

UK PLANNING REFORM AND THE 'GREAT RECOVERY BILL'

Covid 19

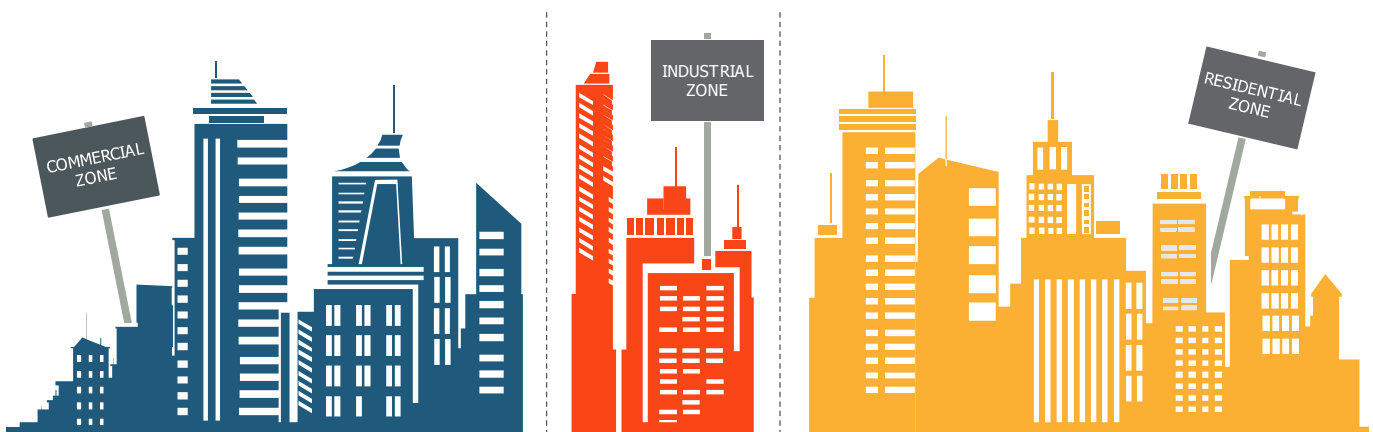
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SUMMARY

Planning reform is once again back in the spotlight and is expected to play a central role in the UK's economic recovery from the Covid crisis. Although we do not know the nature of the reforms at this stage, there is much media speculation they could be radical. Our understanding is that Dominic Cummings is pushing for the whole planning regime to change and will doubtless have support from the Chancellor, whose reputation in the Government and amongst Treasury veterans is growing by the day.

In this briefing we discuss some of the ideas that may be promoted, with a particular focus on the possible introduction of a flexible zonal planning system and its inevitable impact land values.



INTRODUCTION

The Government previously set out some limited reforms to the planning system (discussed in our previous [blog](#)) in its 'Planning for the Future' Statement published on 12 March 2020 with detail of further reforms, promised to be ambitious and creative, set to be unveiled in a Planning White Paper to be published in spring 2020.

Publication of the White Paper was put on hold as the Government dealt with the urgency of the coronavirus pandemic. However, the focus has recently returned to planning and its role in the economic recovery, with talk that a 'Great Recovery Bill' will be passed before the Parliamentary summer recess which is likely to include some radical planning measures.

Planning reform is definitely on the horizon, but the question is how bold and how radical it will be?

A 'NEW DEAL' FOR PLANNING – IDEAS BEING CONSIDERED

Discussions on a 'new deal' for planning are currently ongoing and taking place at the heart of Government with Robert Jenrick MP confirming that:



"the time has come to speed up and simplify this country's overly bureaucratic planning process" and that the Government is "thinking boldly and creatively about the planning system to make it fit for the future"

Robert Jenrick MP, Secretary of State for Housing, Communities and Local Government



Recent media reports identify that some of the changes being considered are radical and that they are being informed by a newly created panel of experts which includes some highly respected industry figures¹.

In addition to the panel's advice, Government discussions are also likely to be informed by a report authored by a Downing Street planning advisor and published by the think tank Policy Exchange titled "Rethinking the Planning System for the 21st Century". This report, published in January 2020, promoted some fairly radical ideas and in its introduction stated:



Perhaps the most revolutionary idea in this report is that land should be divided in two primary classes, not hundreds of finely tuned zoning areas. One class of land is protected against growth, either for historical or environmental reasons. The other class of land largely permits growth. By eliminating uncertainty about the permitting process, development can become faster and cheaper. If the rules of the game are clear from the beginning, then builders will be able to deliver the housing England needs.

Rethinking the Planning System for the 21st Century Report



¹ Bridget Rosewell, the national infrastructure commissioner; property developer Sir Stuart Lipton; planning barrister Christopher Katkowski QC; Nicholas Boys Smith, founder of Create Streets; co-chair of the Building Better, Building Beautiful Commission; and Miles Gibson, head of UK research at advisory group CBRE.

Policy Exchange also released a collection of essays (in June 2020) to be read alongside this report, each considering a different part of the planning system and possible changes. What is interesting is that some of the contributors to the Policy Exchange report and essays have now been appointed to the Government's expert panel, for example the leading economist Bridget Rosewell.

A read of these papers gives a flavour of the ideas and possible direction of travel under discussion. Ideas include the abolition of the local plan, deregulation of planning, introduction of zonal planning, an affordable housing financial tax and EIA reform.

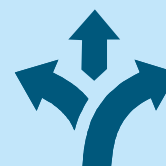
However, the main ideas surfacing in the media that are under Government consideration are the increased use of development corporations, the introduction of zonal planning and an extension of permitted development rights to support town centres and the high street.

We have provided more details on the reforms proposed by Policy Exchange and extracted from media reports and our views on the likelihood of their implementation in the Table annexed to this briefing.

We consider that a wholesale redrafting of the planning system is unlikely and it would not happen quickly in any event, but we consider that the following changes to the system could gain traction and have potential to be delivered.

Potential planning changes

- ✓ A simplification of the local plan system that makes it less prescriptive, perhaps giving a greater prominence to economic regeneration in the decision making process.
- ✓ Incentives to encourage the greater use of government backed development corporations for development.
- ✓ Introduction of a zonal planning regime that operates within defined development or opportunity zones.
- ✓ Introduction of more regulation, rules and codes and a move away from a reliance on policy.
- ✓ EIA reform with a greater emphasis on data collection and the management and monitoring of environmental impacts after completion of development.
- ✓ Expansion of Permitted Development Rights for high street and town centre uses.
- ✓ Extension of the Development Consent Order regime for major housing schemes (1000 + houses) and infrastructure that is not nationally significant - effectively taking such schemes out of highly political local planning controls.



ZONAL PLANNING SYSTEMS

It is the proposal to introduce a simplified zonal planning system that could potentially have the biggest impact on our clients and land values.

Zonal planning systems can exist in various forms and are commonly used in many western countries. In simple terms, an area of land is divided into different zones shown on a zoning map and legally binding zoning rules identify what uses and development is permitted in each zone (and what uses are restricted).

The advantage of this system is in the certainty it gives developers and landowners by setting clear parameters within which to design, build and use, the lack of which can increase development costs, risk and lead to the arbitrary use of discretionary powers – all too frequent complaints of the current planning system in the UK.

What might a zonal planning system in the UK look like?

Media reports suggest that new development zones would benefit from relaxed planning rules and the government would provide public infrastructure investment in order to stimulate private development. We know that the Government will pump billions of pounds into infrastructure but that it will be targeted. The view is that for too long the UK has been too dependent on consumption and needs to move to a more investment-driven economy. However, what we don't know exactly is how 'relaxed' the planning rules within the development zones might be or where they will be located.

Media reports also suggest that zoning rules that focus on design codes are under consideration, so that "attractive" buildings (a term loaded with subjectivity) can be fast-tracked through the planning process, similar to the US zoning system model, where a proposed development that complies with the zoning codes does not require any special consideration from the planning authorities. It is not clear whether such rules would apply only to the proposed new development zones, or perhaps to a wider zoning system.

At the more radical end of the reform spectrum, is an idea promoted in Policy Exchange's "Rethinking the Planning System for the 21st Century" report which would present the clearest example of a "clean break" with the current system. Media reports don't mention this as an option, but it could be that elements are being considered for the proposed new development zones. For more details on these proposals and our views, please see the Table annexed to this briefing.

What would a zonal planning system do to land values?

In the trade-off between flexibility and certainty, a zonal planning system would inevitably impact on land values. However, the extent of the impact would depend on the type of zonal system promoted, the zone to which land is allocated and on how that land is allocated under the current local plan.

A highly prescriptive and detailed zonal regime would place more limits on the freedom to build or change use than exists under the current local plan system. With that would be a reduced scope (in some cases) for "hope value", being the market value of land based on the expectation of getting planning permission, and the opportunity for landowner premiums of the size the current planning system has the potential to deliver when planning permission is granted. If development potential is fixed, the overall value of land is also fixed, and the underlying land value will be more certain. However, if land that has little "hope value" attached in the first place is allocated within a development zone, its value could potentially be increased.

A system of fewer zones which are defined by broad parameters that offers more flexibility than the current local plan system could also impact land values, but to a different degree. For example, if a binary zonal system (as referred to above) is introduced, land allocated as "development land" would clearly have higher land values than "non-development land", but with fewer planning restrictions for "development land", the basis for land value calculations would require revision.

THE END OF LOCALISM? THE END OF PLANNING AS WE KNOW IT?

It seems clear that at the heart of the Government's reform deliberations is the intention to make it easier to build and repurpose land to support a national economic recovery. How far it will dare to go in killing the sacred cows of the planning system as we know it remains to be seen.

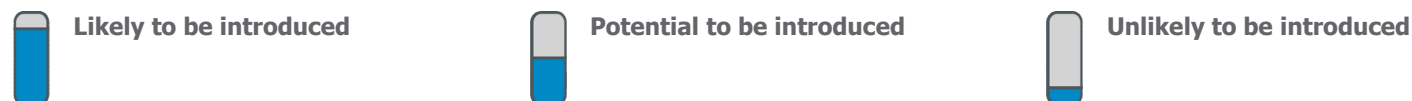
As the country emerges from the Covid crisis, a political landscape may unfold that makes radical reform, previously unimaginable, more palatable. However, in bringing forward a centrally delivered national recovery plan, the role and input of local communities could be sacrificed for the national interest and spell the end of the localism.

As the world emerges from Lockdown, we are entering new territory on many fronts, but those in the planning and development industry must be braced for change and opportunity. Cynics, perhaps with some justification, may wonder if this is yet another fresh faced Planning Minister about to discover just how entrenched the vested interests in the current planning system are.



POTENTIAL REFORMS TO THE UK PLANNING SYSTEM

Table setting out potential reforms to the UK planning system and our view on the likelihood of them happening.




Proposals in Policy Exchange Report “Rethinking the Planning System for the 21st Century” published in January 2020



| Proposed change | | BCLP’s view on likelihood | |
|--|---|--|--|
| Ending detailed land use allocations | Ending detailed land use allocations and controls because site allocations or development plan controls over use based on projections of housing and commercial ‘need’ should be ended because LPAs have proved ineffective and inefficient at micro-managing land markets. Local plans are too rigid and based on imperfect long terms predictions of need that translate poorly into short term restrictions which doesn’t accommodate or respond to changing circumstances and market conditions. | This is one of the most radical views promoted and presents huge challenges if it was ever implemented. This would be a “clean break” with the current system as proposed in the Report. We consider a complete end to land use allocations is unlikely, but a new system that introduces greater elements of flexibility within broader than existing parameters is foreseeable. The challenge, as always, will be timescales and how to deal with vested interests including the human barriers and resistance to change. | |
| Introduction of a binary zonal land use planning system | Introduction of a binary zonal land use planning system with land zones distilled down to just two categories – either ‘development land’, where there is an presumption in favour of new development and, in general, no reference to specific land uses, or ‘non-development land’, where there is not a presumption and minor development is only possible in restricted circumstances . The features of the system would include: <ul style="list-style-type: none"> • ‘Development land’ would include existing urban areas and new urban extensions made possible by infrastructure improvements. • With no reference to specific land uses in zones, market conditions to determine how urban space is used in the development zone and land and buildings in the urban area able to change use without requiring planning permission (as long as rules on separating certain harmful uses are not broken). | Boiling the planning system down into country-wide binary zonal regime looks interesting on paper but is unlikely to be introduced. A more possible outcome would be a zonal regime that operates within defined development zones. On one level this is not a new development principle. For example New Town Development Corporations and Mayoral Development Corporations operate in a similar way with a mixed track record of success. For example Milton Keynes is considered an example of successful new town because it has been adaptable and able to accommodate growth and expansion. However, Bracknell, Crawley and Stevenage have been less successful with development becoming fixed and outdated, partly because of a lack of incentives to carry out incremental new development. Mayoral Development Corporations have, for a variety of reasons struggled to make the headway anticipated. However, for large areas with huge infrastructure complexity, development corporations can | |

| Proposed change | BCLP's view on likelihood |
|---|---|
| <ul style="list-style-type: none"> Zonal designations dependent on metrics other than 'need' (eg access/transport potential, environmental disturbance, and expansion potential for an existing built development) and updated on an ongoing basis and periodically reviewed by the Planning Inspectorate. | <p>break down boundaries.</p> <p>With the Government's emphasis on an investment driven market approach, it is possible to see that a business savvy and well-resourced development corporation could be an attractive option to development delivery for the Government. But a wholesale redrafting of the planning system is unlikely and it would not happen quickly in any event. Every new Government tries to deliver planning reform but is prevented from doing so due to multiple barriers.</p> |
| <p>Redefining the local plan</p> <p>Ending the systematic land use control of individual plots and reforming the structure and objectives of local plans. Local plans should:</p> <ul style="list-style-type: none"> set a limited and simple set of development control rules detailing what development is and is not acceptable. be a framework for administering planning applications that allows developers to respond to market conditions and innovate in the places where new development is suitable. Non-negotiable rules rather than policies with communities given powers to set development rules for the form of new development in their area. Streamlining the role of local politicians – the only stage in the planning system when local politicians have their say should be in forming the rules in local plans, on which local councillors should vote. Development that does not break the development control rules set out in the local plan, meets building regulations and is not in a protected area should be permitted Planning for infrastructure should be a more central feature of local plans. Environmental and heritage planning protections should be transposed into the new system. Local plans should be short, including a zonal map and several pages of development control rules. | <p>The shortening of the NPPF has worked reasonably well and we can see some simplification of the local plan system that makes it less prescriptive, perhaps giving a greater prominence to economic regeneration in the decision making process. However, shorter does not always mean easier. Think of the constant stream of case law we have seen on the NPPF and housing policies, dealing with the presumption in favour of development, 5 year supply amongst other issues. Some of these cases have focussed on just one or two words in the NPPF.</p> |
| <p>A new Planning Act and rewriting of NPPF</p> <p>To enable a new system to emerge and form reforms to development control to take place.</p> | <p>New legislation and amendments to the NPPF is considered likely to be introduced possibly via the 'Great Recovery Act'.</p> |








| Proposed change | | BCLP's view on likelihood | |
|---------------------------|--|--|---|
| An innovation unit | Established to spread innovation and best practice within the new planning system. | Despite a Government emphasis on innovation, we consider the creation of a separate innovation unit solely for planning unlikely from a resourcing and bureaucratic point of view. |  |



Proposals set out in 'Planning Anew', a collection of essays published by Policy Exchange in June 2020

| Proposed change | | BCLP's view on likelihood | |
|--|--|---|---|
| Reversal of the current process of prevention of development and planning permission being seen as a 'gift' | <p>Reversal of the current process of prevention of development and planning permission being seen as a 'gift' (notwithstanding the 'presumption in favour of sustainable development'). New system should:</p> <ul style="list-style-type: none"> Comprise a liberal and permissive set of rules that start from the point that enjoyment of real property is a right, unless constraint can be fully justified eg in the general or public interest or ensuring that others can have the peaceful enjoyment of their possessions. Back to the old adage "an Englishman's home is his castle"? Contain graded levels of regulations setting out the constraints and rules on the right to enjoying through three levels of democracy (the state, the local authority, the local community). | We consider it unlikely that central and local government would be prepared to introduce a complete liberalisation of the system. However, moving to a system of regulation and rules and away from policy could be on the horizon. |  |
| A new three tier planning system | <p>A new three tier planning system comprising:</p> <ul style="list-style-type: none"> National spatial plan with 20 year strategy for growth; Legally binding city/regional/country spatial strategies allocating land with obligatory housing targets in most sustainable locations which, once approved are not subject to further consultation and no mechanism for development to take place outside plan allocations. Landowners expected to pool interests and sign agreements to create mixed schemes and to provide the infrastructure required to serve new development with public sector rights of CPO with a compensation cap; public authorities setting up development corporations as master developers to coordinate the development at these sites. Third tier district-level zonal coding plans setting out precisely what is | This idea seems opposed to some of the others and potentially creates a stricter system with more levels of control. We consider this idea unlikely to be implemented. |  |

| Proposed change | | BCLP's view on likelihood | |
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| | allowed in each zone | | |
| Affordable Housing Tax | <p>A new flat rate of tax on the prediction of the gross development value submitted with the planning application. Features of the new tax system to include:</p> <ul style="list-style-type: none"> Local councils use this money to buy as many homes in the development site as it likes for use as affordable housing. The price the council pays per homes is determined by the value predicted by the homebuilder. The council can then use these homes for affordable housing directly or sell them to a housing association partner. The tax should be used for submarket housing only, with other community benefits like parks, roads, and school paid for out of a separate pot, funded by developers too or by other central or local taxation. | <p>This would be a simpler fiscal regime to manage than currently exists through s106 negotiations. However, it doesn't account for the many nuances and difficulties in predicting development values, viability and controls developers expect over their developments.</p> <p>That said, the ever increasing complexity around viability, transparency of information and competing planning gain requirements and CIL is at the heart of problems with planning delivery and there must be a better way.</p> <p>If the tax is set at a realistic level which will not be prohibitive, perhaps this could be an improvement.</p> | |
| New ministry/ innovation unit for housing and planning | To run experiments to see what works to get high quality new homes with local support. | This is an interesting concept but it could be just another level of bureaucracy. | |
| EIA reform | <p>EIA reform involving:</p> <ul style="list-style-type: none"> Standardised and substantive environmental datasets to establish the state of our natural capital. Shorter period for the EIA process. EIAs to focus only on environmental impacts (not landscape aesthetics, historic or cultural impacts). EIAs to be entered into a central database in a standardised format, with opportunities for data to be aggregated and full lifecycle performance of development to be monitored. Developers to pay a levy for post development site monitoring for a specified time period. EIAs to be fully accountable for environmental impacts after development has completed. | <p>We consider many elements of these proposed reforms are likely to be introduced especially given the Government's climate change commitments and the emphasis on location data management, as set out in the Government's UK Geospatial Strategy 2020-2025 which includes location data in environmental management.</p> <p>EIA has become far too unwieldy due to legal challenge risk and some robust standardisation of the process could be beneficial.</p> | |

Proposals in media reports

| Proposed change | | BCLP's view on likelihood | |
|---|---|---|---|
| Government owned development corporations | Radical reforms to planning laws that will hand control of decisions from local councils to development corporations owned by the government. | Development corporations are a tried and tested delivery vehicle with a mixed success. We do not consider that this would result in a radical change but please see our comments above. |  |
| Introduction of a zonal planning system | Introduction of a zonal planning system and the creation of special development zones, with government investment in public infrastructure to stimulate private development and in which private developers will play an expanded role. | Please see our comments above on the introduction of a zonal planning system. |  |
| A new fast-track planning system for developers of high quality, well-designed buildings | A change to England's design codes so that "attractive" buildings can be sped through the planning process. The model for that could be the "as-of-rights" system used in the US whereby a proposed development that complies with all applicable zoning codes does not require any special consideration from the authorities. | <p>The Government has been championing better design since it introduced the National Design Guide in 2019 and is advised by the Building Better, Building Beautiful Commission, which published a report in January 2020 on high-quality design for new build homes and neighbourhoods.</p> <p>A National Model Design Code will replace the Design Guide in due course and could be a template for local planning authorities and developers to use to create local design codes for site specific and area wide application.</p> <p>A fast tracked system for 'attractive' developments that comply with a design code may be proposed, but there could be difficulties in implementation, not least because the concept of design and what is attractive is loaded with subjectivity, but also because there can be so many other planning considerations to take into account.</p> |  |
| Expansion of the Permitted Development Rights | To allow changes of use for existing properties, for example turning unused shops into homes or offices and to allow high streets and town centres to adapt to changing uses | Amendments to the GPDO are not uncommon. Expanding the rights to support town centre uses is expected, but are likely to be governed by conditions and prior approval requirements. |  |
| Fast track planning system for major housing schemes | Fast track planning system for major housing schemes (1000 + homes) and a wider range of infrastructure though amendments to the Planning Act 2008 to allow greater use of DCO regime and reduced consultation periods. | The DCO regime has generally performed well in delivering faster decisions on complex infrastructure projects. It has already been extended from its original inception under the Planning Act 2008, for example to include housing that is linked to an NSIP application. Further extensions to the regime are likely (but may require a re-naming of the regime). In addition, new (or amended) National Policy Statements, which provide the framework within which decisions must be taken, will be needed. NPSs must undergo a democratic |  |

| Proposed change | | BCLP's view on likelihood | |
|---|---|---|---|
| | | process of public consultation and parliamentary scrutiny before designation. 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 the Government may trail it as. This approach would fly in the face of localism and no doubt be fiercely resisted by certain interests. | |
| Introduction of a "Future Town Centre" council | Introduction of a "Future Town Centre" council of specialist advisers to promote residential development in town centres, with a remit to produce a future plan for town centres to be agreed with the local authority, and delivered by development corporations, with full participation with the local community. More residential development in town centres to be promoted. | Pre-Covid the Government was considering ways to renew and reshape town centres and high streets in a way that drives economic growth and sustainably improves living standards. It launched a Future High Streets Fund in 2018 to support local areas to prepare long-term strategies for their high streets and town centres. This proposal seems to be a natural extension to the scheme already in place, but arguably could create another layer of bureaucracy. |  |
| Introduction of Opportunity Zones | Introduction of Opportunity Zones (new versions of Enterprise Zones) focussing on manufacturing and centred around research hubs, building on the freeport policy already being developed by government. | This proposal doesn't sound like the introduction of anything new, rather a re-naming. But a wider use of such zones in the right location and with a sensible and viable vision for regeneration could be transformative. |  |

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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