubtedly controversial. The last one that I have listed will require another round of consultation before it is taken

forward into legislation – the drafting will not be straightforward.

Response to the Letwin Report

The *Independent Review of Build Out: Final Report*, carried out by Sir Oliver Letwin into "the build out of planning permissions into homes", published in October 2018, has some unexpected radical proposals that would require primary and secondary legislation to be given full effect. He proposes "a new set of planning rules specifically designed to apply to large sites... to ensure that all sites in areas of high housing demand whose size exceeds a certain threshold [1,500 homes] are subject to an additional form of

planning control that requires those owning such sites to provide a diversity of offerings on the site which are able to address the various categories of demand within the local housing market". He envisages that disagreements as to whether sufficient diversity is proposed should be determined by a new "National Expert Committee".

The government has so far played with a straight bat in reaction to the proposals, indicating that it will publish its response early in the year.

London

The mayor's draft London Plan will be subject to independent examination from January until May. It will be fascinating to see

how the inspectors pick their way through the criticisms raised not just by the boroughs (many of which, along with the development community, see the policies as too detailed and prescriptive) but by the Ministry of Housing, Communities and Local Government.

The mayor's second CIL charging schedule, MCIL2 for short, which seeks to collect contributions towards Crossrail 2, was examined in June 2018 and the examiner, Keith Holland, has recommended it is appropriate for adoption. It will be adopted on 1 April 2019 and its increased tariffs will be payable in relation to development where planning permission is granted on or after that date. We can expect

to see a dash to conclude section 106 agreements on schemes prior to that date so as to avoid the increased liability – memories of the frantic rush back in March 2012, ahead of the adoption of MCIL1.

Planning, unplanned

This much we can predict. Not only could national politics take us in different directions, but, if last year is anything to go by, we should expect the unexpected from the Planning Court, the higher courts and also from the Court of Justice of the European Union, with a series of rulings having been handed down over the past year which have had an immediate effect on the way our system operates.

