

JANUARY 2022

As we emerge into a new year, we take a look at what is happening in government

PLANNING



Under the plan, 20% of residents or 10 homeowners, whichever figure is higher, could ask their local council to hold a referendum on a design code for their street.

The code could be used to determine the size, height and style of new homes and allow homeowners to add extensions. The code would need the support of 60% of residents, which if passed would lead to automatic planning permission for new homes and extensions.

The Planning Bill, comprising the government's planning reforms announced in the summer of 2020, had been due to go before parliament later this year. But earlier this month, housing minister Christopher Pincher, speaking at the annual Planning for Housing Conference this week, said it will come forward "early next year".

The Bill had been set to relax rules on planning permission, but fierce

criticism over plans for a zonal planning system means the idea could be scrapped, as could mandatory housebuilding

targets for local authorities.

The government will "look again" at its controversial planning reforms, according to Conservative Party chairman Oliver Dowden, amid reports that Mr. Gove has ordered a "complete rethink" of the Bill.

In summary, which Planning Reforms have been proposed?

The Planning Bill is likely to comprise several key strands to create what the government says will be a more streamlined process. From the government's white paper last summer, these could include:

- A traffic light system of zone planning
- A traffic light system of zone planning to classify land for either:
- Growth
- Renewal
- Protection
- Land in growth areas would benefit from automatic permission, while land in urban renewal areas would be granted permission in principle.

This simplification of the rules has been expected to be included within the Planning Bill, and would make it more difficult for councils and homeowners to block new housing schemes.

The Housing, Communities and Local Government (HCLG) Select Committee said in a report published in June that it was unpersuaded the proposed zonal approach to planning will produce a quicker, cheaper and democratic planning system.

A Digital Planning System.

The document-based planning system currently in effect would move to a digital one. This is designed to improve the speed and efficiency of application decisions, and allow residents to be more engaged in the development of their local area.

At the moment, only 3% of local people engage with consultations on planning applications, according to the government.

Scrapping Section 106

A new infrastructure levy has been proposed to replace Section 106, a legal agreement between an applicant seeking

planning permission and the local planning authority.

Initially designed to be set nationally, the levy will now be set locally, former housing secretary Robert Jenrick confirmed in July, giving local councils more control as well as the ability to determine how and where any levies are spent within their local area.
The HCLG Select Committee is against this proposal outright, and says it could jeopardise the availability of

affordable housing in the UK.



Mandatory Housebuilding Targets.

The proposed changes included mandatory housebuilding targets for councils, in an effort to hit the government's target of building 300,000 new homes per year.

Could Further New Reforms Be Announced?

Last September's government reshuffle saw Mr. Jenrick leave and Mr. Gove became the new housing secretary, and it was later confirmed that the Ministry of Housing, Communities and Local Government has become the Department for Levelling Up, Housing and Communities.

Mr. Gove subsequently paused the planning reforms, ahead of meeting Conservative MPs who had criticised the forthcoming Planning Bill and feared it would silence communities left unable to prevent housing developments in their areas.

Mr. Gove has since hinted at new policy announcements which could follow. He said the government will invest in urban regeneration to put new homes on "neglected" brownfield sites, and criticised the use of steel and concrete "favoured by developers" in favour of more traditional materials, saying these materials often had higher embodied carbon.

The housing secretary also said he wanted to "make housing companies pay more to local communities to improve

amenities in areas where development takes place".

Moreover, Mr. Dowden added that the government would now look to "set out in law measures to protect our towns, villages and precious countryside from being despoiled by ugly development".

Why Have New Reforms Been Proposed?

The last significant update to the planning system occurred in 1947 and the Planning Bill is designed to replace this legislation.

The government said last summer it wanted to cut the planning system red tape, due to the current speed of housing development in England. It has pledged to build 300,000 new homes per year, but official figures show that only 244,000 homes were built in 2019-2020.

Under the current rules, it takes an average of five years for a standard housing development to go through the planning system. The Planning Bill aims to significantly reduce this time.

The government says the reforms will make the planning system more accessible to residents and help more young

people get on the property ladder.

Why has opposition to the reforms been so strong?

The planning reforms were reportedly blamed for the Conservatives' shock defeat in the Chesham and Amersham byelection in June.

Former Conservative Party co-chair Amanda Milling said at the time that she feared the defeat was in part due to the reaction to the proposed reforms, leaving many fearing they could reduce green belt protection in the Chilterns. Cross-party MPs, government officials and local authorities had all voiced concerns, and Conservative MP Bob Seely led a debate in July on the forthcoming Bill, which he described as "flawed and undeliverable". Former housing secretary Mr. Jenrick had repeatedly met sceptical Tory

backbenchers to win them over, and hit back at claims by former prime minister Theresa May that it will create a "developers' charter' But the byelection defeat resulted in pressure to scrap some of the controversial reforms, with some Tory MPs reportedly unhappy that communities could face new housing imposed upon them with no right to object.

Up to 100 Conservative MPs would have voted against the reforms in their current iteration, according to the Daily Mail.

★Before the Planning Bill can be put before parliament, the government still needs to respond to the a considerable 44,000 responses issued in a

consultation over the reforms, which closed in January 2021. This review had been expected in October, while the Bill had been expected to be published sometime before Christmas 2021. The delay means that it's highly unlikely that the Bill will be published before some time in 2022.



New Reforms to Reward High-Quality Design

In the summer of 2021, the government published further planning reforms via the National Model Design Code and a revision of the National Planning Policy Framework.

Both strengthen requirements on design quality and will give local authorities power to reject housing schemes which do not meet the required quality.

Self-builders could also find it easier to secure planning permission if their builds are well designed and use highquality materials.



The National Planning Policy Framework
The National Planning Policy Framework (NPPF) was first published in 2012, and the revision makes beauty a central theme of the NPFF. It sets out the expectation for local authorities to produce and action their own design codes, and emphasise the approval of practical, sustainable designs while rejecting poor-quality designs.

The NPFF also states that streets should be lined with trees to help improve biodiversity and

access to nature through design.

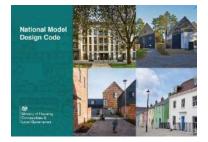
The National Model Design Code

The National Model Design Code (NMDC) provides a 10-point checklist of design principles to enable local authorities to create their own local design requirements.

Local communities will also be encouraged to get involved in the decision-making process through digital tools, social media and face-to-face workshops

to help local authorities deliver beautiful, green homes. The code also includes references to custom and self-build - this is what selfbuilders need to know about the changes - with accompanying guidance underlying how design codes can encourage self-build and custom build developments.

Furthermore, the government has announced the Office for Place, which will drive up design standards and be used to test and pilot the NMDC, involving more than 20 local councils and communities.



Short-Term Lets

N.O.R.A. has written to Michael Gove MP expressing its concern regarding the increasing effect of Short-Term Letting (STL) on many communities and calling for compulsory registration. At present, there are no rules regarding fire and safety inspection, taxation, insurance and planning approval (ensuring compliance with the Local Plan; and allowing neighbours to comment), none of which currently can be enforced in England & Wales. This problem (also known as the 'Airbnb Phenomenon') has spread throughout the world resulting in greatly increased availability of visitor accommodation, especially in attractive towns and cities, but also consequential damage to long-term residential housing stock, and to the Bed and Breakfast and small hotel trade. We have said also that there have been discussions of options with other bodies, including the Short-Term Accommodation Association; as well as the Chair of the All-Party Parliamentary Group on STL. (A copy of this letter was also sent to the Tourism Minister, Nigel Huddleston MP, as responsibility spans the two Departments and also to the Chief Planner, Ms. Joanna Averley.)

More News Items

TEMPORARY MEASURES FOR MARQUEES TO BECOME PERMANENT

The Department for Levelling Up, Housing and Communities (DLUHC) has announced that businesses and hospitality venues will be able to hold markets more often and marquees will be able to be erected without planning permission.

These changes to permitted development rights were first made in 2020 to aid businesses during the Covid-19 pandemic. They are being made permanent following a public consultation.

Councils will be able to hold street markets as required without the need for a planning application, which the government said will attract more people to high streets and town centres.

Housing minister Christopher Pincher said: "The changes we introduced last year supported our town centres and high streets during national restrictions, making sure businesses could stay open and helping to instil a sense of community

"Making these measures permanent will help business and communities to build back better from the pandemic and are just one part of our vision to transform towns and cities across England into thriving places to work, visit and

Scroll down for more information to Legislation and Matters Arising below \

ENGLISH COUNCILS TO SHARE £53.9BN IN FUNDING

The Department for Levelling Up, Housing and Communities (DLUHC) has announced that councils in England will receive £53.9 billion in funding for the 2022/23 financial year. This includes £554 million through the New Homes Bonus

The government said the packages represent the "largest cash-terms increase" in grant funding for 10 years. An extra £3.5 billion is available compared with 2021/22

The funding includes £822 million for councils to spend as they choose on local needs

Alongside aiding councils to deliver vital services, the funding is intended to support councils in playing a "significant role" in the government's levelling up agenda. Also, the government said the settlement will protect residents from "excessive" council tax increases. From next year, the amount council tax can be increased by without a vote has been reduced to 2 per cent, with an extra 1 per cent for councils with adult social care responsibilities.

Levelling-up secretary Michael Gove said: "Councils continue to deliver for their communities and have a major role to play in our central mission of levelling up the country.

"Today's (16 December) funding package represents a real-terms increase from last year's settlement and will make sure councils can improve vital frontline services, support vulnerable people and protect residents from excessive council tax rises as we build back better from the pandemic."

The Provisional Finance Settlement includes £554 million through the New Homes Bonus for 2022/23. This brings the total amount of New Homes Bonus funding to £10 billion. The government said the bonus has seen more than 2.3 million additional homes being built, 560,000 of which were affordable.

The government added that it remains committed to reforming the New Homes Bonus to improve how housing growth is incentivised. It will publish its response to the consultation on the New Homes Bonus "in the coming months".

PAVEMENT PARKING COULD BE BANNED IN WEEKS UNDER NEW 2022 RULES UPDATE



According to a report in the Daily Express (3rd January 2022), pavement parking could be banned in England within weeks as the Government's response to its consultation is set to be revealed. The Department for Transport's consultation into future pavement parking rules came to an end in November 2020. However, no decision or analysis of the results of the consultation has yet been released.

The report confirms a "summary of responses will be published within three months of the consultation closing' meaning results are expected to be announced in the coming weeks.

The new report will show the level of industry support for the three proposals put forward and which one the Government is likely to edge towards.

Option one and two would see improvements to the existing system or give local authorities extra powers to deal with obstructions. But option three would introduce a nationwide pavement

parking prohibition which would see the practice banned across the UK.

This would extend the existing London and Cardiff bans meaning drivers would be fined around £70 for each

infringement.

The DfT consultation claimed the option would establish a "general rule" against pavement parking in the country. They said motorists would benefit from a "consistent rule" that could be followed wherever they went.

New traffic signs and bay markings would be put in place to show drivers where pavement parking was still allowed.

However, a national ban does come with its drawbacks and could be tough to sell to those in the industry.

PATROL, a joint committee representing 300 local authorities, has warned a nationwide ban is "some way in the future" and instead backed the second option.

IAMRoadSmart has previously warned a nationwide ban could provide a parking headache for drivers across the country.

Instead, they have opposed for local areas to "use their existing powers" more effectively.

The DfT admitted a ban would be "the most significant change to English parking law in several decades".

Because of this, local authorities would need to undertake a "substantial amount of work to prepare for it".

They warned a ban would require a "significant implementation period" which would be "time consuming and expensive".

One authority has already estimated the charge to be around £670,000 to prepare for a scheme.

Meanwhile, some local areas said they "depend on pavement parking to preserve traffic flow".

This means a lot of large residential areas would be exempted from a ban from the outset.

The DfT has also warned a national ban may be "inappropriate" in rural areas where some pavement parking "may be safer".

CAN OTHER PEOPLE PARK ACROSS YOUR DRIVEWAY AND OUTSIDE YOUR HOME?



Finding on-street parking can be a tricky task, particularly when another driver takes the spot outside your own house. Anyone can park on your driveway - and there's little you can do about it, legal experts say.

It is also not a requirement by law for neighbours to leave the parking spot outside your home free for you to use.

While it is handy to park up in front of your home, if someone gets there first there is little you can do about it.

It is not "your right" to park in front of your house - unless you have a designated parking space.

Some drivers try to use cones to "save" spaces but this shouldn't be prohibited,

legal experts say.

Leaving anything on the road can be classed as an obstruction and is against the law unless you've been given permission by the council.

Any member of the public can park on any spot in the street, providing the road isn't governed by residents' parking permits. Drivers of course must comply with restrictions and shouldn't causing obstructions.

However, if your street uses permits, anyone with the right permit can park anywhere in the relevant zone.

And there's also no law on how long someone can park in the same space for, unless police think the car has been abandoned.

Neighbours aren't, by law, doing anything wrong if they also take up a space on the street while they have a perfectly good driveway.

But it is illegal to park directly outside a school, on the zig-zag lines to a pedestrian crossing, and in designated marked bays you don't have a permit for.

Now, if someone is blocking your driveway, or their wheel is over the dropped kerb, they are committing a parking offence.

There are two types of dropped kerbs: those for pedestrians, particularly those with buggies or in wheelchairs, and those for drivers to access driveways.

Vehicles parked across dropped kerbs can be ticketed, even if they're not fully blocking it. However, parking very close to a dropped kerb or directly opposite it isn't illegal, even if it restricts access.

But police nor local authorities have the power to move vehicles parked on private driveways.

In the instance of a stranger parking on your driveway, an issue arises when the line between criminal and civil law is blurred.

If a car is parked on a public road and it's blocking your driveway, local authorities certainly have the power to issue a fine

If a car is parked on a public road and it's blocking your driveway, local authorities certainly have the power to issue a fine

THE HIDDEN PLANNING PERMISSIONS YOU NEED TO BUILD IN YOUR GARDEN

It is worth knowing what planning permission you need before you knock down a wall or dig up a pool.

It is not uncommon that garden makeovers or alterations need planning approval or listed-building consent before they go from paper to plot.

And, since 2020, enforcement officers have been inundated with complaints from a public who, having spent more time around their home territory, reported far more issues related to home and garden improvements.

Some improvements are being made without necessary consents: sheds morph into home offices; new tree houses roost in branches; privacy screens shoot up; outdoor entertaining areas, complete with sheltering structures, colonise back gardens.



When investigating alleged breaches of planning control, tools such as Google Earth, with its satellite imagery, and Street View can be helpful in identifying the age, timeframe or extent of a development and therefore whether it has gained immunity from enforcement action.

But it is often not clear exactly what needs permission, and indeed in many instances planning legislation is by no means black and white.

When householders are suspected of not having the right consents before building, feelings can get extremely heated, with vitriol often expressed on social media and local WhatsApp groups.

There have been cases of newcomers objecting to neighbours' planning applications and being lambasted by the village worthies for doing so, despite the fact that the proposals potentially affect the incomer's property.

Local authority planning departments do not go looking for work, but it is their duty to investigate a complaint if one is reported. Most people are not familiar with planning law and it is not unusual for people to complain about actions that are perfectly legal.

It is worth checking with the local planning department before starting work, especially if the scheme is expensive.

Mistakes can be made when people think that the whole of their curtilage is designated as garden, and so they have permitted development rights over the space allowing them to build certain features. But sometimes outlying areas, such as an old orchard or paddock, can be deemed agricultural land rather than garden, which is not automatically covered by development rights.

Permitted development rights allow owners to construct sheds, outdoor offices, paving and fences so long as they comply with set size limits and it is not in an Area of Outstanding Natural Beauty, a conservation area, a National Park, a World Heritage Site, or the Norfolk or Suffolk Broads.

A resident who bought a field intending to extend their garden to have extra lawn, but was ordered to stop the regular mowing of it as this meant it was no longer in agricultural use.

In another case the owners were refused permission to create a garden on their adjoining paddock so they built a vegetable garden and greenhouse on it, which was deemed to be acceptable as this qualified as horticultural production.

For listed buildings it is necessary to apply for listed-building consent for many elements within the curtilage of the property.

Ornamental pools, low walls, large areas of paving and even raised beds may well need listed permission. If something has been developed without permission, there may be action taken to remove it unless you have had 10 years of unbroken use.



Boundary fences

For boundary heights, the limit is 2 metre high; or 1 metre if next to a highway

Boundary heights for gardens are fairly clear in planning law. A boundary fence can be 2 metres high unless it is adjacent to a highway; then 1 metre is the limit.

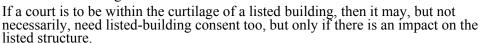
In many appeal cases such as these, both sides produce a written statement and then a judgment is made – although about 70 per cent of the cases are settled on the side of the planning authority.

With the restrictions on boundary-fence heights there is the huge popularity of pleached trees to hide neighbouring eyesores. (Pleached trees are trees that have been trained to form a stunning screen of branches and foliage on a single, straight stem).

The canopy could start any distance off the ground and likewise the top can go to any height, within reason. You do not need planning permission for them usually, but they can offend neighbours, who may resent the shade or the blocking of their view over your garden, so use with caution if you want to stay friends.

Tennis courts

To build a tennis court, planning permission is needed for perimeter fencing. Tennis courts need planning permission for several reasons. This is partly because the perimeter fencing (usually 2.75 metres), is above the 2-metre limit and more often than not may be within 2 metres of the property boundary. Also, being some 600 sq. metre in area, they often cannot be accommodated within the domestic curtilage and so will need a change of land use.





Tennis courts within the curtilage of a listed building do require planning permission, but they don't necessarily require listed-building consent: only if there is an impact on a listed structure. And if the fence is adjacent to a neighbour's boundary and the neighbour's house is listed, then permission is needed.

If significant earth-moving is required (which usually is) then that is another reason for the need for permission. The earth-moving element is extremely subjective, in my experience. What some planning authorities deem as minor engineering works, others don't "bat an eyelid at". Another authority may say that it is permitted to move the amount of earth one man can move in an afternoon with a spade, without permission.

Outdoor swimming pools

Outdoor swimming pools are less of a problem in planning terms than tennis courts. While these may not need permission, it is always advisable to check.



Garden sheds, wildlife pools and treehouses It can be tricky to determine whether tree houses need planning permission or not.

Garden sheds and home offices are usually within permitted development rights as long as they are not bigger than 15 sq. metres, not used for sleeping in, and do not take up more than 50 per cent of the garden.

However, wildlife pools can be construed as engineering works – again, it is all about scale and the amount of earth being moved. Best check with the local planning officers first. Building a large structure for children is pretty straightforward.

Otherwise, if they are more than 2 metres from the boundary and generally restrict the height to 4 metres it might not be necessary. Though it is best to get clarification from the planning officers before finalising the design.

Pathways

Paving a front garden. If the area is larger than 5 sq. metres, and the paving is be of an impermeable material such as stone, and the subsequent rain run-off will not be absorbed in the garden, planning permission is required.

Usually, it is easy to direct the rainwater run-off into adjacent beds or grass areas, so very often permission is not required. Generally, this is the case in the majority of existing front gardens.

Tip for before starting construction

Always check with the local planning office if unsure whether planning permission or listed-building permission is needed – it can be a grey area.

Check that the whole garden is within the domestic curtilage. If some is not, then permitted development rights may not be automatic.

Source: The Telegraph



SECONDARY LEGISLATION

Permitted Development Rights (PDR)

- The Town and Country Planning (General Permitted Development) (Amendment) (No.3) Order 2021 has introduced a number of changes to permitted development rights, which will take effect on various dates in January 2022:
 - ▶ References to the National Planning Policy Framework in The Town and Country Planning (General Permitted Development) (England) Order 2015 will be updated with effect from 11 January 2022.
 - New and amended provisions in relation to moveable structures come into effect on 2 January 2022: these are addressed in more detail below.
 - An amended provision in relation to the holding of markets by or on behalf of local authorities comes into effect on 11 January 2022. Originally introduced in June 2020, this PDR allowed markets to be held for an unlimited amount of days, including the provision of moveable structures related to this use: the measure will now be made permanent. It excludes markets on sites designated as Scheduled Monuments and Sites of Special Scientific Interest.
 - ► A provision in relation to emergency development by a local authority or health service body comes into effect on 1 January 2022.
 - ▶ Provisions relating to development by the Crown on a closed defence site (to allow development by or on behalf of the Crown constituting the erection, extension or alteration of buildings used exclusively for defence purposes on closed defence sites subject to conditions, limitations and restrictions) come into effect on 11 January 2022.
 - A minor amendment to The Town and Country Planning (Compensation) (England) Regulations 2015 also comes into effect on 11 January 2022.
 - The new provisions in respect of moveable structures permit the following without the need for planning permission:
 - ► Unlisted pubs, cafes, and restaurants (not in the curtilage of a listed building) can put up one moveable structure on a permanent basis
 - Listed pubs, cafes, and restaurants, and 'historic visitor attractions' can put up one moveable structure for up to 120 days in a 12-month period.
 - For both of these provisions, there are restrictions relating to scheduled monuments, and to minimising impacts on surrounding communities (including limits to size, height, and distance to residential boundaries). For moveable structures associated with listed buildings, further provisions include requirements for land to be reinstated to its original condition, prior approval from the local planning authority in relation to siting and the method of installation, and consultation with Historic England.

EMERGING LEGISLATION

Government Bills

• Judicial Review and Courts Bill: This legislation has been introduced to give judges power (under the Judicial Review process) to suspend orders quashing planning decisions with legal flaws, to give those involved time to rectify them without losing the planning permission altogether. The Bill will now enter the Report Stage, with the date to be announced.

Private Members' Bills

• Climate and Ecology Bill: The Bill requires the Prime Minister to achieve climate and ecology objectives; to give the Secretary of State a duty to create and implement those objectives; to establish a Citizens' Assembly; and to give duties to the Committee on Climate Change regarding the objectives and strategy. A

first reading was held on the 2 September, with a second reading now scheduled to take place on 18 March 2022.

- Planning (Proper Maintenance of Land) Bill: The Bill makes provision for increased fines for failures to comply with a notice under section 215 of the Town and Country Planning Act 1990. It was introduced to Parliament under the Ten-Minute Rule. The Second Reading in the House of Commons is due to take place on
- Planning and Local Representation Bill: The Bill includes granting local authorities power to apply local design standards for permitted development and to refuse permitted development proposals that would be detrimental to the health and wellbeing of an individual or community. It was introduced to Parliament under the Ten-Minute Rule on 15 July. The Second Reading in the House of Commons is due to take place on 21
- Green Belt Protection Bill: A Bill to establish a national register of Green Belt land in England, to restrict the ability of local authorities to de-designate Green Belt land and to make provision about future development of de-designated Green Belt land. The Bill was introduced on 21 June 2021 with the second reading planned for 14 January 2022.

PRIVATE BILLS

• Planning (Street Plans) Bill: A Bill to make provision about the creation and operation of street-level plans for local development. The Bill was introduced and passed its first reading on 13 September 2021

DLUHC Letter to Chief Planning Officers (for link see footnote) ¹

- The Chief Planner's Newsletter was issued in December 2021 and included:
 - Launch of Green Infrastructure Mapping

 - Planning Propriety Guidance
 Lorry Parking in planning: Written Ministerial Statement
 Further Measures to Ease Supply Chain Pressures

 - Round 2 of the PropTech Engagement Fund

COMMITTEES

Levelling Up, Housing and Communities Committee

• The Committee published the Supporting Our High Streets After Covid-19 report into the regeneration of the UK's high streets after Covid-19. It recommended the government should immediately conduct a review on the impact on high streets of central and local government handling of the pandemic. Furthermore, the committee called for the move to greater local devolution of funding.

Business, Energy and Industrial Strategy Committee

• The Committee published written evidence on 7 December from its inquiry into the government's draft Energy National Policy Statements (NPS), which provide a policy framework used to determine applications for Nationally Significant Infrastructure Projects (NSIPs).

Environmental Audit Committee

• The Committee held a formal evidence session on 7 December on the outcomes of COP26, with the president appearing before the Committee to talk about the implications for UK climate policy and the priorities for the presidency before COP27 next year in Egypt.

Environment and Climate Change Committee

• On 13 December the Committee held an oral evidence session on mobilising action on climate change and the environment, and specifically encouraging behaviour changes among the public.

YND FINALLY, THE LIGHTER SIDE OF LIFE...







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¹ Link to this document: Copy and paste into your browser address bar: