

unnecessary trouble



Facing up to the criticism

England's current way of managing its space to allow us to live better and more sustainable lives is not defensible. For those who use them, the processes of planning are too often inefficient, inaccessible, and untrustworthy.

It is not widely known that longer-range strategic planning has drifted away to other areas of government and its quango diaspora, free-ranging outside the statutory planning system.¹ Hard to see, hard to keep up with. Making the statutory Local Plan remains planning's job; but up-to-date Local Plans are few, and upcoming ones are so long in preparation that they are creaky in content, subject to extended examination by inspectors, vulnerable to legal challenge, and under recent governments have been susceptible to Ministerial interference and to local political coups which can upend them before they are formally adopted.

Processes aside, the bottom line is that we are way short of everyone having a decent home and the chance of a good quality of life. Planning is a soft target easily and unfairly blamed for all that.

How we reached this point

There is insufficient space here to discuss how we got to this predicament, or who specifically is to blame. The long view will tell us that the New Towns Act 1946 and the Town and Country Planning Act 1947 created a whole new planning system as a contribution to the making of a joyous life for all. It was assumed that most people were of good will and would work for the public interest when necessary. It seems that our nation did not have the political culture to deliver and sustain that vision of town and country planning. The issues to be dealt with became intensely political once it turned out there were real winners and losers, and trust was lost.

So here we are in 2020, with a dysfunctional planning system. Worse – and this is tough – it is discredited for outcomes for which it is innocent.

Who do the proposed reforms aim to please?

The motives for this Planning White Paper's round of reforms are explicitly politically driven, but people with something to gain in one stream may not necessarily approve of, or subscribe to, all the others. The main threads seem to be these:

- To make homeowners happy (a large extension might add value, and larger gardens with a consent for an extra house or two will add value when selling up).
- To make people aspiring to have a home of their own happy (by suggesting more will be built).
- To make commercial property landlords happy (shaking out shops and restaurants that cannot pay much rent, and unwanted office blocks, factories, warehouses and low-rental homes, for the development of higher-value housing for private rental or sale).
- To make developers happy (looser controls open more opportunities to profit by land trading or actual development).
- To make farmers happy (development land is worth much more than farmland, even after planning gain and taxation costs).
- To enable HM Treasury and local councils to procure infrastructure and subsidised housing for those on lower incomes (or none). Also to enable the Treasury to gain tax income generally.
- To attempt to appease right-wing political theologians who – after all this time – still nurture a grievance against the 1947 'socialistic' nationalisation of the right to develop land and the power of the state to control what gets developed and appropriate part of its development value for public benefit. This group includes those for whom the current reforms are but a step along the road: they will keep going until they achieve the de-nationalisation of development rights. After all, they say, most of the world has not nationalised these rights, and state control offends the freedom of the owner.

The source of these proposed reforms

The Ministry of Housing, Communities and Local Government's (MHCLG's) *Planning for the Future* White Paper records thanks for the expert advice of a taskforce comprising Sir Stuart Lipton, the developer ('over 20 million sq ft of development in London', according to Wikipedia); town planner and former



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In the absence of strategic growth points, the ‘standard method’ formula for the amount of new housing required has produced numbers that have often been unacceptable at the local level

TCPA staffer Miles Gibson (Head of Research at CBRE since running the Wolfson Economics Prize on Garden Cities); Bridget Rosewell CBE (a consultant economist, former HM Treasury ‘wise person’ and National Infrastructure Commissioner who in 2019 advised the government on speeding up planning inquiries); Christopher Katkowski QC, long-standing star of the planning bar; and Nicholas Boys Smith (a polymath banker who, among other things, founded Create Streets to campaign against tower blocks of housing, and was Co-Chair of the Building Better, Building Beautiful Commission – BBBBC).

The main source of the proposals is the Policy Exchange think-tank. Housing policy staffer Jack Airey is now a Special Adviser on Housing at the No. 10 Policy Unit (not the MHCLG), and with others has produced several publications about housing and planning reform, with recommendations that are echoed in the White Paper.² A second feedstock has been the BBBBC’s *Living With Beauty* report,³ which in essence recommends letting nice people free so that they can make nice places (but tying everybody up in layers of design codes and guides from national to local to make sure).

It is fair to say that it is not evident that day-to-day users of the planning system, including applicants for permission, statutory consultees, interest groups or interested citizens, made any input.⁴ Nor the actual operatives – the planners who prepare statutory development plans, the development

control officers, or the councillors on committees that make the decisions. Now is **our** chance – consultation ends on 29 October 2020.⁵

The proposed reforms are not yet shaped in detail

As described by TCPA Policy Director Hugh Ellis in this issue, the proposals ‘can best be described as a ‘sketch’’. It ought to be a Green Paper – there is vagueness, and choices are floated.

It is explained that the proposed reforms will require primary and secondary legislation. Many ideas are impracticable and trample into serious political sensitivities for local councillors and MPs. Much will have to change for legislation founded on this material to receive the support of Parliament.

The political bother around these reforms – four examples from many

Making Local Plans – the extent and precise boundaries of ‘zones’ are politically contentious

It is not possible in England to produce a Local Plan and have it examined by an inspector who can make binding alterations all within 30 months. The ‘Growth’, ‘Renewal’ and ‘Protected’ zones are not just colouring on the map. The first two would confer a planning permission in principle, saying what sorts of development would be allowed, and ideally would simultaneously have a masterplan and design code to make sure it worked and will be lovely. The third

category ('Protected') is not protected from change, as such a zone still includes 'sites and areas which ... would justify more stringent development controls to ensure sustainability'.

These are all locally contentious matters and will be felt acutely by local politicians and in MP constituency offices. There are not the people (in the public or private sectors) do all this work all over England at speed, to the extent of avoiding standard pages of stuff and also being able to justify their decisions if challenged. Bear in mind that a line one side of a hedge or another, or a misplaced apostrophe, or an 'and' instead of an 'or' can confer millions of pounds of land value and tax liabilities and change the character of a place.

The authors of the White Paper cannot have experienced the local political disturbance of Local Plan proposed allocations of development land. Casting the net of proposed allocations geographically wider into zones, and investing in supporting masterplans and codes, and insisting on doing all that at speed, will not increase trust in the process. Neither will the arrival of an inspector who, judge-like, will be free to make 'binding' alterations having chosen to talk to unhappy people first, or not. Legal challenges will increase, and there will be local political repercussions.

Twin-track design codes and masterplans

Design guides and codes might be for any scale, from the whole local authority area, for a whole zone, or for a smaller area or a site. As mentioned, the ambition is that they would be 'produced on a 'twin track' with the Local Plan'.⁶ For areas for significant development that would have to be the case: it is proposed 'to require that a masterplan and site-specific [design] code are agreed as a condition of the permission in principle which is granted through the plan'.⁷

'Finessing mathematical formulas cannot obscure the fact that planning is an art rather than just a science'

Aside from doubting the professional and technical capacity to produce this volume of work at the speed required (advanced digital techniques are already widely used by consultancies, but a brain and art is involved – this work does not extrude from sausage machines), there will be insufficient time for meaningful public engagement. Short-cutting on that will have political consequences.

Design codes have been a requirement for larger developments for many years now. There has been some unacceptable standardisation (just changing the name of the place and the photo on the cover), but the weakness of the system is not the absence of design codes but the fact that the local planning authority does not enforce them. Councillors and MPs cannot understand why one large development looks so much like another after all that site-specific coding effort at the outline planning stage. The reason is that they are applied vaguely as a tick-box checklist, or not at all.

The standard method of calculating the housing numbers we need

The Cameron-Clegg coalition government of 2010 abolished the Regional Spatial Strategy system under which some demographic and economic forecasting was done and council leaders then did a horse-trading deal on the actual number to aim for. After public examination the inspector would settle on a number somewhere between those put forward by the housebuilders (more) and the countryside protectionists (less). By identifying some strategic growth areas, much housing growth could be directed there, and there was a sigh of relief everywhere else.

Without that method of deriving and distributing housing numbers, a void occurred. By 2018, through a revision of the National Planning Policy Framework (NPPF), the government produced a 'standard method' formula, which, revised a year later, has been limping along ever since. In the absence of strategic growth points, the formula has produced numbers that have often been unacceptable at the local level. In several places this has caused council political control to have changed at local elections and draft Local Plans to be withdrawn to enable a fresh start.

The White Paper persists with the idea of a 'standard method', but instead of worrying about what housing we might actually need it has re-stated the arbitrary general election manifesto promise of '300,000 homes annually, and one million homes over this Parliament'. The new standard method will spread this number, like Marmite on toast.

Proposed revisions to the formula would weight numbers to areas already 'urban', where it is presumed that 'gentle densification' (is this a little less than town cramming?) could occur; and among other tweaks require about 337,000 houses to be planned for each year to allow for the 'drop-off rate between permissions and completions'. The White Paper invites responses to further possible revisions.⁸

Finessing mathematical formulas, like cost/benefit analysis in previous decades, cannot obscure the fact that planning is an art rather than just a science.



'Be eternally vigilant. The de-nationalisation of development rights is only a few steps away...'

Places need to be designed and managed to grow and to stay attractive, and do not have a bottomless capacity to absorb more urbanisation. Not everywhere can keep yielding a tithe of more housing – long-term strategic planned growth points are needed.

More digital

A large section of the White Paper is aimed at digitising planning activity and pumping up the emerging 'PropTech' (property technology) sector.⁹ There is to be money for 'a series of pilots to work with local authorities and tech companies ... to develop innovative solutions to support plan-making activities and make community involvement more accessible and engaging'. The ambition is streamlined working, easier data-gathering nationally, easier access online to planning documents, and easy public input to plan-making.

There are three main issues to be resolved with this sunlit upland for PropTech. The first is: who controls the technology and at what cost? And the service provided would need to be excellent if the planning system is to work to legal deadlines, and secure to avoid manipulation.

Second, there is the issue of digital exclusion. As the Office for National Statistics puts it: *'some people remain digitally excluded. This is particularly the case among certain groups, including older people and disabled people as well as potentially those not living in private households ... the fact that people remain digitally excluded also highlights the importance of ensuring that non-digital alternatives continue to be made available to enable everyone to participate fully in society.'*¹⁰

Third, the stakes in planning are high, and the likely possibility of manipulation of the data by

any party to the planning process to support their position needs to be faced. Reports of consultation responses collected by private or public sector bodies, for example, are usually edited but never checked. There is a need for an independent audit service of survey data and consultation responses and analysis before digital approaches will be trusted.

The politics begin to stir

On 21 August *Planning* newspaper reported¹¹ that 'Conservative-led Horsham District Council in West Sussex said that using the revised standard method produces a housing need figure of 1,715 homes a year for the next 10 years compared to a current annual need figure of 920 homes. The council said ... it 'does not believe the house building industry can deliver 1,715 homes per year. It is difficult enough already to find land that has few constraints for development and to absorb 1,715 homes every year would make that task virtually impossible.'

On 8 September 2020 *The Times* reported¹² that the 'feedback from Tory MPs across the country is overwhelmingly negative' according to one MP in a 17-member Zoom call. 'It feels inevitable we will get a U-turn on this. There's no way people will vote for it.' It also reported that the Prime Minister 'is understood to have said that [London] could be offered a 'carve-out' from some measures after warnings that the reforms risked 'destroying suburbia'.

And on 8 September *Planning* newspaper reported¹³ that Housing Minister Christopher Pincher has stressed that local councils still have a key role in determining the overall numbers as well as the locations of new homes in their areas, in a defence of the government's proposed revisions to its standard method of assessing housing need.

How to respond

The government has support for the principle of major reform of the planning system. But the White Paper proposals clumsily upset its own political constituencies. This was unnecessary. Its bundle of ideas is not practicable, which was avoidable. And page after page saying it is doing one thing, when it is obvious it is trying to do another, destroys trust.¹⁴

There is no need to let the civic discourse on planning run down the Trumpian furrow like that – the public in England are able to understand planning issues if they are properly explained, and are mostly in agreement on what needs to be done strategically. In my experience, they want firm and fair care taken with planning matters at the detailed local level. They want their voices to be heard and fairly weighed in forming reasoned conclusions that they will then respect. They want a well resourced professional planning service and trustworthy elected politicians to make decisions in a transparent way.

No case has been made for casting any of that aside; and where this White Paper does, our responses must say so. Patiently submit the reforms that you feel are actually needed.¹⁵

Be eternally vigilant. The de-nationalisation of development rights is only a few steps away...

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Notes

- 1 A taster is given in D Lock: 'Planning off-piste'. *Town & Country Planning*, 2018, Vol. 87, May/June., 207-10
- 2 See, in particular, J Airey and C Doughty: *Rethinking the Planning System for the 21st Century*. Policy Exchange, Jan. 2020. <https://policyexchange.org.uk/publication/rethinking-the-planning-system-for-the-21st-century/> – quoted in D Lock: 'Radical reform at last?'. *Town & Country Planning*, 2020, Vol. 89, Feb./Mar., 51-54
- 3 The Commissioners and Specialist Advisers are listed at www.gov.uk/government/groups/building-better-building-beautiful-commission#commissioners
- 4 Confirmed by Christopher Katkowski QC in his explanation of the authorship method in *Have We Got Planning News for You Special – Planning for the Future White Paper* (7 Aug. 2020), available at www.youtube.com/watch?v=fE6KD4K8ugk

- 5 Respond to www.gov.uk/government/consultations/planning-for-the-future, or answer the leading questions in the White Paper at planningforthefuture@communities.gov.uk
- 6 *Planning for the Future*. White Paper. Ministry of Housing, Communities and Local Government, Aug. 2020, para. 2.14. www.gov.uk/government/consultations/planning-for-the-future
Note: Paragraph numbers quoted in this article relate to the 'web accessible' version of the White Paper available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907956/Planning_for_the_Future_web_accessible_version.pdf
- 7 Para. 3.18
- 8 And see also the shorter-term proposals set out in *Changes to the Current Planning System: Consultation on Changes to Planning Policy and Regulation*. Ministry of Housing, Communities and Local Government, Aug. 2020. www.gov.uk/government/consultations/changes-to-the-current-planning-system
- 9 Proposals 6 and 7 (paras 2.38-2.46). Wikipedia defines PropTech as 'the application of information technology and platform economics to real estate markets' – see https://en.wikipedia.org/wiki/Property_technology
- 10 For digital exclusion, see 'Exploring the UK's digital divide'. Article. Office for National Statistics, Mar. 2019. www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04; and the section in the excellent *The Wrong Answers to the Wrong Questions: Countering the Misconceptions Driving the Government's Planning Reform Agenda*. Report by an independent group of planning academics. TCPA, Aug. 2020. www.tcpa.org.uk/the-wrong-answers-to-the-wrong-questions; and see the root of the PropTech push from the Connected Places Catapult, at <https://cp.catapult.org.uk/about-us/>
- 11 E Kahn: 'Council slams government's proposed new housing need figure as 'virtually impossible' to meet'. *Planning*, 21 Aug. 2020. www.planningresource.co.uk/article/1692416/council-slams-governments-proposed-new-housing-need-figure-virtually-impossible-meet
- 12 S Swinford: 'London could avoid parts of planning law'. *The Times*, 5 Sept. 2020. www.thetimes.co.uk/article/london-could-avoid-parts-of-planning-law-fit0nqf33
- 13 G McEwan: 'Decisions on where homes go 'will not be made by central government' Pincher pledges'. *Planning*, 8 Sept. 2020. www.planningresource.co.uk/article/1693772/decisions-new-homes-go-will-not-made-central-government-pincher-pledges
- 14 *The Wrong Answers to the Wrong Questions* (see note 9)
- 15 The TCPA commends *Planning 2020 – Final Report of the Raynsford Review of Planning in England*. TCPA, Nov. 2018. www.tcpa.org.uk/Handlers/Download.ashx?IDMF=30864427-d8dc-4b0b-88ed-c6e0f08c0edd; Kate Barker's Review of Land Use Planning (*Barker Review of Land Use Planning Final Report – Recommendations*. Dec. 2004. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228605/0118404857.pdf) is sharper