

# michelmores

## Planning & Property Bulletin

December 2024

# Contents

<b>Demolition approved for M&amp;S Marble Arch: Deputy PM gives green light for redevelopment</b>	<b>4</b>
<b>Clarifying the view of Class Q: the Planning team analyse recent appeal</b>	<b>5</b>
<b>On the fast track: overhaul of committee to speed up planning applications</b>	<b>5</b>
<b>50% affordable housing affords approval of green belt development</b>	<b>6</b>
<b>Case update: Court of Appeal rule on Section 73 variations in <i>Fiske</i></b>	<b>7</b>
<b>A short update on the revised NPPF</b>	<b>8</b>
<b>Our people</b>	<b>9</b>



# Demolition approved for M&S Marble Arch: Deputy PM gives green light for redevelopment

Controversial plans to redevelop the flagship store on Oxford Street have recently been approved by Deputy Prime Minister Angela Rayner following several years of delay.

The planning application, submitted to Westminster City Council (“the Council”) in June 2021, proposes to demolish the three existing buildings and construct a nine-storey mixed use development. The redevelopment plans were met with objections, notably from Save Britain’s Heritage and RetroFirst, who claimed that the demolition would release as much as 40,000 tonnes of carbon dioxide into the atmosphere.

Despite approval from the Council, Mayor of London and an Independent Inspector, the Secretary of State decided to call in the application for his own determination under section 77 of the Town and Country Planning Act 1990.

In July 2023, the plans were rejected by the government and subsequently M&S successfully challenged the decision in court. The case was discussed in more detail by the Planning team earlier this year in an article written by Solicitor, Grace Bravery, and Graduate Solicitor Apprentice, Laurence Platt. You can find a link to read our article [here](#).

The Deputy Prime Minister, alongside her role of Secretary of State for Housing, Communities and Local Government, has now granted permission for the demolition and reconstruction of the flagship store.

The redevelopment appears to now be the test case in the argument about whether old buildings should be demolished or retrofitted. At the heart of the controversy surrounding the redevelopment was the option of retrofitting.

Henrietta Billings, Director of Save Britain’s Heritage argued that there was no need for the building to be demolished and that with a “comprehensive retrofit” the building could “continue to serve as a landmark on Oxford Street for the next 100 years.”

M&S CEO, Stuart Machin, acknowledged the argument for retrofitting and reasoned that 16 different plans to retrofit the store had already been tested and concluded to be untenable.

The redevelopment will put the new building among the top 1% of sustainability performance in London. It will also use less than a quarter of the energy of the current building and recycle and reuse most of the existing building materials. The decision signals to developers a new era in the retrofit vs redevelopment debate with a shifting focus to long term sustainability.

**Source: BBC News.**

## Clarifying the view of Class Q: the Planning team analyse recent appeal

Partner, Fergus Charlton, and Solicitor, Grace Bravery have recently reviewed a South Oxfordshire District Council appeal that has seemingly clarified the requirements for a development to fall within Class Q – conversion of agricultural buildings to residential.

The distinction between conversion and rebuilding remains central when considering whether permitted development rights apply under Class Q. If the works amount to a rebuild then the conversion is not permitted by Class Q.

Fergus and Grace explore the recent case and its clarification of the distinction in further detail [here](#).

**Source: Michelmores.**

## On the fast track: overhaul of committee to speed up planning applications

The Deputy Prime Minister has announced plans to permit planning applications to bypass committee approval if they comply with local plans and the National Planning Policy Framework (NPPF).

The announcement comes as part of the new Government's aim to boost housebuilding to meet the target of 1.5million new homes over the next five years. The Deputy Prime Minister has said that the reforms would help streamline the planning system and tackle "chronic" delays in the current system.

Councillor Richard Wight, planning spokesperson for the District Councils' Network, commented that, while the building of 1.5million homes is "desperately needed", the role of committees provides "a democratic safety valve for decisions on local development, and help get community buy-in for developments."

The link to read the full article can be found [here](#).

**Source: Local Government Lawyer.**



# 50% affordable housing affords approval of green belt development

Outline planning permission has been granted for up to 220 houses, of which 50% will be affordable, on green belt land in Borehamwood, Hertfordshire.

The development was initially refused permission in March 2024 because it was regarded as "inappropriate development in the green belt". The developer, BDW Trading, appealed the decision in June.

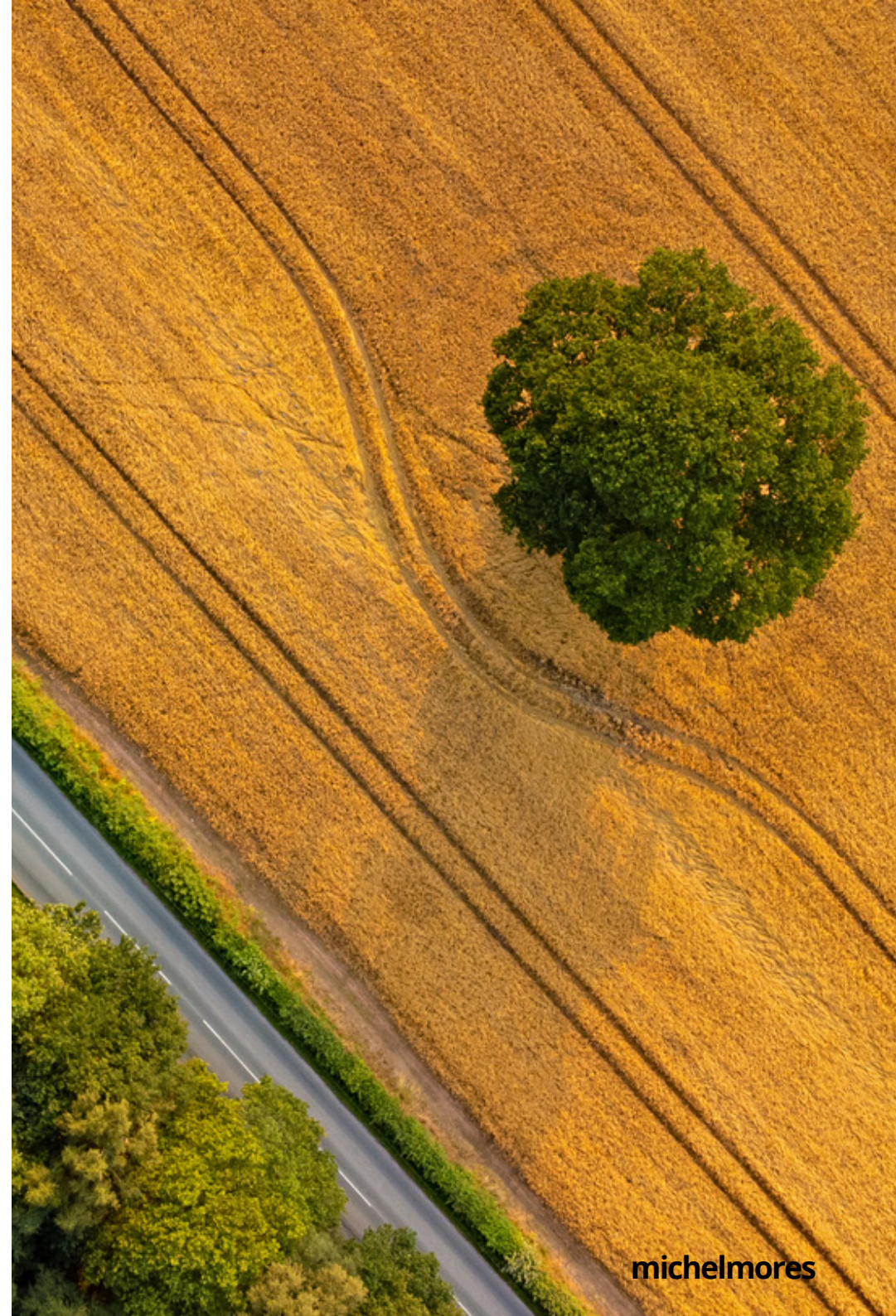
The application was assessed by the planning inspector against several different factors including the impact on the openness and purposes of the green belt, landscape impact, and character and appearance of the surrounding area.

Both the Hertsmere Borough Council (**Council**) and the developer agreed that the Council could only show a housing land supply of 1.36 years, which meant the NPPF's "presumption in favour of sustainable development" was triggered.

Planning inspector, David, Wildsmith, commented that "in a borough which is 80% green belt and only 20-25% of the required housing can be accommodated on brownfield sites, it is an inevitability that any future adopted local plan will have to plan for green belt releases."

A spokesperson for the developer said that they were pleased with the decision and the recognition that "very special circumstances" exist.

**Source: Planning Resource.**



# Case update: Court of Appeal rule on Section 73 variations in *Fiske*

Section 73 of the Town and Country Planning Act 1990 enables applications to be made for the variation or removal of a condition in an existing planning permission.

These work in situations where the proposed change to a planning permission is minor, albeit material, and does not conflict with the operative part of the planning permission. Over the last few years, various court decisions have reviewed the application of section 73 variations and the latest Court of Appeal decision in *Test Valley Borough Council v Chala Fiske* [2024] has further clarified the position.

In this case, the appellant, Test Valley Borough Council, sought to amend the conditions of an existing planning permission for a solar farm, which excluded a previously permitted 33kV substation. The legality of the new conditions was challenged on the basis that they were ultra vires – beyond the authority's legal power.

The Court of Appeal held that while the local planning authority can vary or remove conditions of an existing planning permission, the operative part of the planning permission cannot be altered. The appellant's attempt to exclude the 33kV substation materially conflicted with the existing planning permission and was held to be inconsistent with the scope of a Section 73 application.

The court further established that any new conditions must not materially conflict with the substantive development rights contained in the existing planning permission.

The case helps to provide further guidance to developers who are considering submitting a planning application and highlights the importance of putting any accompanying plans into a condition, rather than part of the development description.

These issues may soon be history should the new government bring section 73B into effect. Although following on from the November edition of this Planning & Property Bulletin, the [answer](#) to Lord Banner's question has not provided any further certainty in this area.

You can read the full judgment [here](#).

**Source: BAILII.**



# A short update on the revised NPPF

The updated version of the National Planning Policy Framework (**NPPF**) has just landed. We wanted to provide a brief update in this December edition of the Planning & Property Bulletin and we will delve deeper in the New Year.

1. The introduction of new immediate mandatory housing targets for councils;
2. There will be an increase in housebuilding targets for areas with the highest unaffordability for housing;
3. Councils will be required to review greenbelt boundaries to meet targets and identify and prioritise 'grey belt' land.

4. Developers will need to meet new "golden rules" to provide infrastructure like transport, GP surgeries and social and affordable housing.
5. Both councils and developers will also need to focus more on social rent and building genuinely affordable homes for people most in need.

The [full revised NPPF](#) was published on the 12 December 2024.

**Source: GOV.UK**



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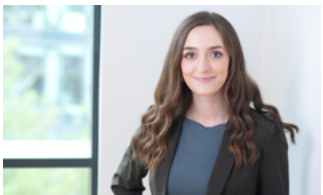
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