

THE PLANNING WHITE PAPER – OUR VIEWS ON THE PROPOSALS FOR PLANNING REFORM

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SUMMARY

The long awaited Planning White Paper was finally published on 6 August 2020 for consultation which, as promised, proposes radical changes to the current planning system that are not short of ambition.

This is not the first time in living memory that a Government has proposed a “fundamental overhaul” of the planning system and comes hot on the heels of the radical changes to the Use Class Order last month with the much greater flexibility to “give businesses greater freedom to adapt to changing circumstances” which kicks in on 1 September. Whilst it is a clear statement of intent to advance a Conservative Party manifesto commitment, previous attempts at radical reform are almost invariably watered down when the reality of unintended consequence becomes apparent through the consultation exercise.

There are, however, some interesting ideas in the latest proposals, not least the proposed introduction of a zoning system which was first trailed in the paper published by the Policy Exchange just before lockdown.

The experience of our Zoning specialist colleagues in our New York office, where an “as of right” Zoning system was introduced in 1961, is that the system does still have significant complexities (for example, the zoning rules now run to 1500 pages!), so it might not be the magic bullet the Government is hoping for. Indeed, the transitional arrangements are likely to be very complicated and will introduce huge levels of uncertainty which will delay and potentially undermine investment decisions.

A further consequence of pressing the “reset” button on the planning system is that it would place a huge additional burden on local authorities that are already seriously under-resourced. Ensuring that they are adequately resourced to implement any changes will be critical to the successful implementation of the reforms.

The ideas in this White Paper will generate much debate and analysis across the industry over the coming months as the implications for public authorities, stakeholders and communities have the potential to be enormous.

This briefing summarises the new planning system that is proposed and our initial views.

Clients wishing to participate in the consultation should note that the 12 week consultation period closes on **29 October 2020**.

A “WHOLE NEW PLANNING SYSTEM” – WHAT IS PROPOSED?

The White Paper divides its proposed reforms to the planning system into three broad themes, which it calls “pillars” and sets out how the changes could be delivered in varying degrees of detail. What is interesting is that alongside the “radical” change proposed and given most prominence, a significantly watered down alternative is mooted and also that a large element of the planning system will remain unchanged

PILLAR ONE: PLANNING FOR DEVELOPMENT

A new role for Local Plans

Many will agree with the Government that Local Plans are too long, complex, take too long to produce and become out of date quickly.

The proposal is, not that they will be abolished, rather that they will be fundamentally re-focused. No general development management policies would be included (these would be contained only in the NPPF), with policies restricted to site or area-specific requirements and development standards to provide certainty about where and how land can be developed, with details of a faster and simplified consenting process also proposed.

Three Zones

At the heart of the new Local Plan system is the local or national allocation of land to three categories (zones) with rules (similar to zoning rules) about how each zone can be developed, covering suitable development uses, height and density limits and identification of sub-areas where different rules apply.

The three proposed zones are set out in the table below, but an alternative binary zonal model is proposed as an alternative with permission in principle given to land in the development category.

Zone	What type of land is included?	How would development be permitted?
Growth Areas - “suitable for substantial development” (to be defined in policy)	<ul style="list-style-type: none"> • Land for comprehensive development eg new settlements/urban extensions • Land for redevelopment eg former industrial sites • Sites where growth could be clustered eg around universities • Areas of flood risk (or with other constraints) excluded unless risks can be mitigated. 	<p>Automatic grant of outline planning permission on adoption of the Local Plan.</p> <p>Details agreed (and full permission achieved) through a faster consenting route which focuses on design and site-specific technical issues and secured through:</p> <ul style="list-style-type: none"> • a reformed reserved matters process; • Local Development Orders; • Development Consent Orders for “exceptionally large sites” eg new towns • Reformed powers may be introduced for Development Corporations to reflect this new framework.

Zone	What type of land is included?	How would development be permitted?
Renewal Areas - "suitable for development"	<ul style="list-style-type: none"> • Existing built areas where smaller scale development is appropriate • 'Gentle densification' and infill of residential areas • Development in town centres • Development in rural areas not allocated as Growth or Protected areas 	<p>Statutory presumption in favour of development, but with opportunities to resist inappropriate development in some cases.</p> <p>Planning consent granted:</p> <ul style="list-style-type: none"> • Automatically if the scheme meets design and other prior approval requirements for pre-specified forms of development • A faster planning application process where a planning application is determined in the context of the description of appropriate development in the area or site set out in the Local Plan and with reference to the NPPF; • Local or Neighbourhood Development Order. • Specific planning applications required for proposals that deviate from the Local Plan (eg if local circumstances change or opportunities arose) • Expansion of permitted development rights to include popular and replicable designs.
Protected Areas	Green Belt, Areas of Outstanding Natural Beauty (AONBs), Conservation Areas, Local Wildlife Sites, areas of significant flood risk and important areas of green space.	More stringent development controls with planning applications submitted to the local authority and assessed against the NPPF, as currently exists.

Preparation of new Local Plans

Proposals to overhaul the procedure for preparing the new Local Plans to make the process faster and with greater opportunity for community engagement include:

- **Removing the test for 'soundness'** - currently local plans can only be adopted if they are found to be legally and procedurally 'sound' in accordance with four tests in the NPPF. This test would be removed and replaced by a single and consolidated statutory "sustainable development" test which would include simpler consideration of environmental impacts to ensure plans strike the right balance between environmental, social and economic objectives.
- **Automation and digitisation of policies** and written in a machine-readable format so that development proposals can be automatically screened to identify where they align with policies and/or codes, leaving the subjective elements to be assessed by humans.
- **Informed by infrastructure** – data and evidence on infrastructure need and planning will inform Local Plans with sites only allocated if there is a reasonable prospect of the infrastructure needed coming forward within the plan period.
- **Binding housing requirement** – demonstration of a five year housing supply would be removed and replaced with a new standard method for establishing housing requirement figures with Local Plans required to identify the areas in which housing, businesses and community needs can be met for at least the next 10 years introduced. The Housing Delivery Test will remain as part of the new system. However, authorities could agree an alternative distribution of their requirement in the context of joint planning arrangements.
- **Incentives to determine applications in statutory time frame** – for example with fee refunds and more deemed approvals.
- **Digitally enabled and standardised process** - various proposals are put forward for the digitisation, standardisation and automation of the application process, to make it easier for applicants and local planning authorities. Local Plans should be fully digitised and web-based rather than document based and a digital register of planning policies is proposed.
- **Shorter and standardised planning applications** - for major development, other than drawings and plans, there should only be one key standardised planning statement of no more than 50 pages.
- **Statutory timetable for key stages of the Local Plan making process** - a 30 month statutory timescale for the production of Local Plans with specified timescales for each stage in the process. Local authorities will be required to adopt a new Local Plan by a specified date and reviewed every 5 years.
- **Neighbourhood Plans retained** and particularly encouraged in towns and cities and extension of the concept so that very small areas – such as individual streets – can set their own rules for the form of development in that area is also under consideration.

BCLP Comment

The new Local Plans proposed will be more prescriptive and rigid in their application, and will operate more like zoning rules. Experience from other countries teaches us that zonal planning systems are far from simple and involve many layers and complexities. To seek to impose a uniform system across the country and deliver it within a 30 month timescale (once the legislation is introduced) underestimates the scale of this challenge.

There is limited detail on how land designations would be decided, and the desire to move away from plans underpinned by evidence raises concerns. How land is ultimately designated could have significant value implications for landowners and designation will be contentious.

Only a passing reference is made to the fact that Development Consent Orders could be used for "*exceptionally large sites*". This process can be lengthy, so an extension of this regime is unlikely to be a quick fix to the delays in housing and infrastructure delivery and will no doubt be fiercely resisted by certain interested parties.

The technological improvements to the process and to the new Local Plan are welcomed (provided they work and are user friendly), but the cost for already under-resourced authorities make deliverability questionable.

PILLAR TWO: PLANNING FOR BEAUTIFUL AND SUSTAINABLE PLACES

These proposals explore the Government's desire to "*have a system in place that enables the creation of beautiful places that will stand the test of time, protects and enhances our precious environment, and supports our efforts to combat climate change and bring greenhouse gas emissions to net-zero by 2050*".

National and local design guides and codes

National and local design guides and codes are proposed to 'guide' decisions on the form of development.

Local design guides prepared with input from local communities would be brought forward as part of the new Local Plan process, by neighbourhood planning groups or applicants with significant proposals and should consider "*empirical evidence of what is popular and characteristic in the local area*", and only given weight in planning decisions if this can be shown. A new expert body would help authorities use design guidance and codes and with a "*monitoring and challenge role*".

A Fast-Track for Beauty

Amendments to policy and legislation would allow certain development that comply with local design guides and codes to be fast-tracked through the system.

Environmental Sustainability

NPPF amendments are proposed to strengthen the way environmental issues are considered although no particular provisions (existing or proposed) are identified at this stage. A new system for environmental considerations (including by reference to SEA, SA, EIA and habitats and species) is proposed, particularly looking at preventing duplication and delays, improving transparency and opportunities outside of the European Union, but details are scarce.

Approach to listed buildings and conservation areas

The planning framework for listed buildings and conservation areas is proposed to be reviewed and updated with consideration of changes of use issues, climate change adaptation and new ways of consenting, such as exploring whether suitably experienced architectural specialists can have "*earned autonomy from routine listed building consents*".

BLCP Comment

Building beautiful and sustainable places is an admirable ambition. However, the subjectivity around what is 'beautiful' makes this a particularly difficult area to deliver on and is likely to divide opinion. Compliance could also increase development costs.

The proposed requirement that local design codes should be based on "*empirical evidence of what is popular and characteristic in the local area*" is interesting but raises questions as to how such evidence will be compiled and its credibility.

PILLAR THREE – PLANNING FOR INFRASTRUCTURE AND CONNECTED PLACES

A new Infrastructure Levy

The existing regimes of CIL and Section 106 planning obligations to secure developer contributions will be replaced with a new consolidated Infrastructure Levy. This would essentially be a reform of the current CIL regime, with the levy charged as a fixed proportion of the development value above a threshold (reflecting average build costs per square metre), with a mandatory nationally-set rate or rates and the current system of planning obligations abolished.

The Infrastructure Levy would be calculated when planning permission is granted (in the same way as CIL) and paid on occupation (rather than on implementation of development as applies for CIL).

Revenues would continue to be collected and spent locally and local authorities could borrow against the Infrastructure Levy revenues to forward fund infrastructure, to incentivise infrastructure delivery and in turn help to ensure development can be completed faster.

The scope of the Infrastructure Levy could be extended to capture changes of use through permitted development rights to ensure better contribution of development permitted this way to infrastructure delivery.

An alternative option is suggested where the Infrastructure Levy remains optional and rates set by individual local authorities. However, as planning obligations would be consolidated into the single Infrastructure Levy, there would be a stronger incentive for local authorities to introduce the new Levy, as they would not be able to use Section 106 planning obligations to secure infrastructure or affordable housing.

Affordable housing provision

Affordable housing is currently secured via Section 106 planning obligations only, but with planning obligations removed, authorities would use the Infrastructure Levy funds for affordable housing.

Local authorities could specify the forms and tenures of on-site affordable housing provision and an affordable housing provider able to purchase units at a market discount, as happens now. However, rather than securing the discount through Section 106 planning obligations, it would be considered as "in-kind" delivery of the Infrastructure Levy. The difference between the price at which the unit is sold to the provider and the market price would be offset from the final Levy liability sum, to incentivise developers to build on-site affordable housing where appropriate.

Local authorities could have an option to revert back to cash contributions if no provider was willing to buy the homes due to their poor quality.

Greater freedom on Infrastructure Levy spend

There would be increased local authority flexibility to allow them to spend receipts on their policy priorities, once core infrastructure obligations have been met.

BCLP's Comments

The proposed new system sounds attractive in that it would be more straightforward for developer's to navigate and plan for. However, removing all opportunity to negotiate and setting national rates will concern many in the industry as it fails to recognise or account for the many variables and nuances in predicting development values and delivering viable developments. However, if rates are set at a realistic level which will not be prohibitive, perhaps this could be an improvement on the existing dual system.

TRANSITION TO A NEW SYSTEM

The Government wants recently approved schemes to be implemented, and to ensure clear transitional arrangements are in place to bring forward new development proposals under a new system. However, despite these wishes developers will inevitably weigh up the merits of proceeding with existing proposals against pressing 'pause' and waiting to see how the new planning landscape unfolds. As a result the proposed changes could inadvertently hinder development coming forward in the short to medium term.

A new system will take many months (and possibly years) to introduce. In a nod that the current system will be in place for some time to come (and perhaps an acknowledgement to the challenges that lie ahead) the Government published a separate consultation on 6 August 2020 on four measures to the existing planning system to improve its effectiveness more immediately.

Funding the new planning system

Whilst the changes proposed, with an emphasis on new technology and software, will be a welcome boost for the PropTech sector, the cost of introducing and operating the proposed new system will be huge for local authorities.

The costs are proposed to be principally funded by the beneficiaries of planning gain through the Infrastructure Levy, with a small proportion earmarked to cover planning costs, Local Plan preparation, design codes and enforcement activities. However, there is no indication of the actual costs estimated or whether this source of funding will be sufficient.

WHAT NEXT?

Once the scale and significance of the proposed changes sink in, developers will want to think carefully about the implications of these reforms on their development strategies in terms of potential new opportunities (as well as challenges). With an opportunity to shape the emerging new planning system, developers would be wise to consider participating in the consultation.

Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

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