

Causes for concern raised by draft environment bill



Beware collateral impacts for the planning system arising from a draft bill published by the Department for Environment, Food and Rural Affairs (DEFRA) just before Christmas. The Environment (Principles and Governance) Bill would allow draft legislative proposals to be brought forward, as part of a wider Environment Bill later this year, setting out the way in which environmental principles will be maintained post-Brexit and the statutory body that will be established to police them.

The explanatory notes assert that matters of town and country planning law would not normally fall within the definition of “environmental law” used. In-

deed, the definition limits the draft bill’s remit to the “natural environment” and excludes matters such as greenhouse gas emissions. But we must be alert: matters such as environmental impact assessment and the conservation of Natura 2000 habitats are now core to the way our planning system operates.

Under the proposals, DEFRA will need to prepare a ministerial policy statement on environmental principles to which other ministers will need to have regard in policy-making, and to prepare an environmental improvement plan every five years. A new Office for Environmental Protection (OEP) will be set up to monitor environmental im-

provement plans and advise on changes.

The OEP will have an enforcement role, particularly on issues that may have national implications. The explanatory notes suggest that individual planning decisions are unlikely to be a focus of its attention. However, beware of mission creep. Also, if the consequences of potential enforcement action are severe, even small risks will have significant commercial and funding implications.

Significant risks arise, as the complaints procedures set out in the draft bill could render public bodies’ decisions vulnerable to judicial review months after the current judicial review period expires. It is unclear what sort of remedy the OEP could seek, but this mechanism would have teeth if the decision complained of is capable of being quashed by this route. We do not yet know how interventionist this body would be in applying principles that remain to be written.

If Brexit takes the form of the current withdrawal agreement, the government has committed to no regression from current environmental protections. I would like to see a similar commitment that, by virtue of Brexit, we will not see greater uncertainties arising for those for whom the certainty of the six-week deadline for bringing judicial review proceedings is paramount.

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