

## Insights

# TO RETROFIT OR REBUILD - IS PLANNING POLICY A HELP OR HINDERANCE?

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## SUMMARY

Reducing the embodied carbon in the built environment has an important role in mitigating the effects of climate change. However, there is no national planning policy that incorporates such considerations in the planning process. Whilst a policy shift is on the horizon, the recent High Court challenge brought by M&S following the refusal of its Oxford Street store plans brings welcome clarity on where things currently stand for demolition and rebuild proposals.

Retrofitting and reuse of existing buildings, as opposed to their demolition and rebuild, is a more environmentally sustainable approach to development in most (but not all) cases, in terms of lower carbon emissions.

However, there is currently no standardised approach to calculating and assessing the non-operational carbon or 'embodied carbon' impacts of a development over its lifetime. Neither are there clear national planning policies or guidance on how these emissions should be taken into account in planning decisions. This contrasts to 'operational carbon', being the carbon emissions from running a building, which have been subject to recent policy and regulatory intervention.

However, the 'embodied carbon' in buildings is becoming an increasing focus, given that the built environment is estimated to contribute 40% of global greenhouse gas emissions. With calls from the Environment Audit Select Committee, campaigners and industry to embed a broad form of carbon assessment into national planning policy to support a reduction in this figure, a policy shift is in sight.

Whilst this was considered in the most recent consultation on updates to the NPPF (in December 2022) no new policy was introduced. However, the door was left open to future changes pending further research on the impacts of measuring and reducing embodied carbon at project level and sector wide.

## THE CHALLENGES

So whilst there is a strong environmental case for retrofitting buildings (because carbon emissions are generally lower than demolishing and rebuilding), and the economic case is getting stronger too, with the 'green premium' expected to increasingly dictate real estate values in the coming years, in practice there are often development challenges.

This is in part due to the high cost of works to deliver a building that reaches a good sustainability standard (in [BCLP's Sustainability Imperative Report](#) 68% of institutional investors consider these cost to be too high). Where retrofitting is not economically viable, demolition and rebuilding may be the only option.

However, navigating planning policy around when demolition is justified is not straightforward, as was highlighted in the [recent High Court challenge by M&S](#) against the Secretary of State's (SoS) decision to refuse its planning application to demolish and rebuild its flagship store in Oxford Street in the summer of 2023 ([see our previous insight for background](#)).

This decision attracted much attention partly because it was seen as 'anti-business'. But it also highlighted a lack of detailed national planning policy on how embodied carbon emissions in the context of the reuse and demolition of buildings should be treated, which perhaps misaligns with expectation, given the extent of climate emergency and the role of the built environment in its mitigation.

## CLIMATE CHANGE CONSIDERATIONS IN THE PLANNING PROCESS

At a national level there are broad statutory and policy requirements (in the NPPF) for climate change to be a consideration in the planning process. In this context the reuse of existing building is encouraged, but there is no specific requirement for embodied carbon emissions to be measured and weighed in the planning balance in the consideration of demolition reuse proposals. So it is for local authorities to introduce local policies that specifically address these issues if they wish, and in a way that reflects national planning policy. This results in a lack of uniformity across the country, with carbon offsetting requirements secured through planning obligations are increasingly common in local plans.

## DOES THE M&S CASE CLARIFY WHEN DEMOLITION IS JUSTIFIED?

Not exactly. However, it is helpful in two respects. The first is that it confirms that there is no strong presumption in the NPPF in favour of retrofitting and reusing buildings (the SoS had said, in his decision to refuse M&S's planning application, that there was such a presumption in NPPF paragraph 157, and that M&S had failed to provide sufficient evidence to conclude there was no viable and deliverable alternative to demolition), but his interpretation was held to be categorically wrong and he was accused of 're-writing' planning policy, which he is not entitled to do. The Court made it clear that any such presumption would need to be expressly stated in the policy.

The second is that (for major developments in London), whilst the London Plan requires development proposals to calculate and reduce whole life cycle carbon emissions, the case confirmed London Plan policy (SI2) that introduces a net-zero carbon requirement, only applies to the operational carbon of the building. The SoS had wrongly applied this policy and taken into account the embodied carbon of the proposed demolition and construction when assessing whether it was net-zero carbon.

## WHAT'S NEXT?

A national planning policy shift is probably on the horizon that will likely strengthen the 'retrofit first' requirement and incorporate assessments of embodied carbon into the planning process. The M&S case may provide the impetus for these changes sooner rather than later, but not under the current government. It is clear, however, that an incoming Labour government regards planning reform as being a key priority and will also wish to burnish its sustainability credentials by an early amendment to NPPF. So there is an inevitability that any early amendment to NPPF will include a presumption in favour of retrofitting and reuse.

In the meantime, some local authorities, such as the City of London and Westminster City Council, are on step ahead and leading the way with clearer and stronger 'retrofit first' policies in their emerging plans that will require developers to explore retrofit options before demolishing buildings.

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*This article was written with Trainee Solicitor Hannah Whiting*

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