10 Questions on Planning Reform

Published 21 December 2020

In the summer of 2020 the Government launched proposals for the biggest reform of the planning system since the Second World War. The proposals are contained in the "Planning for the Future" White Paper, which has recently undergone a public consultation process and responses are being analysed by the Government. Alongside the White Paper, immediate changes were brought in to reform Use Classes and to extend Permitted Development rights.

On 3 November 2020, **Dominic Fagan** of the YEP London Committee was joined by a panel of planning experts to discuss the proposals for reform. The panellists were:

- **Joanna Crow**, Senior Associate at DAC Beachcroft LLP;
- **Sophie Rae**, Associate Planner at WSP; and
- **Chris Cooper**, Associate Partner at Carter Jonas.

A copy of the recording of the webinar is available here and below is a summary of 10 key points arising out of the discussion.

1. What are the problems with the current process of creating local plans? And how do the Government's proposals aim to improve these documents?

Local plans are the foundation for determining planning applications as they define the development parameters in a local area. Perhaps understandably given the multitude of factors they must consider, local plans are complex documents and often run in to hundreds of pages in length. The local plan preparation process is slow, taking on average 7 years, leaving 50% of Local authorities currently without an up to date plan.

The Government wants to speed up the process of preparing local plans so that it takes a maximum of 30 months from start to finish. The new style local plans should also be no longer than 50 pages in length.

2. How will zoning work in practice?

Dealing with each of the zones in turn:

Growth areas

- Land within growth areas will be deemed to have automatic outline permission for the principle of development;
- Full permission will then be secured by a reserved matters process to agree outstanding issues.

Renewal areas

- There will be a statutory presumption of development in these areas;
- Applications for full permission expected to be fast tracked through the process if the scheme meets design and other prior approval requirements.

Protected areas

- Development of land in protected areas will require a full application in line with the current process;
- It is not an absolute prohibition to development.

3. How can technology be better utilised in the plan making process?

The Government has acknowledged that the current planning system is based on 20th century technology, with many local planning authorities relying on legacy software. The White Paper sets out that the Government wants the planning process to be brought into the 21st century, moving away from notices on lamp posts to a modernised, open data approach that will create a reliable national picture of what is happening and where. The Government has outlined its ambitions for local plans to become visual, interactive-map based and standardised, using the latest digital technology.

There is also the potential to implement software which will encourage digital innovation and provide access to underlying data. The intention would be to help automate currently routine processes which will free up officer time so that they can focus their time on larger, more time consuming applications.

4. Will the Government's proposals achieve greater community engagement in the planning process?

From a practicality perspective, digitalisation in planning and a better use of technology must be seen as a positive driver in attempting to engage with a wider cross section of the local community. Use of PropTech and 3D modelling helps to break down the jargon barrier and assist local communities in seeing the realities of a scheme much more easily.

In reality, however, even with greater use of technology the likelihood is that the public will only engage in the planning process if an application has an impact of their day-to-day lives.

5. What are the issues with the current dual system of Section 106 contributions and Community Infrastructure Levy payments?

The CIL regulations are widely regarded to be too complex, having been amended a number of times since their original inception. CIL is also not a mandatory requirement in every local authority area, which means developer contributions can vary widely between local authorities. From a viability and cash flow perspective, CIL payments are also currently required to be made on commencement, which can create issues for cash flow through developments.

S.106 agreements are often criticised for lacking transparency because they are individually negotiated agreements. As a consequence, there is a perception that they tend to favour large developers who have greater negotiating resources and power. However, the existing S.106 process does at least provide the opportunity to agree bespoke solutions to development proposals, and any new system needs to retain an element of flexibility.

6. What are the Government's proposals to improve the system of developer contributions to infrastructure?

There will be no s.106 contributions and no CIL. Instead there will be a combined levy (effectively operating as a tax) which is nationally set and which will be payable on completion based on the development's value.

The proposals allow for developers to pay 'in kind' for the new levy by providing on-site affordable housing. Councils would also be able to borrow against future levy revenues to offset the risk to cash-flow arising out of payments being made at completion of a development.

7. Why has the Government moved now to create a new use class E?

From the 1st September 2020, the Government's reforms mean that A1/A2/B and B1 uses (shops, cafes and offices) are reclassified to a new use class E. The new class also includes some leisure uses such as gyms/health and day nurseries. The idea is to give landlords greater flexibility in relation to buildings which may be struggling, as a building's use can now be changed from one use in class E to another use within class E without the need for planning permission. Clearly COVID 19 has been a factor in the push for this policy change now, although it has been in the making for a long time given the general decline of the high street over a number of years.

8. What are the new Permitted Development rights and what conditions must be met before they can be exercised?

A Permitted Development means no planning permission is needed for certain works. The aim of the new rights is to support regeneration through the residential development of vacant and redundant buildings. Two new Permitted Development rights have been introduced:

(a) Demolition and rebuilding within the same footprint of buildings which have been vacant for at least six months; and

(b) Upwards extensions of up to two additional stories on existing buildings built between 1948 and 2018.

Both new Permitted Development rights are heavily caveated, meaning that anyone who wishes to take advantage of them must jump through several hoops before work can begin, one of which is the need to obtain prior approval from the local planning authority (see question 9 below).

A criticism of existing Permitted Development rights is that a lack of regulation has resulted in poor quality housing, so an extension of these rights appears to be at odds with the Government's proposal in Pillar 2 of the White Paper to prioritise beautiful buildings.

9. What is the difference between the prior approval process and obtaining planning permission?

The prior approval process is a tool relating to some permitted development rights which requires applicants to first seek approval from the local planning authority that specified elements of the development are acceptable before work can proceed. It is different from the process of obtaining planning permission in that the prior approval process assumes that the

principle of the development is acceptable, subject to approval of specified details.

From an administrative point of view, prior approval applications are cheaper and should in theory be determined in their statutory 8 week period, otherwise a 'deemed consent' can be given for the proposals.

10. Boris wants to "*tear it down and start again*" when it comes to planning. But is the White Paper really the radical reform required or could it go further?

The combination of changes to the Use Classes Order, Permitted Development rights, and proposals contained within the 'Planning for the Future' White Paper represent sweeping and fundamental reforms to the planning system in England.

The White Paper proposals are intended to accelerate delivery through providing greater certainty on the type of development that will be approved and the levy that developers will be required to pay. Increased development across all sectors will help the recovery of the UK's economy by stimulating investment, infrastructure and new jobs, and in this regard the reforms are welcomed.

However, there are concerns that the planning sector is under-resourced which will continue to slow decision making and plan making. Until a Government provides Local Authorities with sufficient support, any radical changes will only serve as minor improvements to the existing system.

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