HBA Newsletter

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Contents

NPPF and the Levelling Up and Regeneration Bill

Revised NPPF – latest update on likely publication date

On 4 July DLUHC's Secretary of State, Michael Gove, announced a delay in the publication of the revised NPPF. (Further changes were previously signalled at a later date, after the Levelling Up and Regeneration Bill became law).

A DLUHC spokesperson said the likely timetable would "depend on Parliamentary time, but will be after Summer Recess, so from September."

The Department's response to the NPPF will not be published until after the Levelling Up and Regeneration Bill gets assent - and it is thought that the Bill might be delayed until November (after the Party Conference season).

Commentators noted that there were few immediate political benefits from planning reform so close to a general election, which must be called within the next 18 months.

The delays were "indicative" of how the government's planning reform agenda has become more problematic – one commentator noted, "The so-called major reform of the planning system is actually turning out to be a long drawn out, piecemeal process…It just seems to drift along."

Note: draft changes to the NPPF were published in December 2022 and the Department confirmed that final revisions would be published in Spring 2023.

These include:

- making the **standard method** of assessing housing need an "advisory starting-point"
- removing the **duty to co-operate** with other local authorities. Lichfields said "The NPPF amendments introduce a set of caveats that set LPAs a requirement to deliver sufficient homes only 'so far as possible.' If passed, it would significantly reduce the number of homes being delivered.

Duty to Co-Operate and government's "alignment policy"

Consultation on the alignment policy is 'still being developed' – Housing Minister

On 6 July *Planning Resource* reported the continued uncertainty about the government's proposed "alignment policy" which is to replace the duty to co-operate to be abolished by the Levelling Up and Regeneration Bill

On 20 June the Housing Minister, Rachel MacLean, wrote to Clive Betts, Chair of the Commons' Select Committee dealing with DLUHC matters, to say: "We will be carrying out a consultation on the Alignment Policy as part of future changes to the National Planning Policy Framework (NPPF).

“That consultation is still being developed and Ministers have not taken final decisions on the content.

“The Duty to Co-operate will continue to apply to plans brought forward under the current system. Local Plans brought forward under the new system will not be subject to the Duty to Cooperate but will be covered by the alignment policy.”

Planning Resource noted that the principal difference between the alignment policy with the duty to co-operate was that the latter was a statutory pass/fail test that could see a plan sent back to the drawing board at examination whilst, under the alignment policy “authorities and inspectors would have the ability to amend plans to improve alignment” during examination.

DLUHC’s Director-General of Regeneration told the Committee, “We are stepping away from using the alignment test as a way of delivering local housing numbers, while ensuring that the alignment test is still used for developing infrastructure in common and developing nature recovery strategies in common.”

One consultant commented, ‘“Why would I as a council in the current circumstances bend over backwards to pick up housing need from a neighbouring authority, when I think in all likelihood the government might say I don’t need to shortly? The duty to cooperate had a stick behind it, which was important.”

Infrastructure Levy - amendments

Planning Resource reports on a series of amendments tabled ahead of the Report Stage of the Levelling Up and Regeneration Bill in the House of Lords next week.

The Levy is designed to replace S.106 and CIL.

One of the amendments allows Infrastructure Levy charging authorities to include provision for onsite affordable housing.

Another is designed to ensure that the Infrastructure Levy will be capable of delivering at least as much affordable housing as the existing system of developer contributions through CIL and S.106 agreements. Charging authorities must seek to ensure “that the level of affordable housing which is funded, and provided by developers, and the amount of such funding, is maintained or exceeded.”

Another creates a duty on the levelling up secretary to prepare a report to Parliament on the effect of the IL on the funding and provision of affordable housing.

There is also an amendment watering down the duty in the Bill that makes it compulsory for authorities to charge the levy.

It disapplies authorities from a duty to comply with the IL if the council considers that doing so would make development in an area economically unviable.

This also makes it clear that the references to affordable housing funding in that duty include sources other than the Infrastructure Levy.

https://bills.parliament.uk/publications/51425/documents/3784

Planning Inspectorate's performance, 2022/23

On 29 June, the Planning Inspectorate published its annual report and accounts for 2022/23.

It said it continued to receive high levels of casework, which presented resource and speed challenges.

It had prioritised in response to these, focussing resources on delivering in areas of casework that would provide the greatest value such as inquiries, local plans and National Infrastructure.

Once it had become clear that improvements in these areas could be maintained, it had begun to focus on hearings which delivered results in stabilising and improving timeliness in these areas.

It had also increased Inspector capacity and continued to invest in digital services. Its next area of focus would be appeals decided after written exchange of evidence.

Local Plans:

- 23 local plans were submitted for examination during the year: the fewest in any of the last five years
- 33 virtual and face to face opening examination hearings were held
- 33 reports on the Local Plans were examined
- Its income fell to £3.4m, lower than the average of the last five years, reflecting fewer examinations.

Appeals:

- It received around 17,000 planning appeals, the largest area of the Inspectorate's work, and comparable to 2021/22. However, the mix of cases included a higher share of case types which were more time consuming, e.g about 20% more cases required a **hearing**. The increase in hearings was likely to be related to receiving more **major housing appeals**
- It also received about 8% more enforcement appeals than 2021/22, when there were also more appeals received than 2020/21.

Around 35% of the appeals received each year did not have all the information or evidence it needed to be able to start work on the case, resulting in delays.

In the last year three out of every ten appeals were allowed, meaning that the Inspector's decision permitted a development where the original decision did not.
Across England in 2022/23 **around 27,000 homes were granted planning permission on appeal**. This was comparable to the previous three years.

For planning appeals **decided after a hearing** it:

- decided 570, around 34% more than in 2021/22 and more than it received, as this was a focus area
- sped up decisions on the fastest 25% decisions as it began to handle new appeals submitted from April 2022 in a similar way to planning appeals by inquiry.
- Did not make overall decision times more consistent as it continued to decide older appeals from before April 2022. The 10% of decisions that took the longest consequently took longer than 2021/22.

For planning appeals decided after **written exchange of evidence** it:

- decided a comparable number to 2021/22 and received more than it decided, as it focused on other casework.
- **Took longer to decide** appeals. The median decision time increased gradually through the year to 26 weeks, the highest for the last five years.
- Became less consistent in decision times. The quickest 10% of decisions took 13 weeks or less, whilst the slowest 10% took 49 weeks or more.
- Confirmed this was the next area of focus after planning appeals by hearing and began to allocate inspectors to this work more in the first quarter of 2023.

Inspectors: in 2022/23 it employed (average, full-time equivalent) 783 staff. 95 New inspectors were recruited, increasing capacity to deliver more decisions.

From November 2022 it also used the services of 71 **contractors** who provided Planning Appeal Decision Services on a fee-paid contractual basis

https://www.gov.uk/government/publications/the-planning-inspectorate-annual-report-and-accounts-202223/planning-inspectorate-annual-report-and-accounts-2022-2023

Nutrient Neutrality – update

Timeline - **indefinite**: on 3 July *Housing Today* reported that the interim CEO of the Environment Agency had advised the Lords Built Environment Committee that he could not say when problems arising from nutrient neutrality requirements introduced by the Environment Agency would be resolved.

He expected delivery through “integrated catchment action plans in the government’s *Plan for Water*, published in April, but could not say how long this would take. He agreed that, in Poole Harbour (where a similar approach had been taken) it had been almost ten years to resolve the issue.

He told the Committee that the government had set targets for nutrient loads across each of the river catchments and that DEFRA “colleagues are working at pace” on an implementation plan for the strategy.

“It will look at all of the different interventions in a catchment leading to the target for the improvements that are in the improvement plan set out with government.

“And then we can measure, here’s the reduction happening in sectors X, Y and Z, and set the targets for that catchment, to know where you can unlock and release development. The implementation of the integrated Plan for Water is key to be able to do that.”

“Do you want to buy X or Y farms to really reduce the nutrient effect there so that you can unlock development? Or do you want a glide path that’s more equitable across all sectors? That will allow you to have those strategic decisions.”

High Court Ruling on Nutrient Neutrality: on 30 June, the High Court delivered its Judgement on a case brought by C G Fry & Son Ltd.

The developer had been granted outline planning consent for the staged construction of up to 650 homes at Jurston Farm, near Wellington, Somerset in 2015.

The first two of eight phases had been complete and phase three had obtained reserved matters approval in June 2020.

The company then applied to the local planning authority to discharge some pre-commencement conditions attached to that approval.

In refusing the application, Somerset Council insisted that an appropriate assessment under the Conservation of Habitats and Species Regulations 2017 was required, expressing concern that nutrients generated by the development, especially phosphorous, might have a negative impact on the protected Somerset Levels and Moors Ramsar site.

In Spring 2023 the company launched Judicial Review proceedings after a planning inspector upheld the council's decision arguing that the issue was "legally irrelevant because it fell outside the specific parameters of what the outline planning permission and the reserved matters approval had left over for consideration under these conditions."

The Judge observed that "The claim arises in the context of the issue of nutrient neutrality. In broad terms, this issue relates to the phosphate loading of protected water habitats, leading to eutrophication. This is caused by reasons including agricultural practices and under-investment in water infrastructure.

"There is a risk of the problem being exacerbated by water generated by new developments which contain phosphates, principally from foul water.

He accepted the developer’s case that "on the face of it the assessment provisions (of the 2017 Regulations) are confined in their application to the planning permission stage and do not extend to the discharge of conditions" but “While on a strict reading of the (2017 Regulations), the assessment provisions...do not cover the discharge of conditions, in my view they do apply as a result of, firstly, Article 6(3) of the Habitats Directive, secondly, a purposive interpretation of their provisions and thirdly, case law binding on me."

He concluded that the requirements of Article 6(3) "remain part of UK law". "That article requires that the competent authorities should not agree a project until an appropriate assessment has been undertaken and it shows that it will not affect the integrity of a (protected) site.

"A planning consent is part of agreeing a project when it is necessary to implement a development. In this case, the discharge of pre-commencement conditions was a necessary step in the implementation of the development.

"An appropriate assessment had not been undertaken up to that point, so consequently the inspector determined that he could not discharge the conditions prior to (an appropriate assessment) being undertaken. His conclusion was consistent with Article 6(3) of the Habitats Directive."

The 2017 Regulations themselves "demanded a purposive interpretation" in the light of the "strict precautionary principle" established by EU case law.

Upholding the appeal would "open up a lacuna in habitats assessments leading to the possibility that, as here, development would proceed without an assessment being undertaken - the possibility (arising) when negative environmental effects were only ascertained after the first stage in a multi-stage consent process."

"The upshot is that the Habitats Directive and Habitats Regulations 2017 mandate that an appropriate assessment be undertaken before a project is consented. That is irrespective of whatever stage the process has reached according to UK planning law.

"The basal fact in this case is that neither at the permission stage, reserved matters or conditions discharge stage has there been an appropriate assessment.

"Application of the Habitats Directive and a purposive approach to the interpretation of the Habitats Regulations 2017 require the application of the assessment provisions to the discharge of conditions.

"The strict precautionary approach required would be undermined if they were limited to the initial - the permission - stage of a multi-stage process."

C.G.Fry & Son Limited v Secretary of State for Levelling Up, Housing and Communities. Case Number: CO/12/2023

Comment: interesting to see that natural mitigation and/or payment for credits has been exposed as being ineffectual.

Significantly, the primacy of an outline planning permission being *"the de facto planning consent"* appears to have been substantially eroded.

The decision crystallises the fact that nutrient neutrality considerations can be legitimately introduced even after the grant of outline consent and despite the subjective way in which the matter is being considered by Natural England and LPAs affected by the NE planning advice.

Most of the argument(s) centred on the legal principles underpinning the Habitats Regulations and planning law. The Judge conveniently left aside the statutory duties imposed on all Sewerage Companies pursuant to S94 WIA 1991 – this had been reinforced by virtue of the 2009 Supreme Court decision in Barratt versus Welsh Water.

Likewise, application of the mandated principle enshrined in EU and domestic legislation that the "polluter pays" must be allowed to prevail. The housebuilding industry does not discharge nitrates and phosphates into the water environment; as previously noted, it is the occupier of a new home and who pays for effectual and consequential wastewater treatment through the annual domestic sewerage charge. (The focus appears to have been on phosphates – little to no mention of nitrates.

That said, what was disturbing was the somewhat sweeping statement articulated in the decision that appeared to suggest EU Directives, transposed into UK law, and allowed to prevail as a result of the construct of the Withdrawal Act 2018, effectively trumps established domestic law. However, the Judge's decision appears silent on whether or not this extends to crucially important Supreme Court decisions relating to other affecting legislation. Likewise, EU Directives such as the Wastewater Treatment Directive. If anything, this latest decision adds a further degree of complexity and uncertainty.

The evidence presented in support of the Claimant's case appears to lack any factual basis, but this could have been influenced by Leading Council representing C G Fry. This would have been a very useful opportunity to expose the flaws within the NE calculation methodology, together with the degree of subjectivity that is being applied by NE and the Council. (See para 12 of the decision – "*… the proposed development might have a negative effect on qualifying features".*

The Council appears to have offered little in the way of evidence that would enable any developer to assess nutrient loading, having relied on the "precautionary principle" against the background of Natural England now conceding the nutrient loading from new housing is very small.

As a final observation, as developments continue to be delayed how many planning consents are likely to expire? As changes to Building Regulations evolve and come into force from 2023 onwards, the potential increases in housebuilder costs will be considerable. Moreover, serving initial notices in advance of an implementable planning consent will only provide a limited amount of time.

Thanks to Steve Wielebsi (sew@waconsultancy.co.uk) for these comments.

Water issues

Environment Agency's concerns about demand

On 28 June it was reported that the Environment Agency was objecting to schemes for c. 5,000 homes in Cambridgeshire because water demand from these developments would "pose a significant risk" to the environment".
The Agency has objected to planning applications which include:

- 3,500 homes at Bourn Airfield, east of Cambourne
- 425 homes proposed on land north of Cambridge North Station,
- up to 1,000 homes proposed for the second and third phases of the Darwin Green development on the northern edge of Cambridge.

In relation to one scheme (Cambridge North) it said it objected on the grounds that it may individually, and/or in combination with other proposed development in Greater Cambridge, increase abstraction and risk deterioration to water bodies in the Greater Cambridge area, because of the additional demand for potable water use" and that, in its view, it was contrary to [policy in the South Cambridgeshire Local Plan] where it specifies that proposals must demonstrate that; there is adequate (public water) supply to serve the whole development, and that the quality of groundwater or surface water bodies will not be harmed".

The Agency said, "Water is a precious resource that is under pressure across the country, and these pressures are being felt in and around Cambridge and East Anglia with increasing abstraction posing a real risk to chalk streams, river, and wetland habitats.

"The Environment Agency has a duty to protect the environment and ensure that there is enough water for people, business and the environment, and we will act where planned developments are not sustainable and risk causing harm to the environment.

"We have objected to some proposed development applications in the Greater Cambridge Area on the basis that the water supply for these developments will pose a significant risk to our local water environment. We are continuing to liaise with the Greater Cambridge Partnership planning authority and Cambridge Water to find a solution for people and the environment."

Cambridge Water, which supplies the area, said it was "working closely with the Environment Agency" to boost supplies and reduce the amount of water taken from underground aquifers "to protect rare chalk streams in the region. We're confident that we have a resilient, long-term solution to achieve this."

Water Resilience – water transfer scheme

Mott MacDonald and Adams Hendry Consulting Ltd have been appointed to work on securing planning permission for a water transfer scheme to help safeguard England's water supply.

They will lead the delivery of the development consent order (DCO) application for the Nationally Significant Infrastructure Project (NSIP) developed by Affinity Water and Severn Trent Water, with support from the Canal & River Trust.

The proposal will see the Grand Union Canal upgraded to allow up to 115 million litres a day of treated waste water to be transported from the Midlands to the South East. Water will then be abstracted from the canal and treated for public water supply in the South East.

The team will help to secure the necessary planning and environmental consents, engage with stakeholders, and manage consultation with statutory bodies.

Housing Supply, Qu.1, 2023

On 21 June DLUHC published housing supply data for Qu.1, 2023.

These are based on numbers supplied by building control data which cover around 80% of the market.

Starts and completions, Qu.1

- *there were 37,810 starts* (seasonally adjusted) 3% less than the previous quarter and 12% less compared to Qu.1, 2022.
- There were *39,970 completions* (seasonally adjusted), 12% less than the previous quarter and 8% less compared to Qu.1, 2022.

Net additional dwellings, 2021-22

- There were 232,820 net additional dwellings in the year, 10% higher than 2020-21.

England: In the year to 31 March 2023 new build dwelling starts in England were estimated to be 173,000, 1% less, compared to the year to 31 March 2022.

Regionally: In the year to 31 March 2023 starts rose in the North West, East Midlands, London and the South West. The largest percentage increase was 17% in London.

Completions rose in 6 of 9 regions from the previous year. The largest percentage increases were 18% in London and 17% in the East of England.

The highest rates of annual starts per 1,000 dwellings was in the East Midlands and the highest rates of annual completions per 1,000 dwellings was in the East of England.

Completions recovered to a peak of 181,900 in the year ending June 2021 and have since fallen to 174,600 in the year ending March 2023.

Planning permissions: The latest provisional figures show that permission for 269,000 homes was given in the year to 31 March 2023, 11% less than the 302,000 homes granted permission in the year to 31 March 2022.

EPCs – quarterly and annually: in the quarter ending March 2023, there were 53,200 new dwelling EPCs lodged, 10% less compared to the same quarter last year.

In the year ending March 2023, there were 246,750 new dwelling EPCs lodged, 3% more compared to last year.

https://www.gov.uk/government/statistics/housing-supply-indicators-of-new-supply-england-january-to-march-2023/housing-supply-indicators-of-new-supply-england-january-to-march-2023

Consumer Code for Home Builders – changes

The Consumer Code for Home Builders' summer newsletter has details of the consultation on proposed changes following last year's review.

There is concern about proposals for the Consumer Code for Home Builders which go further than the requirements of the NHQB code, as follows:

- To amend the **Independent Dispute Resolution Scheme** rules to ensure restitution appropriately reflects the breach and where a home builder cancels a reservation agreement with a view to selling the home at a higher price.
- To encourage the industry to review current **cash retention models** operated by architects and some home builders and consider whether consumer confidence could be enhanced by the wider application of such schemes.
- To advocate an **industry compensation fund** so that consumers' awards are underwritten should there be a failure of a home builder to honour it while advocating to home warranty bodies, through their terms and conditions, that they hold parent companies liable for Code compliance of any subsidiaries and/or Single Purpose Vehicles created.

Other recommended changes include:

- aligning different code schemes and simplifying access to complaint advice for consumers
- raising the maximum financial compensation threshold for claims brought through the Independent Dispute Resolution Scheme, as well as the individual amount that can be awarded for distress and inconvenience
- incorporating new requirements for home builders to improve how snagging issues (non-structural defects identified in the first two years post occupation) are dealt with, tackling some of the most common causes of complaint from new build home buyers

- broadening the scope of the Code to include shared ownership and strengthening requirements to support vulnerable customers
- outlawing financial incentives to complete on properties that haven't yet met warranty standards and requiring any commissions for recommending products and services to be declared
- to convene a meeting of other CTSI approved Code Sponsors to demonstrate the value of aligning Codes but seeking a protocol to prevent Code hopping to circumvent disciplinary action.

Consultation closed on 30 June.

The revised Code will be published in September with builders required to work to it from October.

https://consumercode.co.uk/summer-newsletter-available-now/?pk_campaign=newsletter_6245

Boundary Review published – will it matter politically?

The Boundary Commission for England published its 2023 review on 27 June as part of a regular redrawing to ensure parliamentary seats have roughly the same number of voters.

This is the first overhaul since 2010:

- **England** will gain 10 seats, taking its total to 543
- **Wales** will lose eight of its current 40
- **Scotland**'s total will fall from 59 to 57
- **Northern Ireland** will retain its current 18 seats.

The total number of MPs will remain 650, as earlier plans to reduce the number of seats from 650 to 600 were abandoned in 2020.

The *Guardian* noted that, according to Lord Hayward, Tory peer and polling expert, the Conservatives could gain between 5 and 10 seats as a result of these changes. The losses could be borne by Labour, the SNP and Paid Cymru.

The *Independent* agreed that the new boundaries would slightly favour the Conservatives; in recent decades there had been a pattern of depopulating Labour seats in Northern England whilst the number of suburban seats in the south gradually gained in numbers, in terms of demographic trends.

Furthermore Conservative voters were more efficiently distributed - "the Party did not pile up lots of votes in already safe seats".

- **East Midlands = 47** (increase of one)
- **Eastern = 61** (increase of three)
- **London = 75** (increase of two)
- **North East = 27** (decrease of two)
- **North West = 73** (decrease of two)
- **South East = 91** (increase of seven)

- **South West = 58** (increase of three)
- **West Midlands = 57** (decrease of two)
- **Yorkshire and the Humber = 54** (no change)

Defence Secretary Ben Wallace will lose his seat of Wyre and Preston North. It is to be abolished and absorbed into three neighbouring Lancashire constituencies. Gavin Williamson had seen his seat disappear and there were, perhaps, fewer seats that could be counted as "safe" for Conservatives.

The Shadow Chancellor Rachel Reeves's constituency (Leeds West) will be split three ways. She is expected to find a new constituency.

Fareham, the seat of Home Secretary Suella Braverman, will disappear; she has been selected as Tory candidate for neighbouring Meon Valley.

The Government will draft an Order containing the recommendations of all four Parliamentary Boundary Commissions: once that draft Order is approved by the Privy Council, the new constituencies will be used for the next General election after this.

https://boundarycommissionforengland.independent.gov.uk/2023-review/

Local Plan Update

Mole Valley: Mole Valley continues to pause its emerging local plan due to upcoming changes to the NPPF. In March the Inspectors examining the Plan gave permission to put it on hold as the changes to the NPPF "may have implications for its plan, and that the final NPPF changes are yet unknown". Councillors welcomed the decision, noting that paused plans will not be treated as out of date because the revised NPPF was still unpublished.

Wiltshire has published the latest version of its draft local plan review, proposing 9,000 fewer homes than previously (244 fewer homes p.a).

In 2021 it consulted on up to 45,630 homes between 2016 and 2036, "based on analysis using long term migration trends and forecasts suggesting that additional housing would be needed to increase the level of resident workers to avoid net in-commuting".

However, after consultation to test the upper range,(40,840 to 45,630 homes) there was a clear divergence of views, and it was recommended that further work be undertaken to "refresh the council's evidence on housing need".

The revised document (to be considered on 11 July) plans for 36,740 homes, "of which over 21,900 homes have already been built or are committed", 8,890 homes fewer than 2021 (or 19 per cent) though the plan period has been cut by two years.

An Officer's report said the new target was "no more than required by the government's standard methodology," placing a "greater emphasis on ensuring new homes meet the needs of Wiltshire's residents through setting new affordable housing policies."

40% per cent affordable housing would be required on sites of ten or more dwellings across the authority area, and on sites of five or more dwellings in designated rural areas.
The timetable – should it be approved on 18 July a final public pre-submission consultation will take place in the autumn before examination in 2024.

The existing plan was adopted in 2015 and made provision for the 42,000 homes over the plan period from 2006 to 2026.

Building Safety update

Responsible Actors Scheme; construction product manufacturers; foreign developers

"The severity of the penalties and the sanctions, the lack of discretion in their application, the arbitrary nature of inclusion in the scheme and the effect on employees, subcontractors, other stakeholders and shareholders seem to me, and to others outside who I have talked to, to be disproportionate" (Lord Naseby, House of Lords, 20 June – Responsible Actors Scheme)

Responsible Actors Scheme: Regulations establishing the "Responsible Actors Scheme," committing members of the scheme to fix unsafe buildings they have constructed or refurbished over the past 30 years, were published in April.

On 4 July DLUHC announced the Regulations had passed into law on 3 July and government expected to launch the scheme in the summer.

There is a link to the explanatory memorandum at the foot of this item.

The Regulations 2023 state that an instrument, made under sections 126-9 of the Building Safety Act 2022, established a "planning prohibition" to prevent non-members carrying out "major" development that had permission and a building control prohibition that prevented a prohibited person receiving building control approvals.

Extending the scheme: the Department was "bringing forward these regulations for a scheme focused on larger developers at speed. **We propose to extend the scheme over time to cover all developers that have built defective buildings over 11 metres** and should be paying to fix them."

Signatories: on 26 June government updated its list of those signing up to the scheme, showing that Dandara Living had signed the contract, thereby bringing the number committed to paying for remediation to 49.

Two - Rydon Homes and Abbey Developments - were the only companies who had not yet signed up.

Lords' Debate the Regulations: the Regulations were debated in the House of Lords on 20 June. They noted that the regulations also applied the prohibitions to persons controlled by the developer to make sure that developers could not easily avoid the prohibitions by continuing their development business through other entities they control.

Turning to the application of **prohibitions to group companies** she said an eligible non-member of the scheme would be prohibited along with the entities that they control, so it is not all group companies, and an exception was available for entities controlled by an eligible non-member that was not in the building industry. Developers could have quite complex business relationships both here and abroad, and the Department needed to capture those as well.

The DLUHC spokesperson in the House of Lords, Baroness Scott, addressed the issue of construction product manufacturers and overseas developers (see earlier issues of HBA Newsletter)

Construction Product Manufacturers – consequences "likely to be severe": she reiterated that the Secretary of State made clear in a recent letter to the major institutional shareholders in the three companies most involved—Kingspan, Arconic and Saint-Gobain—that, if an appropriate financial package was not agreed, "the focus of the department will be trained on them, and the consequences for the relevant construction product manufacturers are likely to be severe".

The Department could only do this one stage at a time, but they are next in line. The Secretary of State made it clear that **reputational, legal, commercial or further new tools** could all be considered if these firms do not do the right thing.

Foreign developers and the building safety levy: any overseas-based developer that met the eligibility criteria in the regulations would be eligible for the scheme. The eligibility criteria did not distinguish between overseas-based and UK-based companies. Several developers that had signed the developer remediation contract had overseas parent companies at the moment.

Looking beyond the responsible actors scheme, the **building safety levy** would be tied to the building safety process in England. Qualifying projects will be required to pay the levy regardless of where the developer was based.

Lords' debate: https://hansard.parliament.uk/lords/2023-06-20/debates/2608083B-22DE-4851-9959-6C1F040E8A05/BuildingSafety(ResponsibleActorsSchemeAndProhibitions)Regulations2023

Explanatory Memorandum:
https://www.legislation.gov.uk/ukdsi/2023/9780348247497/pdfs/ukdsiem_9780348247497_en.pdf

Homes England – update

Review of the Agency: on 26 June a review of Homes England was launched to ensure the body was "delivering for the taxpayer".

It is one of 40 government Arm's Length Bodies chosen for a routine review as part of the Cabinet Office's Public Bodies Review Programme.

It will be led by Tony Poulter, a non-executive member of the Department for Transport board. He will shortly begin speaking to stakeholders including developers, government and councils.

The review will examine Homes England's current ways of working, focusing on its structure, compliance and outcomes for stakeholders and customers. How the Department for Levelling Up, Housing and Communities works with Homes England will also be reviewed.

The Agency has:

- a portfolio of over 9,000 hectares of land
- around £16 billion of combined capital spend (loan, grant, equity, and guarantees) to deploy by 2027/28
- supports consumers through the provision of safer homes, including through the Department for Levelling Up, Housing and Communities' (DLUHC) building safety interventions
- in its delivery of the Help to Buy programme it is also the sixth largest mortgage lender in the country.

The Agency was last reviewed (when it was the Homes and Communities Agency) in 2016.

Poulter is expected to finalise the review and its recommendations by the end of the year.

The Minister for Housing and Planning Rachel Maclean said the government remained committed to its target of building 300,000 homes per year, and this review into Homes England would look into "how we work together as we continue building the homes this country needs."

https://www.gov.uk/government/publications/homes-england-public-body-review-terms-of-reference/homes-england-public-body-review-terms-of-reference.

Homes England results, 2022-23: on 27 June Homes England published housing starts and completions data for the year April 2022 to March 2023 (excluding London), showing there were 36,478 housing starts and 32,990 completions.

- The proportion of affordable homes started on site rose, a result of the maturing of the Affordable Homes Programme (AHP) 2021-26, in its second year of delivery
- Overall levels of starts and completions were down as a result of the impact of tough economic conditions on housebuilding industry.

The Shared Ownership and Affordable Homes Programme recorded 126,800 starts by the end of March 2023 with 5,000 remaining starts to deliver in 2023-24.

From 1 April 2022 to 31 March 2023, 78 % of starts (28,457) were for affordable homes, 3% higher than the previous year.

Of the housing completions, 23,318 (71%) were for affordable homes, a 12 % fall on the previous year, attributed to the closure of the Affordable Homes Guarantees, Care and Support Specialised Housing, Empty Homes and Shared Ownership Affordable Homes Programme 2016-21, with completions naturally reducing towards the end of a programme life cycle.

4,793 affordable homes started in 2022-23 were for Affordable Rent.

There were 3,921 starts under schemes including Shared Ownership and Rent to Buy. 17,525 starts were defined as 'Affordable Tenure TBC' homes, where the ultimate tenure category is not known until completion. The remaining 2,218 were for Social Rent, a 12 per cent increase on the previous year.

Of the affordable homes completed, 10,250 were for Affordable Rent, 27% lower than the previous year, and 9,336 under Intermediate Affordable Housing schemes. The remaining 3,732 were Social Rent completions, up 21% on the previous year.

Affordable Homes Programme widened: on 27 June Homes England announced that grant funding provided through the Government's Affordable Homes Programme 2021-26 could be used to fund replacement homes, together with new affordable homes, as part of wider estate regeneration plans.

It should now be better able to support its partners to replace housing that is outdated and no longer fit-for-purpose, with a larger number of high-quality, energy efficient new affordable homes.

The change to the Affordable Homes Programme had been agreed with DLUHC and was part of the Agency's wider efforts to help bolster the affordable housing sector and maintain housing supply.

The change would come into effect immediately and funding decisions will be made on a regular basis up until the end of March 2025, subject to availability of funding. All schemes must start on site by 31 March 2025 and must complete within the Affordable Homes Programme's current timeframes.

Design - A C Lloyd Homes to close following call-in by Gove

On 20 June it was reported that the Group whose **Warwickshire** site was 'called in' by Secretary of State, Michael Gove had decided to close its housebuilding division (A C Lloyd Homes).

It has withdrawn its application for 200 homes at Chesterton Drive, Whitnash, Leamington Spa. The decision will not affect the A C Lloyd Group, which is a land trader and commercial developer.
The planning application was called in by Michael Gove on 11 May, although the company had received outline planning permission. The local authority resolved to grant reserved matters in December 2022.

A C Lloyd's decision follows the Secretary of State's recent action, calling-in several housing schemes on design grounds, including Berkeley Group's 165-home development by Berkeley Group and another 150-home scheme at Sandbach.

LPDF said, "Housebuilding is a capital and operationally intensive business with high fixed costs. For a medium sized business with perhaps three to five sites any delay to one can seriously impact cashflow to meet monthly fixed costs.

"When the delays within the planning system (including discharge of conditions), combined with other regulatory burdens, utility drawdowns, politics and cost increases are overlaid then the impact on a small or medium sized business becomes magnified.

"It is these issues that the government (or a future government) needs to resolve."

Housing for NHS Workers – Task Force

A White Paper published by the NHS Homes Alliance (and others) has proposed that NHS land should be used to deliver homes for those working in health and social care.

It calls for the establishment of a cross-government department, NHS and private sector task force, which was announced by the government in response to the white paper, which was launched today (26 June).

The parliamentary under-secretary of state at the Department of Health and Social Care, said he welcomed the paper from the NHS Homes Alliance which, he said, "highlights several recommendations to address the issues that have so far prevented the NHS from delivering key worker accommodation at the scale and pace that is required.

He would lead a joint task force with Housing Minister, Rachel Maclean, to work through the barriers identified and support the NHS to streamline delivery of this much-needed accommodation to support its vital and valuable workforce."

The White Paper recommends that developments are built based on the specific recruitment and staff retention needs. The long-term value and flexibility of use for the NHS should be protected.

Recommendations also include introducing a distinct planning use class "to standardise, derisk and fast track delivery of NHS homes," and to make the homes exempt from Section 106, the community infrastructure levy and highways contributions.
It suggests exploring modern methods of construction to "to speed up construction time and reduce costs."

Public Sector Land Disposal

Waterbeach Barracks sold for housing

The Ministry of Defence has announced the sale of Waterbeach Barracks in Cambridgeshire to Urban&Civic for major redevelopment, including 6,500 homes. The site was formerly home to the Royal Engineers.

The site is one of six development partnerships with the MOD across the UK. The sale was managed by the Defence Infrastructure Organisation (DIO) through its Land Sale Delivery Partnerships. It is the first of the six partnership sites to be sold.

Urban&Civic is part of the Wellcome Trust and has been the MOD's development partner since 2014.

The development will be delivered in stages over the next 20 years.

The scheme will include a town centre, five new schools, public transport and active travel schemes as well as 250 acres of green space and 34 acres of ecology habitats.

Buildings will all have low-energy features, including air source heat pumps and electric vehicle points. The scheme will deliver a 20% biodiversity net gain.

West Midlands Combined Authority & Keepmoat

Keepmoat has entered into an agreement with the West Midlands Combined Authority through which it has become its strategic partner. Through this arrangement it will build 4,000 new mixed tenure homes across the region by 2031, whilst committing to net zero carbon emissions on any brownfield site development.

Earlier this year, WMCA agreed a 'Deeper Devolution Deal' with the government, which gave it additional powers, as well as additional funding of over £1.5billion.

The deal supports the West Midlands' Plan for Growth, with a particular focus on the manufacturing of housing and the regeneration of brownfield sites.

Bob Kerslake (28 February 1955 - 1 July 2023)

Lord Kerslake died on 1 July. After a career in local government, he was appointed CEO of the Homes and Communities Agency (2008-2010).

In September 2010 he accepted the post of Permanent Secretary at the Department for Communities and Local Government (2010 and 2015) a role he retained when he became the head of the Civil Service (2012-2014).

The Economy

UK National Accounts, Qu.1, 2023

On 30 June, the Office for National Statistics published quarterly accounts for the first three months of 2023.

- UK gross domestic product (GDP) is estimated to have increased by an unrevised 0.1% in Quarter 1 2023.
- In output terms, the services sector grew by 0.1% on the quarter driven by increases in information and communication, and administrative and support service activities; elsewhere, the construction sector grew by a revised 0.4% (previously 0.7%), while the production sector grew by 0.1%, with a revised 0.6% growth in manufacturing (previously 0.5%).
- The GDP implied deflator rose by 6.5% in the year to Quarter 1 2023, primarily reflecting higher cost pressures faced by households.
- The household saving ratio is 8.7%, down from 9.3% in Quarter 4 2022.
- Real households' disposable income (RHDI) fell by 0.8% following positive growth of 1.3% in Quarter 4, 2022.
- Households experienced simultaneous withdrawals from their deposit accounts and negative secured loans for the first time ever.

Balance of Payments, Qu.1, 2023

On 30 June, the Office for National Statistics published balance of payments data for Qu.1, 2023.

- The underlying UK **current account deficit**, excluding precious metals, narrowed to £17.0 billion or 2.6% of gross domestic product (GDP) in Quarter 1 (Jan to Mar) 2023, a change of £4.1 billion from the previous quarter when the deficit of £21.1 billion equated to 3.3% of GDP.
- When trade in precious metals is included, the UK current account deficit widened to £10.8 billion, or 1.7% of GDP in Quarter 1 2023.
- In Quarter 1 2023, the total trade deficit, excluding precious metals, narrowed to £19.4 billion from £25.4 billion in the previous quarter; as the goods deficit narrowed and the services surplus decreased.
- The **primary income account balance** recorded a surplus of £6.6 billion, or 1.0% of GDP.
- In Quarter 1 2023, the UK was a net lender to the rest of the world, recording a **net financial outflow** of £14.6 billion.
- The UK's **net international investment liability position** widened from £271.6 billion in Quarter 4 (Oct to Dec) 2022 to £357.8 billion.

Lending to business, May

On 29 June, the Bank of England published “Money and Credit” for May, including data on lending to business.

Repayments: UK non-financial businesses (PNFCs and public corporations) repaid, on net, £0.6 billion of bank and building society loans (including overdrafts), compared to £0.5 billion of net borrowing in April.

Within this measure, **net borrowing** by large non-financial businesses fell from £1.6 billion in April to £0.4 billion. Net repayments of small and medium sized non-financial businesses (SMEs) was at £1.0 billion, down from £1.2 billion in April.

The annual growth rate of borrowing by large businesses rose from 3.0% in April to 3.6% in May, while for SMEs the rate decreased slightly from -4.2% to -4.3%.

The average cost of **new borrowing** from banks by UK PNFCs rose sharply by 33 basis points to an effective interest rate of 6.32% and was 429 basis points above the December 2021 rate of 2.03% (when Bank Rate increases began). Likewise, the effective interest rate on new loans to SMEs rose from 6.52% in April to 6.86% in May, compared to 2.51% in December 2021.

Private non-financial companies (PNFC) made **net repayments** of £1.6 billion in market finance, compared to £3.6 billion of net repayments in April. Within this, on net, companies bought back £2.4 billion of equity, marking the twentieth consecutive month of equity buybacks. This was partly offset by £0.3 billion and £0.5 billion of bonds and commercial paper issuances, respectively.

UK non-financial businesses **deposited** £9.8 billion with banks and building societies in all currencies. These were the first net deposits from UK non-financial businesses since August 2022 (£13.8 billion). The effective rate on new time deposits rose significantly from 3.70% to 3.94% in May, while the effective rate on stock sight deposits increased by 2 basis points to 1.92%.

S&P Global/CIPS Services PMI, June

On 5 July S&P Global/CIPS published the Services PMI for June.

The main Index stood at 53.7, down from 55.2 in May (any figure above 50 indicates expansion), marking five months of continuous business expansion. There were a number of reports citing weak demand from clients in the real estate and construction sectors, largely due to rising interest rates.

Volumes of new work increased moderately in June, but the rate of growth was the slowest since the current period of expansion began in February with longer decision-making among clients in response to concerns about the domestic economic outlook and the impact of higher borrowing costs.

Employment numbers increased for the sixth consecutive month in June, accelerating to its fastest rate since September 2022 with reports that vacancies had become easier to fill.

Additional staff recruitment helped to boost business capacity and in turn resulted in an overall reduction in backlogs of work for the first time since January.

There was another steep increase in input costs across the service economy, but the overall rate of inflation eased for the first time in three months and was the slowest since May 2021, citing higher salary payments as the reason for increased cost burdens.

Prices charged by service providers also increased at a slower rate in June, reflecting weaker cost pressures and some reports citing pressure from clients to offer discounts. Where output charges were increased, this was often attributed to additional labour costs and higher-than-expected inflation across the wider UK economy.

CIPS said, “Concerns that the engine of growth in the UK economy could be showing signs of slowdown were realised last month with the weakest rise in new orders since January. Though the sector remained in expansion mode, customer appetite to spend had decreased with concerns over interest rates and cost of living rises affecting household budgets.

"This in turn impacted on optimism in the sector which was the lowest for five months and charges to customers rose at the second-lowest levels since August 2021.

S&P Global/CIPS Manufacturing PMI, June

On 3 July S&P Global/CIPS published the manufacturing PMI for June.

The main Index fell to a six-month low of 46.5 in June, down from 47.1 in May (any figure below 50 indicates contraction).

Output contracted for the fourth successive month, although at a slower rate. Downturns at investment and intermediate goods producers continued, in contrast to mild growth in consumer goods. There were reports linking lower production to reduced new order intakes and to capacity being above current demand requirements.

New orders fell for the third successive month and at the fastest rate since January, with reports of a general reluctance among clients to commit to new contracts, especially as many remained over-stocked.

There was a further reassessment of staffing, with employment falling for the ninth successive month, and at the sharpest rate since March. This also reflected weaker demand, redundancies and cost management initiatives.

Weak demand and improved material availability led to lower backlogs of work and a build-up of stocks of finished goods. Inventories of purchases fell, largely due to a marked reduction in purchasing activity.

Lower demand for inputs was also a prime factor underlying a further improvement in vendor lead times. Average input costs fell for the second month running and to the greatest extent since February 2016.

Average output prices meanwhile fell for the first time since April 2016.

CIPS said, "…A combination of depressed sales from domestic and overseas markets and strong price pressures hanging around has resulted in levels of new business reducing for the third month in a row… The UK has avoided recession by the skin of its teeth according to official government data, but manufacturers are reducing stock levels, buying, and investing less just to keep their heads above water.."

S&P Global/CIPS Construction PMI, June

On 6 July S&P Global/CIPS published the Construction PMI for June.

The main Index stood at 48.9, down from 51.6 in May (any figure under 50 indicates contraction), below the neutral 50.0 threshold for the first time in five months.

The reduction in output levels was marginal overall, but this masked divergent trends across the three major categories of construction activity monitored by the survey.

Residential work (39.6) fell at the steepest rate since May 2020. Survey respondents widely commented on weaker demand due to rising borrowing costs and a subdued outlook for the housing market.

Civil engineering was the best-performing sector (53.1), with business activity rising at the second-fastest rate since June 2022. Commercial building also expanded (53.0).

New order volumes fell for the first time since January, although the pace of decline was only marginal overall. Subdued demand was mostly linked to the impact of rising interest rates on house building projects, alongside concerns among clients about the general economic outlook.

Construction companies sought to reduce their inventories and cut back on purchases of products and materials. Mirroring the trend for new orders, the reduction in input buying was the first for five months.

Suppliers' delivery times shortened for the fourth month running and was the strongest for around 14 years. Survey respondents widely commented on improved availability.

June data signalled a marginal decline in overall input prices across the construction sector, the first outright reduction in average cost burdens since January 2010.

Sub-contractor charges rose at the slowest pace for 31 months.

S&P Global said, "Weaker housing market conditions in the wake of higher borrowing costs acted as a major constraint on UK construction output in June. Total industry activity declined for the first time in five months due to the steepest downturn in residential work since May 2020. Aside from the lockdown-related fall in housebuilding, the rate of decline was the fastest for just over 14 years. Survey respondents widely commented on cutbacks to new residential building projects and more caution among clients in response to rising interest rates…"

https://www.pmi.spglobal.com/public/release/pressreleases

The Market

Mortgage Lending, May

On 29 June, the Bank of England published "*Money and Credit*" for May with mortgage lending figures for the month.

Net approvals (approvals net of cancellations) for **house purchases**, which is an indicator of future borrowing, increased from 49,000 in April to **50,500** in May. Likewise, approvals for **remortgaging** (which only capture remortgaging with a different lender) saw a rise from 32,500 in April to **33,600** in May.

Individuals repaid, on net, £0.1 billion of mortgage debt. The net repayments followed the record £1.5 billion net repayments in April (if the period since the onset of the Covid-19 pandemic is excluded).

Gross lending rose from £16.4 billion in April to £18.7 billion in May, while gross repayments increased slightly from £18.6 billion to £18.9 billion after three consecutive months of decrease.

The 'effective' interest rate – the actual interest rate paid – on newly drawn mortgages rose by 10 basis points to 4.56% in May. The rate on the outstanding stock of mortgages also increased by 7 basis points, from 2.75% in April to 2.82% in May.

Halifax House Price Index, June

On 7 July Halifax published its House Price Index for June.

Month on month, average house prices fell -0.1%, the third consecutive monthly decline.

Quarter or quarter they rose 0.3% and year on year they fell by -2.6%.

The latest figures suggest some resilience in **new build** property prices (up by +1.9%) annually. However, the rate of growth has continued to slow, and has now dropped to its lowest level in more than three years.

Existing properties, which were instrumental in driving prices up during the pandemic related housing rush, were down by -3.5% year-on-year in June.

Regionally: average house prices were falling on an annual basis in most parts of the UK, with the only exceptions being the West Midlands (+1.5%), along with marginal gains in Yorkshire & Humberside (+0.2%) and Northern Ireland (+0.2%).

The most downward pressure was in the South of England (at -3.0% the annual fall in the South East was the largest since July 2011).

London recorded an annual decline of -2.6%, its weakest performance since October 2009.

Welsh house prices were down by -1.8% annual (compared to a +1.0% increase in May) – the nation's first year-on-year fall since March 2013.

In Scotland, prices were down slightly on the year (-0.1%), but nonetheless significant in being the first annual contraction in property prices in the last three years.

Halifax said the annual national fall was the largest since June 2011, largely reflecting the impact of historically high house prices last summer, supported by the temporary Stamp Duty cut.

"These latest figures do suggest a degree of stability in the face of economic uncertainty, and the volume of mortgage applications held up well throughout June, particularly from first-time buyers. That said the housing market remains sensitive to volatility in borrowing costs. Concerns about persistent inflation have led to a significant increase in the cost of funding. Coupled with base rate rising by another 50bp, this contributed to a big jump in typical mortgage rates over the last month.

"The resulting squeeze on affordability will inevitably act as a brake on demand.."

Nationwide House Price Index, June

On 30 June Nationwide published its House Price Index for the month.

House prices rose 0.1% month on month but fell -3.5% year on year. All regions except Northern Ireland recorded annual price fall in Qu.2. East Anglia was the weakest performing region, with prices down 4.7%, year on year.

Nationwide said, "Annual house price growth was broadly stable, little changed from the 3.4% decline recorded in May…

"Longer term interest rates, which underpin mortgage pricing, have increased sharply in recent months [and] longer term borrowing costs have risen to levels similar to those prevailing in the wake of the mini-Budget last year, but this has yet to have the same negative impact on sentiment….

"The sharp increase in borrowing costs is likely to exert a significant drag on housing market activity in the near term."

Ilke Homes in administration

In a statement of 30 June Ilke Homes said that, in the face of unprecedented inflation and a lack of land supply linked to planning processes, it had not been able to secure the further investment needed to take it forward. This had resulted in the immediate closure of the manufacturing facility at Flaxby in North Yorkshire and all site activities would cease. 1,150 staff will be made redundant with a small number being retained to assist the Administrators.

Aldermore Bank and NFB: Finance and funding survey

NFB in conjunction with its associate member, Aldermore Bank would like to understand member and industries finance and funding needs. We have put together a short survey, which should take no more than a couple of minutes to complete but give us a good picture of what industry needs, where we should be targeting support and how best support the construction sector.

This knowledge will also help NFB Policy identify ways to better support members and lobby the Government for appropriate assistance in funding, regulation, and policy

Find the survey here:
https://www.surveymonkey.co.uk/r/MP3CB39

HBA Housebuilders survey

This House Builders Association (HBA) survey is a rolling survey, which helps us identify what industries main challenges are, so we can inform decision makers, such as politicians, what they are getting right and what they need to improve.

With the Government likely to draw planning into the 'Levelling Up whitepaper,' it is an ideal opportunity for you to complete this survey and help us lobby for the changes SME housebuilders need.

Find the survey here:
https://www.builders.org.uk/policy/survey-page/hba-housebuilders-survey/

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