

Briefing on the August 2020 Planning White Paper (PWP)

The Government published a [consultation](#) on reform of the planning system in England with a closing date of 29th October 2020.

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1 New style Local Plans

Plans would be simplified (para. 1.16) and would identify three categories of land – (Proposal 1)

- **"growth areas"** that are "suitable for comprehensive development, including urban extension sites, and areas for redevelopment, such as former industrial sites or urban regeneration sites". Outline Planning Permission would be automatically granted for forms and types of development specified in the Council's Local Plan for growth areas;
- **"renewal areas"** that cover "existing built areas where smaller scale development is appropriate" and such land could include "the gentle densification and infill of residential areas and development in town centres. There would be "a statutory presumption in favour of development being granted for the uses specified in the Local Plan as being suitable in each area"; and
- **"protected areas"** which would include sites which "justify more stringent development controls to ensure sustainability". This would include "areas such as green belt, conservation

areas, local wildlife sites, areas of significant flood risk and important areas of green space". Full planning applications would be required for new schemes.

It does not mention Metropolitan Open Land, although clearly we should press for that to be in the Protected Areas and that may have been the intention.

The document says that new-style Local Plans would "comprise an interactive web-based map of the administrative area where data and policies are easily searchable, with a key and accompanying text." According to Proposal 7, Local Plans will have to be digital so that processes such as assessing planning applications can be automated (Proposal 6). For Growth and Renewal areas, "the key and accompanying text would set out suitable development uses, as well as limitations" such as on height, density and scale. Uses would be specified for sites and for areas.

Local authorities would need to identify land zoned for their own development of social housing. The legal duty to cooperate, which requires local planning authorities to continuously and effectively engage with neighbours on strategic issues, "would be removed". However, the PWP adds in para. 2.19 that "further consideration will be given to the way in which strategic cross-boundary issues, such as major infrastructure or strategic sites, can be adequately planned for, including the scale at which plans are best prepared in areas with significant strategic challenges".

Councils and the Planning Inspectorate would be required through legislation to meet a statutory timetable for plan preparation with **six stages (Proposal 8)** and "sanctions for those who fail to do so" and the power for the Government to step in and write its own plan for the area (para. 2.52), taking into account "any co-operation to get plans in place across local planning authority boundaries."

The PWP suggests that Local Plans would not need to contain policies because decision making would be on the basis of the Council's defined development required in each location. There would be general policies in a new National Planning Policy Framework to be taken into consideration for development management (para. 2.13).

That would not be acceptable in London if it leaves no scope for London-wide policy through the Regional Spatial Development Strategy, the London Plan, to which borough Local Plans have to be in general conformity. Local Plans should interpret and apply London Plan policies for Good Growth in a way that is suitable locally. The intended status of the London Plan is not mentioned in the PWP.

Local Plans would no longer be examined for 'soundness' but on the basis of a new sustainability test. Deliverability, environmental impact considerations and infrastructure requirements would be taken into consideration. The Housing Delivery Test would remain in place.

Options

The PWP sets out two alternative policy options (paras. 2.11. & 2.12.). Under the first of these, rather than dividing land into three categories, the consultation says the government is "interested in views on more binary models".

"One option is to combine Growth and Renewal areas ... into one category and to extend permission in principle to all land within this area, based on the uses and forms of development specified for each sub-area within it".

Another approach would be to limit automatic permission in principle to land identified as a Growth area. It says that "other areas of land would, as now, be identified for different forms of development

in ways determined by the local planning authority (and taking into account policy in the National Planning Policy Framework), and subject to the existing development management process".

Design Codes

The Government envisages that local authorities will provide design codes for each area on the map (para. 1.18), specifying what sorts of development will be suitable in each area. To benefit from the outline approval or presumption, applications would have to comply with any applicable design code. How local authorities will find resources to write these design codes is a key question.

Instead of general policies for development, the document says, Local Plans would be required to set out site- and area-specific requirements for development, alongside locally-produced design codes. The Government will publish a National Model Design Code, complementing a "revised and consolidated" [Manual for Streets](#) along with local guides and codes.

Following the designation of sites, (para. 1.18 and proposal 11) the Government will "**Expect design guidance and codes – which will set the rules for the design of new development – to be prepared locally and to be based on genuine community involvement rather than meaningless consultation**, so that local residents have a genuine say in the design of new development, and ensure that codes have real 'bite' by making them more binding on planning decisions."

Design codes would "provide certainty and reflect local character and preferences about the form and appearance of development." (para. 2.14).

However, para. 2.34 of the PWP states "In both the Growth and Renewal areas it would still be possible for a proposal which is different to the plan to come forward (if, for example, local circumstances had changed suddenly, or an unanticipated opportunity arose), but this would require a full planning application."

2 New-style Community Infrastructure Levy

A new 'single infrastructure levy'

It is proposed (from para.1.19):

- "The Community Infrastructure Levy and the current system of planning obligations will be reformed as a nationally-set, value-based, flat-rate charge ('the Infrastructure Levy'). A single rate or varied rates could be set. We will aim for the new Levy to raise more revenue than under the current system of developer contributions, and deliver at least as much – if not more – on-site affordable housing as at present. This reform will enable us to sweep away months of negotiation of Section 106 agreements and the need to consider site viability. We will capture a greater share of the uplift in land value that comes with development."
- "We will give local authorities greater powers to determine how developer contributions are used, including expanding the scope of the Levy to cover affordable housing provision."
- "We will capture changes of use through permitted development rights, so that additional homes delivered through this route will bring with them support for new infrastructure."

- “We would also allow local authorities to borrow against Infrastructure Levy revenues so that they could forward fund infrastructure.”
- Under this approach the London Mayoral Community Infrastructure Levy could be retained as part of the Infrastructure Levy to support the funding of strategic infrastructure.
- Local authorities would have a means to specify the forms and tenures of the on-site provision, working with a nominated affordable housing provider.
- The developer contributions will be made on completion, rather than on permission.

The PWP states “a Section 106 planning obligation could still be used to secure a covenant on land.” The new-style CIL would cover only S106 agreements making financial contributions, for example for affordable housing, transport improvements. Other types of S106 to secure legal matters and conditions will still exist.

PWP para. 4.27 states that “it may be necessary to consider ring-fencing a certain amount of Levy funding for affordable housing to ensure that affordable housing continues to be delivered.”

Against the overall housing need of 65,878 annually devised in the 2017 [Strategic Housing Market Assessment](#), 30,972 are required for low cost rent and 11,869 for other intermediate affordable homes. Those figures have not been achieved, creating overcrowding, homelessness and difficulties for key workers. That crisis will need to be addressed by Government as part of their changes to the planning system and the funding they make available to the Mayor for low cost rent and other affordable homes.

Para. 5.19 suggests that “a small proportion of the [new CIL] income should be earmarked to local planning authorities to cover their overall planning costs, including the preparation and review of Local Plans and design codes and enforcement activities.” That could reduce funds for infrastructure and affordable homes and limit the grants the Government may allocate to LPAs to manage the transition to a new planning system.

The “overall planning costs” include dealing with small householder applications which have insufficient fees and carrying out enforcement work. At present those are part funded by planning fees for large developments. That situation needs improvement and the PWP para. 5.18 states “Planning fees should continue to be set on a national basis and cover at least the full cost of processing the application type based on clear national benchmarking. This should involve the greater regulation of discretionary pre-application charging to ensure it is fair and proportionate.”

How the Government intends fees should cover all such work is not clear. See Enforcement below.

A [Savills CIL report](#) implies that some developments would be viable only if the affordable housing obligation is 10%, although this is a problem with any system of funding affordable housing through developer contributions rather than general taxation. With the new Infrastructure Levy based on the gain in land value of development, there will be problems in areas of low land value where additional housing would need similar infrastructure as in high value areas. Many economists would argue this is a market signal not to build in areas of low land value.

However, the new type of levy would remove the current arguments and negotiations about viability of development.

A problem is that the Infrastructure Levy would be paid on completion which can be several years after approval and will require Councils to borrow against that future income.

Clarification will be needed on how the Mayoral CIL, which applies only in some locations, will affect the funding of infrastructure other than transport.

The Government then offers alternatives (paras 4.16. - 4.18) for which it seeks comments. They are:

- The Infrastructure Levy could remain optional and would be set by individual local authorities.
- It would be possible to simplify the levy further – for instance, setting parameters.
- The cost of CIL could be capitalised into land value.
- The Infrastructure Levy rates could be set nationally at a single rate, set nationally at an area-specific rate, or set locally.
- A 'first refusal' right could be created for local authorities or any affordable housing provider acting on their behalf to buy up to a set proportion of on-site units (on a square metre basis) at a discounted price, broadly equivalent to build costs. The proportion would be set nationally.

These changes to the way Local Plans are written and applied and the way developers' contributions are secured and used will be very demanding on the resources and skills of people in planning departments. The government has promised to "develop a comprehensive resources and skills strategy for the planning sector to support the implementation of our reforms". Proposals for "improving the resourcing of planning departments" will be published "later this year".

3 What does this mean for London?

Like the National Planning Policy Framework (NPPF), the White Paper has nothing to say about London and the highly urbanised nature of England. However, as the London Plan demonstrates, the particular circumstances of London require both strategic policies and local plan policies to manage the particular pressures in London, as well as an indication of the local plan policies that would be appropriate. Local plans currently conform generally with the London Plan and develop borough-specific local plan policies.

The implication in the White Paper is that all London borough Local Plans should be updated by Spring of 2024 to meet the requirements of the new land zoning requirements in the planning reform, if approved in Parliament. An extra year will be given for those who have adopted a Local Plan within the previous three years or where a Local Plan has been submitted to the Secretary of State for examination. It will require the necessary primary legislation to have been passed and in force, with any necessary accompanying Regulations and guidance, by Autumn 2021. That would mean introducing a new Planning Bill in Parliament early in 2021.

In particular, boroughs will have to decide how to nominate land for the three different purposes (Planning White Paper paragraph 1.16 and Proposal 1): growth, renewal or protection (Proposals 16 and 17).

4 What does this mean for communities?

Once the plan and design codes are made, communities will have little opportunity to influence decisions on planning applications, except for those submitted for protected areas. Residents will have to be fully involved in the plan-making stage when land and sites are zoned and design codes and other development requirements within them are defined. The other opportunities for residents to comment will be when the Local Plan is consulted upon prior to its examination and at that examination if they have submitted comments.

The major change is that at the decision-making stage there may be little or no consultation on schemes that are effectively given permission by the Local Plan, even large developments, except in “protected areas”. It is envisaged that almost all decisions would be delegated to officers, with very few being determined by the planning committee.

An article by Adam Branson in ‘Planning’ amplifies these points as [here](#).

5 Densification of land use

The PWP in para. 3.20 requires the densification of existing land use. That is the same approach adopted already for London in the draft New London Plan that was examined in 2019.

“To take this approach forward, we intend to develop a limited set of form-based development types that allow the redevelopment of existing residential buildings where the relevant conditions are satisfied – enabling increased densities while maintaining visual harmony in a range of common development settings (such as semi-detached suburban development). These would benefit from permitted development rights relating to the settings in which they apply. Prior approval from the local planning authority would still be needed for aspects of the design to ensure the development is right for its context, such as materials.

To enable further tailoring of these patterns to local character and preferences, we also propose that local planning authorities or neighbourhood planning groups would be able to use local orders to modify how the standard types apply in their areas, based on local evidence of what options are most popular with the wider public.”

The term ‘local order’ may refer to a Local Development Order, the current legislation for which is [here](#).

Planning permission granted by a local development order may be made subject to such conditions or limitations as are specified in the order.

Densification would be in addition to the new permitted development rights that have been introduced by the Government to extend or replace buildings which apply from 30th August 2020, as covered by a London Forum e-bulletin on 24th August 2020.

To encourage densification, Proposal 4 introduces a new Standard Method for establishing housing requirement figures to ensure enough land is released in the areas where affordability is worst, to stop land supply being a barrier to enough homes being built. The new housing need figures would factor in land constraints. See section 7 below.

6 Enforcement

The Planning White Paper para. 5.29 states “We will review and strengthen the existing planning enforcement powers and sanctions available to local planning authorities to ensure they support the new planning system. We will introduce more powers to address intentional unauthorised development, consider higher fines, and look to ways of supporting more enforcement activity.”

7 Revised methods of calculating housing need and other changes

A complication for finalising the New London Plan is [“Changes to the current planning system: Consultation on changes to planning policy and regulations”](#).

The deadline for response to the document is Thursday 1st October which is almost a month before the closing date for comments on the PWP, so it must be given early attention.

The full set of proposals in the “Changes to the current planning system” are

1. changes to the standard method for assessing local housing need: “Following the outcome of this consultation, the Government will update the planning practice guidance with the revised standard method for assessing local housing need.”
2. securing of First Homes, sold at a 30% discount to market price for first time buyers “including key workers” through developer contributions in the short term until the transition to a new system: “We intend to begin by making planning policy changes, to ensure that clear expectations are set. However, to ensure that First Homes are delivered, nationwide, on a consistent basis, we are keeping under consideration the option to strengthen the policy through primary legislation at a future date. We also intend to introduce an exemption from the Community Infrastructure Levy for First Homes, to enable delivery prior to wider developer contribution reform. This would require changes to regulations. Lastly, we are also considering significant reforms to the system of developer contributions. We will ensure that First Homes will continue to be delivered under a reformed approach.”
3. supporting small and medium-sized builders by temporarily lifting the small sites threshold below which developers do not need to contribute to affordable housing up to 40 or 50 units: “Following the consultation, a decision will be taken on whether to proceed with this approach. If it is taken forward, this could be through the introduction of a Written Ministerial Statement in the Autumn.”
4. extending the current Permission in Principle to major development: “Following this consultation, if we introduce Permission in Principle by application for major development, we aim to introduce amending regulations this Autumn, with the regulations expected to come into force by the end of the calendar year. Changes to the fee structure would require separate changes to the Planning Fees Regulations.”

The “Changes to the current planning system” consultation contains significant proposals that would affect considerably the outcome of the Planning White Paper in new legislation.

The first item above gives details for the PWP proposal 4 on identifying areas of greatest need for additional homes. Revised methods of calculating housing need are included in it which would be likely to increase the housing targets in London, with the Government proposing a new London-wide housing need of 93,000 net additional homes per year [according to Lichfields estimates] before

adjustment for constraints such as heritage protection, environmental value, flood risk and Green Belt, compared to the current housing target in the draft New London Plan (NLP) of 52,000. One important omission from the list of proposed constraints is Metropolitan Open Land.

The PWP para. 2.26 states that "It may be appropriate for Mayors of combined authorities to oversee the strategic distribution of the requirement in a way that alters the distribution of numbers, and this would be allowed for." It is expected that would include the right for the GLA to make such a distribution in London. Centralised setting of borough figures, as implied, would be unacceptable.

The 2017 draft of the NLP had a housing target of 66,000 new homes annually and it was on the recommendation of the examining Inspectors of it that the figure should be reduced to 52,000 to make achievement feasible in the light of land capacity problems in London.

As that draft NLP was being prepared, the Government suggested that the London housing target should be much higher and possibly around 74,000 annually to help address unmet need backlog.

However, the land capacity constraints in London may have been recognised by the Secretary of State, Robert Jenrick MP and in responding in March 2020 to the 'Intend-to-Publish' version of the NLP he wrote to the Mayor:-

"Future Housing Delivery in London

I would like you to commit to maximising delivery in London, including through taking proactive steps to surpass the housing requirement in your Plan. This must include:

- Producing and delivering a new strategy with authorities in the wider South East to offset unmet housing need in a joined-up way."

That may provide the Mayor with the opportunity to continue effectively with preparing that strategy, following the exploratory talks with local authorities around London and along commuter growth corridors that the Deputy Mayor, Jules Pipe, has held in the past two years.

Without that or other policy measures, London Forum does not think a much higher housing target in London will plausibly be achieved.

The second proposal above for 'First Homes' would be unsuitable for the capital. London Forum responded to the earlier consultation on First Homes by pointing out that they would be out of financial reach of the key workers the Government thinks would benefit. That is because, even with a 30% discount, the price for such a home would be over £400,000, on average.

The latest proposal seeks to encourage developers' delivery of First Homes by exempting them from paying the new Infrastructure Levy. As in the comments above in section 2 about that levy, it is required for affordable housing and the infrastructure and facilities, including transport, needed for the delivery of additional housing. The reduction for funds in Councils for those purposes caused by First Homes would reduce sustainability of development. Putting First Homes as zoned requirements in Local Plans would be contrary to the PWP requirement in para.1.16 that "Local Plans should be subject to a single statutory 'sustainable development' test."

The RTPI were critical of the introduction of First Homes in their response to the earlier consultation, as [here](#). They wrote First Homes "may lead to a reduction in affordable housing available to all on the basis of need." Also, "The National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) require affordable housing mix policies to be based on local evidence of need. However, the

framework for First Homes would elevate First Homes above all other tenures. This undermines the local plan-led approach.”

The Government’s proposal in para. 48 of the consultation document is “The Government intends to set out in policy that a minimum of 25 per cent of all affordable housing units secured through developer contributions should be First Homes.”

Para. 50 states “Local authorities should already have affordable housing policies set out in their local plan, which will include the amounts of affordable housing to be sought, and the tenure mix of this housing.” In that case, why would the Government impose a particular type of home on LPAs?

Further confusion is introduced by para. 57 - “*local plans and neighbourhood plans that are submitted for Examination within 6 months of this new policy being enacted will not need to reflect the First Homes policy requirements.*” Those plans could have a ‘life’ of five years or more and in London that would distort the provision of affordable homes across boroughs. The Mayor must retain the right to propose affordable housing percentages and options, as set out in the NLP Policy H6.

The third proposal above for lifting the threshold for contributions by small builders to 40 or more housing units could reduce the amount of affordable homes delivered in London. The current threshold is 10 new homes, or site area of 0.5 hectares. The site area threshold will be increased “*at the same proportion*”, so presumably to 2 or 2.5 hectares.

Small builders might delay development until this concession becomes available to them which would be contrary to the Government’s aim for speeding up housing delivery.

This proposal would challenge the NLP Policy H2, undermining the Mayor’s framework for borough Local Plans on the development of small sites.

The fourth proposal above for extending the current Permission in Principle to major development would introduce yet more confusing options to the PWP proposals for zoning and decision taking on development proposals. For growth areas, it will be necessary for response to this consultation to consider carefully the difference between ‘Outline Planning Permission’ and ‘Permission in Principle’ for growth areas and the extent of negotiation before finalisation of approval under each that would be available to Councils.

8 Comments by others on the PWP

A set of comments on the White Paper by Duncan Field of Town Legal is [here](#).

Landmark Chambers and Pinsent Masons hosted a webinar to discuss the PWP [here](#).

The views of London Councils were reported by Dave Hill in ONLONDON [here](#).

9 Points we may wish to include in our response

- Protection of Metropolitan Open Land
- The risk that higher targets mean either releasing green belt or bad development (both of which Mr Jenrick says he doesn't want), particularly without more resources/powers/etc for boroughs. (If boroughs just permitted mansion blocks everywhere or very tall buildings near to transport nodes to meet the targets, they will be voted out of office, so they won't.)

- Making sure to retain the necessary aspects of s.106 for non-cash elements, especially car-free agreements, rights of way, phasing, etc.
- Pushing the Government towards more community-led processes
- Making sure London boroughs can set their own levy percentages, with flexibility for difficult sites etc.
- Making clear that their 'renewal' zones will probably end up just being brownfield sites (or do we not want to make this clear to them?)
- What to do on First Homes/affordable homes? They seem immovably set on First Homes.
- Boroughs must have the possibility to set their own rules on construction: rules suitable for a sparsely populated area would cause a riot in Westminster, and K&C's current rules would render much development unviable in rural Lancashire.
- Boroughs must be free to make rules on things such as biodiversity
- Regional Mayors must still have powers to set policies governing their area
- Boroughs do not have the resources to do design codes
- The authors of the new model design code were unable to give a plausible means by which design codes could be used to allow intensification, short of being drawn building by building
- In true zonal systems, things that do not comply with the rules are illegal. Under this proposal, the council can approve it anyway, so residents lose trust. That is why there should be a community right of appeal. That right should be available also to statutory consultees.
- Developer levies – many councils simply ignore the priorities that local communities or neighbourhood fora have indicated, in deciding where to spend the 15% or 25% of CIL.
- Planning fees must cover the cost of Councils' work on every type of application.
- Design codes must ensure the delivery of the types of homes required in each locality.
- Incentives or penalties are required for building out approved schemes at expected rates.
- The arguments for selecting any option posed by the PWP questions must be well supported by examples and reasons.