Legal landscape

On beauty

The government has indicated that 'beauty' will become a formal requirement for new development. Simon Ricketts highlights some flaws in the plan

I hope it doesn't take a lawyer to point out the potential tension between the government's current measures to deregulate the planning system and the prime minister's assurance that "we" will "build a more beautiful Britain".

At time of writing we were awaiting the government's response to the Building Better Building Beautiful Commission's January 2020 report *Living with Beauty*. The response is going to have to be good, because I have some questions.

Why beauty? Homes can be created by way of a wider range of permitted development rights (PDR) without any control by the local planning authority as to minimum room sizes. The new "commercial, business and service" use class also brings unprecedented and welcome flexibility. These are fundamental changes. And yet 'beauty' is to be put on a pedestal – no matter about sustainability, the living conditions of those within the building or of those in an area dependent on a range of services. One might assume that the government's main concern beyond whether the particular change delivers on the numbers – homes, jobs – is "What does it look like from the outside?"

"IN OUR PLANNING WORLD, BEAUTY IS NOT IN THE EYE OF THE BEHOLDER. IT IS IN THE EYE OF THE DECISION-MAKER"

The PDR developer will require prior approval for "design" and "external appearance" but not for the size of rooms in the building. Changes of use that may be utterly transformative of areas are achievable under the new class E, and yet minor external works to facilitate those changes will still require a full planning application! The greater the policy emphasis on 'beauty', the greater the discrepancy. Isn't this upside-down thinking?

And whose beauty? The methodology for assessing beauty also needs better definition. In our planning world, beauty is not in the eye of the beholder. It is in the eye of the decision-maker.

The NPPF already puts emphasis on achieving "well-designed places" and advises that planning permission should be refused for "poor design". There is already subjectivity and principles of good design are embodied in local design standards.

Since October 2019 we have had MHCLG's national design guide and await a national model design code. But the commission has recommended that policies should be ratcheted up, to refer to beauty, to require decision-makers to refuse proposals that are not well designed, to introduce a "fast track for beauty".

The commission asserts that there is a "powerful consensus... concerning what people prize in the design of new developments, and about how beauty in human settlement is generally understood", that what "beauty means" and "the local 'spirit of place' should be discovered and defined empirically".

But we each 'read' a building in a different way. Some may just see a familiar form of architecture; others may see the underlying message of those who built it, perhaps to inspire awe and/or subjugation of the individual to an institution, in a way that nowadays would be regarded as wholly inappropriate.

Beauty is not about "spirit of place" – surely it is about how a space functions, within a particular society, and about emotions: comfort, nostalgia, aspiration, fear?

While the commission's report is careful not to promote particular building styles, it rails against tall, "iconic" or "innovative" buildings in a way that is inherently conservative. It lavishes praise on local vernacular styles of building and building materials, when continued use of such styles and materials is nowadays just an artifice.

Are these not some of the dangers of going beyond seeking to control "poor design" and of seeking to regulate to achieve "beauty"? I, too, want us to achieve a more beautiful Britain. But when it comes to what is 'beautiful', our tastes and emotional reactions may differ.

Simon Ricketts is a partner with Town Legal LLP. This piece reflects his personal views. Simon comments routinely on planning law at https://simonicity.com/

In brief

- In planning law, beauty is in the eye of the decision-maker– not in the eye of the beholder
- Beauty is inherent in the way a space functions
- Maintaining vernacular styles of building and building materials can nowadays be just an artifice

Supreme Court trashes Irish Government's climate change plan

The Irish Republic's Supreme Court has torpedoed the government's 'excessively vague and aspirational' strategy to combat climate change.

A seven-judge court ruled that the National Mitigation Plan (2017-2022) lacked specificity and should be quashed.

The court also found the plan did not comply with Ireland's obligations under the Climate Action and Low Carbon Development Act 2015 to give sufficient detail about achieving the national transition objective of a low carbon economy by the end of 2050.

The government was obliged to give "some realistic level of detail" about how it intended to meet the objective and the plan fell "a long way short" of the sort of specificity the 2015 act required, insisted the Chief Justice, Mr Justice Frank Clarke. It must now devise a new plan taking into account the court's findings, made following an appeal by Friends of the Irish Environment (FIE).

Hillingon wins HS2 Court of Appeal case

Hillingdon Council's appeal over a High Court ruling concerning the submission of planning applications by HS2 Ltd under the HS2 Act has been allowed by the Court of Appeal.

In March 2018, the council refused to grant approval for HS2 Ltd's plans and specifications for proposed works associated with the creation of the Colne Valley Viaduct South Embankment wetland habitat ecological mitigation as the firm did not submit sufficient information in support of it.

HS2 Ltd appealed to the government saying that it was not required to provide the information which the council required as it could instead rely upon a suite of non-statutory documents, known as Environmental Minimum Requirements. The housing and transport secretaries rejected recommendations by their planning inspector who recommended that the council's decision be upheld.

In December 2019, a judicial review of the government's decision to allow HS2 Ltd's appeal was upheld by Mrs Justice Lang.

The Court of Appeal however ruled that HS2 Ltd could not rely on the Environmental Minimum Requirements and should provide sufficient information to the council in support of its planning applications. Until then, Hillingdon did not have to determine them.

The secretaries of state's determination was quashed. They must now reconsider the matter in the light of this judgment.

The government was ordered to pay the council's legal costs of both the High Court and Court of Appeal cases.

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High Court to consider wind farm category

An Bord Pleanála's (ABP) categorisation of an application seeking planning permission for a wind farm development is to be considered by the High Court. The challenge is against ABP and State while Innogy Renewables Ireland Ltd, the proposed developer, is a notice party.

ABP has not decided the application yet. The case will consider its decision to categorise it as a strategic infrastructural development.

The challenge was instigated by Paddy Massey, chair of a local residents' group which opposes the development. Massey says the proposed development is on two sites: 11 turbines on land in Lyrenacarriga, County Waterford, and six on land including Lyre mountain, County Cork, to be linked by an underground electricity conductor.

Once a planning application is considered to involve strategic infrastructure, it is eligible for fast-track consideration by ABP. Massey alleges the proposed development is not strategic infrastructure.

Mr Justice Denis McDonald said he was satisfied that the applicant had raised the necessary substantial grounds for judicial review.

Housing need standard method changes revised

A 'revised' standard method for calculating housing need was announced by the government as part of the *Planning for the Future* white paper.
bit.ly/planner0920-revision

Campaigners crowdfund for legal challenge over Liverpool zip wire

Campaigners are seeking to crowdfund a judicial review challenge over the decision of the planning committee at Liverpool City Council to approve the creation of an adventure zip wire in the city centre, reports *Local Government Lawyer*.
bit.ly/planner0920-zipwire

The only way is up

This webinar will consider the raft of changes proposed by the government concerning permitted development rights, changes of use and upward development.
bit.ly/planner0920-upwards

Haringey £500k confiscation order upheld

A defendant who turned a house into 12 flats without planning permission from the London Borough of Haringey has lost an appeal over the subsequent imposition of a confiscation order for more than £500,000, *Local Government Lawyer* reports.
bit.ly/planner0920-confiscate

For the future

Planning lawyers Simon Ricketts and Duncan Field share their thoughts on the government's *Planning for the Future* white paper.
bit.ly/planner0920-future

Judicial review granted over Surrey oil wells

A campaigner has been given permission by a Court of Appeal judge for a judicial review of Surrey County Council's decision to allow the drilling of four new oil wells and 20 years of oil production near Gatwick, says *Local Government Lawyer*.
bit.ly/planner0920-oil

Race to the bottom

The government's dramatic building reforms are likely to cut democratic input into the planning process by half, writes *Guardian* architecture editor Oliver Wainwright.
bit.ly/planner0920-wainwright