

Legal landscape

DOES THE PLANNING SYSTEM WORK FOR ALL?

The NPPF has nothing to say about diversity. Is it possible then for the planning system to work for all? Michael Bedford QC offers some thoughts

The NPPF does not mention the words 'diversity' or 'equality'.

In appropriate circumstances, however, whether a development or policy proposal will impact on different members of the community is capable of being a material consideration in the making of planning decisions.

Such was the case in *LDRA Ltd v SSCLG* [2016] EWHC 950 (*Admin*), which considered the impact of redeveloping a car park on disabled people's access to River Mersey, and where planning permission was quashed.

Similarly, *R (West Berkshire DC) v SSCLG* [2016] EWCA Civ 441 considered the effect of changes to national affordable housing policy thresholds on the provision of affordable housing. In this case the policy was upheld after a retrospective equality assessment.

These two cases specifically considered the operation of the Public Sector Equality Duty in s.149 of the Equality Act 2010. But diversity is, of course, a wider concept than the statutory notion of equality. For present purposes, this latter is limited to matters relating to interactions between the planning system and those

with protected characteristics.¹

Socio-economic considerations, unrelated to a protected characteristic, would not be an equality issue but could be a diversity issue. Such matters could have land use implications, as was the case in *Horada v SSCLG* [2016] EWCA Civ 169, which considered the impact of redevelopment of Shepherd's Bush Market on low-cost accommodation for small traders, and where the CPO was quashed.

Is it enough for the planning system to recognise that diversity issues are capable of being a material consideration, so that where they are they have to be considered by

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decision-makers on a case-by-case basis? Or should some more specific guidance be given on how this should be done? If so, the imminent consultation on the refreshed NPPF could provide the opportunity to add it.

The former Office of the Deputy Prime Minister (ODPM) certainly took the view that diversity issues should be 'mainstreamed' within the planning system. Under John Prescott, the ODPM took the view that diversity and equality were integral aspects of sustainable development, and that to achieve this outcome would require clear guidance to decision-takers and policymakers to ensure that this was done.

The ODPM commissioned research from Sheffield Hallam University in 2003, leading to *Diversity and Equality in Planning: a Good Practice Guide* (2004). It contains a wealth of useful information for those who want to address diversity issues as an overt topic when making planning decisions.

The DCLG, under the leadership of Eric Pickles, was less convinced that diversity should be singled out in this way. As noted above, the NPPF does not directly address diversity. In March 2013 Pickles told the Planning Inspectorate not only to stop asking appellants to submit diversity information with appeals, but also to stress that "ministers believe that the planning system should be applicant-blind, and focused on the spatial impacts and not the background of the applicant".

The letter made it clear that where diversity issues were relevant to the decision they could be expected to be picked up when addressing other material considerations – such as where a care home proposal sought to provide accommodation to meet the needs of the elderly.

The MHCLG, under Sajid Javid, has shown no signs of being any more enthusiastic than Pickles about the need for guidance on diversity.

Given that there is nothing to stop decision-makers who do want to recognise diversity issues directly in their decisions from doing so at present where those issues have spatial or land use implications², it may be thought that the case for bespoke guidance at a national level has not been made out. Planning is already flexible enough to allow these issues to be addressed where warranted by the circumstances. **□**

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¹ Age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

² Examples would include low-cost or other forms of specialised housing, accommodation for gypsies and travellers, the provision of land/premises for business 'start-ups', or ensuring that public spaces and transport routes are safe and welcoming to vulnerable groups.