

THE FUTURE OF DECISION TAKING UNDER FUTURE LEGISLATION AND POLICY

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“[T]he current state of planning presents a special version of that dilemma that George Orwell famously spelt out in his essay on Charles Dickens: how can you improve human nature until you have changed the system? And what is the use of changing the system before you have improved human nature?”

The fact is that we will need to do both in parallel. We will need to rebuild a better system, and to educate planners and their co-professionals to operate effectively to make it deliver a better world. That should be the starting message for the next century.”

Professor Peter Hall, Town Planning Review 85.5 (2014)

I) Introduction: The Need for Reform

1. This paper analyses the direction of travel in both plan-making and decision-taking, across both policy and legislation.
2. In terms of legislative change, the paper focusses upon the current text of the Levelling up and Regeneration Bill (“LURB”). The Bill is presently at the House of Lords Bill Committee Stage, the penultimate step prior to the Third Reading, and thereafter Royal Assent. Committee Stage sessions are scheduled up to 22 March 2022.
3. As to policy, the paper looks to the revised text of the National Planning Policy Framework, whose consultation ended on 2 March 2023. The exact date of publication remains unclear at the present time.
4. The LURB has undergone an almost cinematically epic journey, under three Prime Minister, three Secretaries of State, battled over by a “rebel alliance”, scrutinised by the Parliamentary Select Committee and every sector think-tank. Yet it remains, in

¹ With the assistance of an earlier draft by Hugh Richards

² The paper states the position as at 3 March 2022, ahead of Government amendments at the House of Lords Committee Stage up to 22 March 2022 (and potentially beyond)

the final strait, only lightly amended from the version initially presented to Parliament last year.

5. By contrast, national policy seems set to undergo a major and potentially never-ending journey of its own, split/transformed into National Development Management Policies and a pared-down NPPF, with timescales outwards to 2031.³
6. Whatever the Bill's exact fate, there is universal acceptance that the process of decision-taking requires major reform.
7. The current legislation is certainly showing its age, some 33 years after the Town and Country Planning Act 1990 and 19 years after the Planning and Compulsory Purchase Act 2004, with much of the post-2010 legislation achieving little by way of improvement.
8. It is widely agreed that the system has serious inefficiencies and lacks the necessary certainty, with key areas of difficulty including:
 - (a) Significant Delay: with all types of application and at all stages, most notably in delivering/receiving
 - (i) pre-application advice,
 - (ii) consultation responses from statutory consultees,
 - (iii) case officer recommendations,
 - (iv) consideration at committee meetings, and
 - (v) the conclusion of s106 agreements
 - (b) LPA staff recruitment and retention;

³ <https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy#chapter-12---wider-changes-to-national-planning-policy-in-the-future>

(c) Moratoriums on new grants of permission: on grounds of nutrient neutrality, SANG, and even in respect of utilities;⁴

(d) Refusals of permission for allocated sites (contrary to officer advice), for example on highways grounds that are “indefensible”.⁵

9. The past 3 years have seen a growing, widespread perception of intractable and perpetual “crisis”: a “full house” of economic, societal and environmental challenges over and above housing affordability and Covid/post-pandemic recovery, for example: (i) climate change (heatwaves, flooding, water supply), (ii) nutrient neutrality, and (iii) energy security/cost rises. The current process of decision-taking feels wholly inadequate to address these problems at the speed required.
10. Whatever the exact shape of reform, the *need* for reform is therefore inescapable. Doing nothing is not a serious option.
11. What has been striking, however, is the almost universal opposition to some of the flagship reforms to policy, notably the proposal to confer housing targets a merely “advisory” status. This immediately saw major stalling of the plan-making process across England, including plans that had advanced through all stages, short of Main Modifications.
12. The overall sense is that whatever Government has proposed by way of policy reform, this cannot seriously be their endgame objective for the next 2 years. On the other side of the Local Elections on 4 May 2023, there will be some big “leadership” calls for the Secretary of State and the Prime Minister.

DECISION-TAKING

Principal Changes to Decision-Taking

13. As identified at the outset, the plan-making changes do not replace the core structural principles in the Town and Country Planning Act 1990, but they substantially amend certain key provisions of the Planning and Compulsory Purchase Act 2004.
14. The decision-taking components have a similar character. We have identified four core changes. All are textually short, but their impact would be considerable (once/if implemented):

- (1) Development Plan and National Development Management Policies

- Clause 86 (Role of development plan and national policy) and
- Clause 87 (National development management policies);

- (2) Planning Data and Digitisation

- Clauses 78 (Power in relation to the processing of planning data)
- Clause 79 (Power in relation to the provision of planning data);

(3) Environmental Assessment

- Clause 138 (Power to specify environmental outcomes)
- Clause 139 (Environmental outcomes reports for relevant consents and relevant plans)
- Clause 140 (Power to define ‘relevant consent’ and ‘relevant plan’ etc)
- Clause 141 (Assessing and monitoring impact on outcomes etc)
- Clause 142 (Safeguards: non-regression, international obligations and public engagement)

(4) Self-Build and Custom-Build Housing

- Clause 115 Duty to grant sufficient planning permission for self-build and custom housebuilding

15. We shall analyse the text of these provisions and (where applicable) the Explanatory Notes and the DLUHC Policy Paper, and the NPPF Consultation Paper. We shall proceed on the basis that many will already have read the excellent summaries of the draft Bill text by various solicitors’ firms⁶ and planning consultancies.⁷
16. Our intention is not to catalogue. Instead our focus is upon areas of ambiguity, controversy and potential further change under the current Prime Minister’s and Secretary of State’s leadership.
17. In doing so, we have in particular reflected on experiences of the past decade (2012-22) post-*Tesco v Dundee* and post-NPPF, in the Planning Court and appellate courts.

1) The Development Plan and National Development Management Policies

83 Role of development plan and national policy in England

(1) Section 38 of PCPA 2004 (development plan) is amended as follows.

(2) After subsection (5) insert—

⁶ For example: <https://www.townlegal.com/wp-content/uploads/Levelling-up-and-regeneration-bill-and-policy-paper-Summary-by-Town-Legal.pdf> and <https://www.pinsentmasons.com/out-law/news/levelling-up-bill-set-transform-englands-planning-environment-regulations>

⁷ For example, <https://lichfields.uk/the-levelling-up-and-regeneration-bill/>

“(5A) For the purposes of any area in England, subsections (5B) and (5C) apply if, for the purposes of any determination to be made under the planning Acts, regard is to be had to—

- (a) the development plan, and
- (b) **any national development management policies.**

(5B) Subject to subsections (5) and (5C), the determination must be made in accordance with the development plan and **any national development management policies**, unless material considerations **strongly** indicate otherwise.

(5C) If to any extent the development plan **conflicts** with a national development management policy, the conflict must be resolved **in favour of** the national development management policy.”

(3) In subsection (6), for “If” substitute “For the purposes of any area in Wales, if”.

(4) After subsection (9A) (inserted by section 82(4) of this Act) insert—

“(9B) National development management policy must be construed in accordance with section 38ZA.”

(5) Schedule 6 amends various Acts relating to planning so that they provide that, in making a determination, regard is to be had to the development plan and any national development management policies.

84 National development management policies: meaning

After section 38 of PCPA 2004 insert—

“38ZA Meaning of “national development management policy”

(1) “national development management policy” is a policy (however expressed) of the Secretary of State in relation to the development or use of land in England or any part of England, which the Secretary of State by **direction** designates as a national development management policy.

(2) The Secretary of State may—

- (a) revoke a direction under subsection (1);
- (b) modify a national development management policy.

(3) Before making or revoking a direction under subsection (1), or modifying a national development management policy, the Secretary of State must ensure that such consultation with, and participation by, the public or any bodies or persons (if any) as the Secretary of State **thinks appropriate** takes place.”

Questions

18. Four questions arise:

Q1: What will National Development Management Policies (“NDMPs”) cover?

Q2: How will Sub-section 38(5C) PCPA work in practice, in conferring primacy on NDMPs in situations of conflict with the development plan? (Will this provision survive? Is there a workable alternative?)

Q3: In the above context, how will NDMPs be prepared (including consultation?)

Q4: In the context of all the above, how will Sub-section 38(5B) PCPA “strongly indicate otherwise” work?

19. We shall explore the two main publicly stated objectives of the provisions and a third unstated, yet nonetheless apparent, objective:

(1) To avoid duplication of text within new development plans;

(2) To speed up plan adoption (discouraging or even preventing reliance on out-of-date plans);

(3) To ensure that the planning system is sufficiently flexible to adapt to rapid change.

Q1: What will National Development Management Policies cover?

20. The innovation of “national development management policies” (“NDMP”) is arguably the centrepiece of the whole Bill – putting national policy on an express statutory footing for decision-making for the first time.

21. It is a somewhat remarkable feature of the current system that “national policy” is not referred to expressly within either section 70 TCPA 1990 or section 38(6) PCPA.

In 2017, the Supreme Court held that the power to issue “national policy” arises expressly or by implication from the Planning Acts.⁸

22. However, the silence of legislators in 1990 and 2004 is plainly no longer justifiable given the scale and effect of present national policy today. Clause 83’s introduction of Sub-section (5A) into Section 38(6) PCPA corrects this gap.
23. The statutory wording for NDMPs is very broad, intentionally so: “*however expressed*” limited only to “*the development or use of land in England*”.
24. The Explanatory Notes to the Bill are of very limited assistance.⁹ Of far greater initial assistance (but still incomplete) was the Policy Paper¹⁰ and a further letter issued by the (former) Secretary of State in response to the Select Committee (30 June 2022).¹¹

The Policy Paper describes them thus:

To help make the content of plans faster to produce and easier to navigate, policies on issues that apply in most areas (such as general heritage protection) will be set out nationally. These will be contained in a suite of National Development Management Policies, which will have the same weight as plans so that they are taken fully into account in decisions.

25. The Policy Paper draws a distinction with the NPPF, which is envisaged to remain as a separate document to guide plan-making. We set out the excerpt below. For completeness, we have also included below the wording on (a) the removal of the

⁸ **Hopkins Homes v Suffolk Coastal** [2017] PTSR 623, [19]-[20] ...it was suggested that his powers derived, expressly or by implication, from the planning Acts which give him overall responsibility for oversight of the planning system: see *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 AC 295 , paras 140–143, per Lord Clyde. This is reflected both in specific requirements (such as in section 19(2) of the 2004 Act relating to plan preparation) and more generally in his power to intervene in many aspects of the planning process, including (by way of call-in) the determination of appeals.

20. In my view this is clearly correct. The modern system of town and country planning is the creature of statute: see *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132 , 140–141. Even if there had been a pre-existing prerogative power relating to the same subject matter, it would have been superseded: see *R (Miller) v Secretary of State for Exiting the European Union (Birnie intervening)* [2017] 2 WLR 583 , para 48. ...

⁹ <https://publications.parliament.uk/pa/bills/cbill/58-03/0006/en/220006en.pdf>

¹⁰ <https://www.gov.uk/government/publications/levelling-up-and-regeneration-further-information/levelling-up-and-regeneration-further-information>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1088045/Letter_to_DLUHC_Committee_Chair.pdf

five year housing land supply test; (b) the 30 month timescale for plan production and (c) digital tools, which we shall return to below:

Alongside the Bill

To incentivise plan production further and ensure that newly produced plans are not undermined, our intention is to remove the requirement for authorities to maintain a rolling five-year supply of deliverable land for housing, where their plan is up to date, i.e., adopted within the past five years. This will curb perceived ‘speculative development’ and ‘planning by appeal’, so long as plans are kept up to date. We will consult on changes to be made to the National Planning Policy Framework.

This is just one of the changes that we intend to make to the National Planning Policy Framework to support effective implementation of the Bill. Most fundamentally, we will need to identify and consult on the National Development Management Policies which will sit alongside plans to guide decision-making. They will be derived from the policies set out currently in the National Planning Policy Framework, where these are intended to guide decision-making, but we will also identify and seek views on any gaps in the issues which are covered. The rest of the National Planning Policy Framework will be re-focused on setting out the principles to be taken into account in plan-making, whilst also streamlining national policy, making it more accessible and user friendly.

Alongside this, regulations will be updated to set clear timetables for plan production – with the expectation that they are produced within 30 months and updated at least every five years. During this period, there will be a requirement for two rounds of community engagement before plans are submitted for independent examination. We will also produce new guidance on community engagement in planning, which will describe the different ways in which communities can get involved and highlight best practice, including the opportunities which digital technology offers. Any new digital engagement tools will sit alongside existing methods of engagement (such as site notices and neighbour letters). For decision making, the Bill will also enable pre-application engagement with communities to be required before a planning application is submitted, remove the sunset clause, making the powers which currently expire in 2025, permanent.

26. The NPPF Consultation provides only a partial answer:

3. National Development Management Policies are proposed in Clauses 83 and 84 of the Bill (as introduced to the Commons; these are now 86 and 87 in the version introduced to the Lords). These would be given the same weight in certain planning decisions as policies in local plans, neighbourhood plans and other statutory plans (and could, where relevant, also be a material consideration in some other planning decisions, such as those on Nationally Significant Infrastructure Projects). It is our intention that National Development Management Policies would cover planning considerations that apply regularly in decision-making across England or significant parts of it, such as general policies for conserving heritage assets, and preventing inappropriate development in the Green Belt and areas of high flood risk.

...

The Case for National Development Management Policies

9. *The creation of National Development Management Policies is part of the government's ambition to make it easier to produce plans and foster a genuinely plan-led system, leading to clearer and more certain decision making.*

10. *Through responses to 2020's Planning for the Future White Paper and wider engagement with stakeholders, we have heard that:*

- *Local plans are often hundreds of pages long, but can try to replicate many aspects of national planning policy, such as general policies for controlling development in the Green Belt, or policies on nationally-recognised heritage assets. Feedback from local authorities is that they do so because national policy has no statutory status, unlike the development plan. Removing this material from local plans would help to make them more accessible and engaging for users as well as cheaper to produce;*
- *Unnecessary time can be spent at examination testing such generic development management policies and establishing whether they are consistent with the National Planning Policy Framework, rather than dealing with locally-specific matters;*
- *There are a number of issues of national importance – such as the Green Belt – where many accept that policies for controlling development should be set nationally; and*
- *Small builders in particular struggle to follow multiple different detailed local plan policies on the same issues, making it harder to build within different local authority areas.*

11. *With this in mind, the government believes the case for National Development Management Policies is 5-fold:*

- *They will help local authorities produce swifter, slimmer plans by removing the need to set out generic issues of national importance such as policies for protecting the Green Belt;*
- *They will make plans more locally-relevant and easier for communities and other users to digest;*
- *It will be easier for applicants to align their proposals with national and local policy requirements and, where they wish, to go beyond them. We expect this to be particularly valuable for small and medium enterprises: it will support our small and medium sized builders to build more of the homes and create more of the skilled jobs that people want to see in their communities;*
- *They will provide greater assurance that important policy safeguards which apply nationally, or to significant parts of England (such as protections for areas at risk of flooding, policy on climate change, and policies to protect the Green Belt) will be upheld with statutory weight and applied quickly across the country, including when any changes are made; and*

- They will mean that this framework of common national policies can guide decisions even if the local plan is significantly out-of-date and cannot be relied upon. For example, they will ensure that national protections for things safeguarded solely through planning policy – local wildlife sites for example – have clear statutory status equivalent to an up-to-date plan.

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The scope of National Development Management Policies

12. The government's initial view is that National Development Management Policies would fall within 3 broad categories:

- Existing policies aimed at decision-making already provided within the National Planning Policy Framework, subject to these being reviewed on a case-by-case basis so that the rationale for their inclusion is clear;
- Selective new additions to reflect new national priorities, for example net zero policies that it would be difficult to develop evidence to support at a district level, but which are nationally important.
- Selective new additions to close 'gaps' where existing national policy is silent on planning considerations that regularly affect decision-making across the country (or significant parts of it).

13. We also propose that any National Development Management Policies would adhere to a number of principles:

- Covering only matters that have a direct bearing on the determination of planning applications;
- Limited to key, nationally important issues commonly encountered in making decisions on planning applications across the country (or significant parts of the country); and
- solely addressing planning issues, in other words that concern the development and use of land. National Development Management Policies would not address subjects which are regulated through other legislation, for example the building regulations or acts relating to public health, pollution, and employment; although we are minded to retain the scope for optional technical standards to be set locally through plans, where these remain appropriate, so that local planning authorities can go above certain minima set through building standards.

14. We will also want to make sure that National Development Management Policies are drafted in a clear, concise and consistent manner, and avoid ambiguities, so that they are easy to understand and apply by applicants, local planning authorities and other users. The policies will also need to be capable of being accessed easily in a digital format by a wide range of users.

27. On the basis of these fragmentary excerpts, one can envisage NDMPs being drafted to include the primary (and perhaps the only) tests for decision-taking in the following exemplar areas:
- (1) Heritage, replacing NPPF Chapter 16 and giving effect to s66(1) of the Planning (Listed Buildings etc) Act 1990;
 - (2) Habitats (NPPF Chapter 15 (e.g. NPPF 175, 179 and 180) and section 70 of the Conservation of Habitats and Species Regulations 2017)
 - (3) Green Belt (NPPF Chapter 13, e.g. NPPF 138 and NPPF 147-151)
 - (4) National Park/AONB (NPPF Chapter 15, e.g. NPPF 176-178)
 - (5) Flood risk (NPPF Chapter 14, e.g. NPPF 159-169)
 - (6) Climate change (NPPF Chapter 14, e.g. NPPF 154-158)
28. “Greyer” areas will be those where a national test applies, but some local flexibility is allowed (reflecting LPA geographical and economic particularity), for example:
- (1) Residential development in the countryside (e.g. NPPF 80)
 - (2) Retail sequential test and impact assessment (e.g. NPPF 88-90)
 - (3) Highways grounds (e.g. NPPF 111)
29. The future of the Presumption in Favour of Sustainable Development (“PFSD”) and housing land supply targets are plainly unclear under the NDMP world. However, it should be noted that there is technically nothing within the text of the Bill, as drafted, which would forbid the inclusion (or re-introduction) of such provisions (“*a policy (however expressed) of the Secretary of State in relation to the development or use of land in England*”).

30. There will need to continue to be a mechanism to be encourage grants of permission and to monitor housing supply through a preliminary period up to the adoption of up-to-date plans. It would also seem essential to monitor performance post-adoption, even during the initial five-year period before the plan must be reviewed. NDMPs will therefore likely continue to need to contain text to set the necessary framework for assessment.
31. To date, the Government has strictly observed the long-established distinction between broad statutory objectives (e.g. Section 37 PCPA 2004: “contributing to the achievement of sustainable development”) and more detailed policy text. That will remain highly significant, given the comparative differences between passing legislation and publishing national policy.
32. There were various attempts, notably in the Commons, to include express provisions on substantive policy matters.
33. From a decision-taking perspective, at face value, the innovation of NDMPs covering the above cited topic areas makes a lot of sense.
34. It would avoid duplication and confusion at the report-writing stage, and consequent litigation. In particular, it would avoid battles over the datedness of development plan provisions, and consequently the application of the presumption, see notably the Court of Appeal’s resolution of issues in the context of heritage policy in *City & Country Bramshill Ltd v SSCLG* [2021] 1 WLR 5761, [87]:

87. ... The absence of an explicit reference to striking a balance between “harm” and “public benefits” in the local plan policies does not put them into conflict with the NPPF, or with the duty in section 66(1) . Both local and national policies are congruent with the statutory duty. The local plan policies are not in the same form as those for “designated heritage assets” in the NPPF. They do not provide for a balancing exercise of the kind described in paragraphs 193 to 196 of the NPPF, in which “public benefits” are set against “harm”. But they do not preclude a balancing exercise as part of the decision-making process, whenever such an exercise is appropriate. They do not override the NPPF policies or prevent the decision-maker from adopting the approach indicated in them. They are directed to the same basic objective of preservation.

35. In summary, even before one considers questions of primacy, the simple introduction of NDMPs as express material considerations in the s38(6) PCPA exercise has the potential to simplify the s38(6) PCPA process.
36. This will especially be the case if the development plan is allowed to focus upon (1) allocation; (2) designation of “protected” areas (e.g. special landscapes, open countryside outside settlement boundaries); (c) design policies (with additional Design Codes, introduced under Schedule 7, Section 15B(2)(e) and Section 15F(1)).
37. Difficulties will however arise if (a) the NDMP content is not sufficiently clear, failing to set out with precision what LPAs should still cover; or (b) the precise relationship between NDMPs and development plans is not clear on the face of the legislation.
38. This leads directly to our second question:

Q2: How will Sub-section 38(5C) PCPA work in practice, in conferring primacy on NDMPs in situations of conflict with the development plan? (Will this provision survive? Is there a workable alternative?)

39. On its face, sub-section (5C) has a very attractive simplicity: if a development plan contains a test that does not match the NDMP, then the NDMP will prevail.
40. Sub-section (5C) has alarmed a number of observers, both within Parliament and externally, including those with the interests of both rural and urban communities in mind (e.g. CPRE, TCPA). There have been multiple contributions throughout the Parliamentary phase, with Members expressing their concern as to the reality of this position. The Select Committee on Levelling-up, Housing and Communities has sought to give voice those concerns.
41. The group Rights, Community, Action (RCA) provided Counsel’s Opinion to the Select Committee, which in turn prompted a direct question (by a letter dated 21 June 2022) to the (former) Secretary of State, Michael Gove MP.

42. Gove's response (dated 5 July 2022) is worth consideration in full, as the best guide to the *intention*, but not necessarily the *effect* of the Clause 83 provisions:

The primacy of the development plan

An important aim of the legislation is to improve local democratic engagement in planning, so that communities have a stronger say over where development goes, what it looks like and the improvements they would like to see. My reforms to plan-making are a key part of this: they strengthen the role of the plan, so that departures from it would, in effect, require strong reasons (clause 83 inserts proposed new clause 38(5B) into the Planning and Compulsory Purchase Act 2004 (the "2004 Act")); it would no longer be enough for other considerations merely to 'indicate otherwise', as the current wording at section 38(6) of the 2004 Act provides for. This change means more certainty that the proposals in plans will be implemented as intended, and that the safeguards they contain will be respected, whether that is the Green Belt, flood protection or local design standards. This, in turn, should mean local authorities having to fight fewer appeals, and communities facing fewer unanticipated developments on their doorstep.

I understand the questions which have been asked about National Development Management Policies. These would sit alongside those in local, neighbourhood and other statutory plans prepared locally, with the Bill requiring that these national policies also be adhered to, unless there are other considerations which strongly indicate otherwise.

A key reason for this change is to enable the greater role for plans envisaged above. At present local plans take too much time to produce, they can be very long, and they are often hard to digest. There can, also, be a lot of overlap with policies in the National Planning Policy Framework. Many agree that it makes sense to set out policy on nationally-important matters, which apply across all or many authorities, at the national level: like standard policies for controlling development in the Green Belt, for protecting heritage assets, or for setting ambitious baseline standards for addressing climate change. Giving these policies statutory status will make sure that they carry appropriate weight and, crucially, allow locally-produced plans to focus on matters of local importance; making them more locally-relevant, and easier to produce and use.

The Bill does say that National Development Management Policies would have precedence in the event of conflict with plans; which is, I believe, a necessary safeguard in situations where plans have become very out of date, and important national policies on the environment and other matters need to be reflected fully in decisions. I would, though, expect such conflicts to be limited in future; both because we are making it easier to produce plans and keep them up to date, and because of the clear distinction which the Bill provides for in the role of locally-produced policies vis-à-vis those of national importance.

Given the above, it is my strong view that the Bill will do much to strengthen the role of locally-produced plans, will not undermine their primacy as frameworks for local planning matters, and will make it easier for communities to engage and have confidence in them.

Consultation on National Development Management Policies

The Bill would place an obligation on me, or my successors, to undertake such consultation as is considered appropriate when producing or changing National Development Management Policies (clause 84 inserts proposed new section 38ZA of the 2004 Act). As I said when we met, I understand the interest there will be in these policies, and I will carry out full public consultation before they are introduced. Ahead of that, I will publish a 'prospectus' shortly, which will set out my initial thinking, and invite views, on the scope of National Development Management Policies and how they would relate to the rest of the National Planning Policy Framework.

43. The Select Committee wrote again to the next/interim Secretary of State (Greg Clark MP) on 24 August 2022. Again, their text is worth considering in full:

8. In respect of the planning provisions, the main concerns that have been raised are about a lack of detail in the Bill, which has hindered effective scrutiny, and about a perceived movement towards the centralisation of planning decisions due to some of the provisions in the Bill and the tone of some of the language. Both these concerns have meant that the evidence we have heard has been presented with some scepticism and some distrust as to what the Government's intentions are. If one central thrust of the Bill is not to centralise planning decisions, then the remaining planning provisions in the Bill can be described as loosely connected proposals to tinker with the current system, hopefully achieving some improvement. We have not received strong opposition to any of the proposals, but in part this is a factor of the detail not being published, so witnesses are having to hypothesise what will be enacted rather than respond to a firm proposal.

...

15. We welcome the response from the then Secretary of State, as a planning system that is more accessible, more transparent, and delivers better outcomes for the people it serves is what the Committee would like to see. However, there continues to be concerns that the direction of travel in this Bill is away from a local plan-led system, and that the National Development Management Policies will impose a radical, centralising change upon the current system. Part of the reason for these concerns stems from the previous issue – lack of detail in the Bill. It is not sufficiently clear what areas National Development Management Policies will cover and what they will look like.

16. More specifically related to this concern, the Committee's attention has been drawn in particular to clause 83(2) which states at (5C) that: "If to any extent the development plan conflicts with a national development management policy, the conflict must be resolved in favour of the national development management policy". It has been put to the Committee that this introduces a centralising hierarchy of policy that is new to the English planning system. One reading of this clause is that it fundamentally undermines the plan led system which has been a bedrock of the system for nearly twenty years (Section 38 of the Planning and Compulsory Purchase Act 2004) and which is firmly stated in the current NPPF. If this is not the intention, then serious consideration needs to be given to amending or removing this clause.

17. It is our view that, if it is indeed the Government's intention that it is not seeking to centralise planning, the Government needs to take action to show that is the case. This may be through amendments to the wording in the Bill. We have also explored with witnesses how National Development Management Policies differ from National Policy

Statements, and many witnesses supported NDMPs being subject to the same standard of consultation and scrutiny as National Policy Statements. An alternative would be for draft National Development Management Policies to be published before the Bill is considered at Report Stage, so that MPs know what they will encompass.

44. To date, no amendments have been proposed by the Government in either the Commons or the Lords.
45. Whilst, at face value, (5C) may be regarded as sitting uneasily alongside rhetorical promises of conferring greater power to the local level (see the quote at the head of this paper). It is hard to reconcile the text of (5C) with a system based on increasing “local control”.
46. We emphasise that we do not personally consider that there is merit in the suggestion that there is a lack of such control. The narrative has simply become very strong in recent years, especially amongst “grassroots” party members and elected local representatives. Indeed, this is not solely a Conservative Party issue. There are a number of Councils in other parties’ control, including those with large number of independent councillors elected on “stop development” tickets.
47. The real question now is whether there is any realistic or workable alternative to (5C)?
48. Sub-section (5C)’s structure and its simplicity are essential. An LPA is expressly limited from relying on an existing development plan, merely because it is adopted. (5C) makes clear that it cannot do so.
49. There may be significant concerns as to “centralisation” at a time of accumulating mistrust in /disaffection with Central Government. However, neither local plan-making nor “localised decision-taking” can be described as a paragon of success.
50. Without (5C), the resulting Section 38 (even with (5A)) would (on its face) do nothing to require an LPA to adopt a new Local Plan – absent very robust NDMP wording. Such NDMP wording would very likely go beyond what the PFSD currently provides. A consistent theme in the judgments on former NPPF (2012) paragraph 14 and the current NPPF 11d was the existing strength of the Section 38(6) PCPA test.

51. The Government therefore has made its stark choice to preserve (5C) to retain the power to deal with long delays to local plan-making and individual decisions, even on allocated sites.

Q3: In the above context, how will NDMPs be prepared (including consultation?)

52. The Bill provides for only two statutory requirements for NDMPs (their making, revocation and modification):
- (1) First, they must be subject to some form of consultation (*“consultation with, and participation by, the public or any bodies or persons (if any) as the Secretary of State thinks appropriate takes place”*) (Section 84(3));
- (2) Second, there must a direction as to which policy is an NDMP (Section 84(1)). The latter will be the key decision for any legal challenge to their content/preparation procedure.
53. On the basis of the above, one would expect the initial set of NDMPs to be subject to a significant consultation exercise, at least 6 weeks, with draft text. The precedent set by recent NPPF exercises is a strong one, for the purposes of legitimate expectations.
54. What about revocation and modification? This is considerably more complex and a fertile ground for legal challenge, at least in the first few such instances. We do not consider that a future Secretary of State would forgo all consultation – the risk of successful challenge would be too great given the express legislative reference and the potential impact of the changes. However, it would seem that short, partial consultation is a much more real risk, perhaps as short as 28 days, using narrow questions and with limited background evidence.
55. The availability of rapid changes will be double-edged. On the one hand, it would assist Secretary of State intervention where major challenges are identified, e.g. on questions of nutrient neutrality. It may provide a powerful coercive force for authorities that delay plan-making, effectively providing the Secretary of State with

an express statutory route currently only available by way of Written Ministerial Statement, e.g. as with Housing Supply in Oxfordshire.¹²

56. However, the speed with which the power may be exercised will add a degree of unpredictability to applications and land promotion, particularly in the run-up to Local and General Elections – as NDMPs could be used to stall or even promote refusal of categories of application.
57. In line with our observations above, one would expect the Government at least to explore greater Parliamentary involvement with the preparation and approval of new NDMPs. The consequence of this will however inevitably be further delay and controversy in their formulation, including revisiting the fraught question of “targets”.

Q4: In the context of all the above, how will Sub-section 38(5B) “strongly indicate otherwise” provision work?

58. The sub-section (5B) provision gained much early comment, with the suggestion that “strongly indicate” amounted to a significant change to section 38(6) PCPA.
59. In our view, it is important not to overplay this. The provision provides for a classic exercise of discretion and planning judgment. However, more importantly, one might ask whether the statutory provision simply reflects what happens in practice.
60. It is arguable that LPAs and Inspectors working with the existing s38(6) PCPA wording already apply similar tests. Few cases are truly decided on a “finely balanced” basis. A far greater proportion are decided because of the operation of the existing presumption, which has a very similar effect. It is hard to think of any case granted permission contrary to both the development plan and national policy.
61. It will be very important for decision-takers to use the statutory formula “strongly indicate”, in a similar fashion to the heritage context. But provided they have done

¹² <https://questions-statements.parliament.uk/written-statements/detail/2018-09-12/HCWS955>

so, then we do not consider the Planning Court would wish to further structure what the adverb “strongly” means.

62. Difficulties will arise if (5C) is removed – i.e. how conflicts between Local Plan and NDMPs will be resolved. This simply underscores the importance of getting this provision right.

Summary on Clauses 86 and 86

63. In our view, Clauses 86 and 87 present considerable opportunity to address a number of otherwise intractable issues in decision-taking – most notably LPAs’ reliance on out-of-date development plans.
64. The provisions have understandably alarmed those who are sceptical of increased “centralisation”. But such critics have not been able to make a convincing case that decision-taking is working well at the local level. In fact, it is strongly arguable that the LPA level is significantly under-performing when compared to the Planning Inspectorate.
65. The key now will be the leadership’s appetite to enforce a greater degree of centralised control, faced with what were initially described as “rock bottom” conditions in local plan preparation activity,¹³ but which then saw the withdrawal of many plans at the turn of the year.

¹³ <https://www.planningresource.co.uk/article/1796722/local-plan-watch-plan-making-activity-remains-rock-bottom>

2) Planning Data

78 Power in relation to the processing of planning data

(1) Regulations made by the Secretary of State under this Chapter (“planning data regulations”) may make provision requiring a relevant planning authority, in processing such of its planning data as is specified or described in the regulations, to comply with any approved data standards which are applicable.

(2) “Planning data”, in relation to a relevant planning authority, means any information which is provided to, or processed by, the authority—

- (a) for the purposes of a function under a relevant planning enactment, or
- (b) for any other purpose relating to planning or development in England.

(3) “Approved data standards”, in relation to planning data, are such written standards, containing technical specifications or other requirements in relation to the data, or in relation to providing or processing the data, as may be published by the Secretary of State from time to time.

79 Power in relation to the provision of planning data

(1) A relevant planning authority may by publishing a notice require a person, or persons of a particular description, in providing to the authority such planning data as is specified or described in planning data regulations, to provide the data—

- (a) in any form and manner, or
- (b) in a particular form and manner, which complies with any approved data standards which are applicable.

(2) A relevant planning authority may not impose a requirement under subsection (1)—

- (a) on the Crown,
- (b) on a court or tribunal, or
- (c) in relation to the provision of planning data for the purposes of, or in contemplation of, legal proceedings before a court or tribunal.

(3) If a relevant planning authority imposes a requirement under subsection (1) on a person, provision in a relevant planning enactment does not apply to the extent that it requires or permits the person to provide the planning data to the authority in a form or manner which is inconsistent with the requirement imposed under subsection (1).

(4) Subsections (5) to (7) apply if—

- (a) in providing planning data to a relevant planning authority, a person fails to comply with a requirement imposed under subsection (1), and
- (b) the authority does not consider that the person has a reasonable excuse for the failure.

(5) The authority may serve a notice on the person rejecting for such purposes as may be specified in the notice—

- (a) all or any part of the planning data, and
- (b) if the authority considers it appropriate to do so, any other information provided with the planning data or any document in or with which the planning data is provided.

(6) *Any planning data, other information or document rejected under subsection (5) is to be treated as not having been provided to the authority for the purposes specified in the notice.*

(7) *If the planning data, other information or document is subsequently provided to the authority in a form and manner which complies with the requirement under subsection (1), the authority may treat the planning data, other information or document as having been provided at the time that it would have been provided had it not been rejected under subsection (5).*

(8) ***Planning data regulations*** may include provision about how the powers in this section are to be exercised, including provision about—

- (a) *the provision or publication of notices or other documents;*
- (b) *the form and content of notices or other documents (and, for these purposes, the regulations may confer a discretion on a relevant planning authority);*
- (c) *time limits;*
- (d) *any other procedural matters.*

66. It is easy to overlook Part 3, Chapter 1 of the Bill, However, its effect could prove transformative over the next decade for all those working in the planning sector. References to “planning data” are best understood synonymously with the terms “digitisation”, and the broader concepts of “information” and “access”: a world in which applications are submitted, assessed, consulted upon, determined and monitored using much improved technology.
67. Everything depends on the content of the forthcoming Regulations, referred to in Clause 79(8). However, there is now a clear direction of travel towards digital transformation, most notably submission of applications in particular formats.
68. The Explanatory Notes and the Policy Paper provide almost no further guidance. The examples given in the Explanatory Notes both relate to plan-making (e.g. how conservation areas are mapped). The Policy Paper simply states:

“The Bill includes a number of measures which will allow a transformation in the use of high-quality data and modern, digital services across the planning process, including powers to set common data standards and software requirements....

We will continue to progress our wider digital delivery programme, including improvements to planning data and developing modern, data-driven planning software, so that handling and providing information on planning applications is faster and more efficient. We are also working with the PropTech sector to develop tools so communities can engage with planning services through digital means alongside traditional forms of engagement.”

69. The difficulty with digitisation is that the pace of change has been grindingly slow in the past 5 years, such that it is hard to see exactly what this format would look like.
70. One way to look at digitisation from the perspective of four key actors within the planning system:
- (a) Central Government (DLUHC, the Planning Inspectorate)
 - (b) Local Planning Authorities
 - (c) Development Industry (Applicants for Permission)
 - (d) General Public (Commenting on Applications)
71. This not an exhaustive list, and there are many sub-sets within the above categories, but it is a useful analytical springboard.

Central Government (DLUHC, the Inspectorate)

72. Central Government is the primary sponsor of the planning data reforms. The main ideas behind planning data go back some way, but were most clearly crystallized in the 2020 Planning White Paper *Planning for the Future*:

1.17. Second, we will take a radical, digital-first approach to modernise the planning process. This means moving from a process based on documents to a process driven by data. We will:

- *Support local planning authorities to use digital tools to support a new civic engagement process for local plans and decision-making, making it easier for people to understand what is being proposed and its likely impact on them through visualisations and other digital approaches. We will make it much easier for people to feed in their views into the system through social networks and via their phones.*
- *Insist local plans are built on standardised, digitally consumable rules and data, enabling accessible interactive maps that show what can be built where. The data will be accessed by software used across the public sector and also by external PropTech entrepreneurs to improve transparency, decision-making and productivity in the sector.*
- *Standardise, and make openly and digitally accessible, other critical datasets that the planning system relies on, including **planning decisions** and developer contributions. Approaches for fixing the underlying data are already being tested and developed by innovative local planning authorities and we are exploring options for how these could be scaled nationally.*

- Work with tech companies and local authorities to modernise the software used for making and case-managing a planning application, improving the user-experience for those applying and reducing the errors and costs currently experienced by planning authorities. A new more modular software landscape will encourage digital innovation and will consume and provide access to underlying data. This will help automate routine processes, such as knowing whether new applications are within the rules, making decision making faster and more certain.
- Engage with the UK PropTech sector through a PropTech Innovation Council to make the most of innovative new approaches to meet public policy objectives, help this emerging sector to boost productivity in the wider planning and housing sectors, and ensure government data and decisions support the sector's growth in the UK and internationally.

Proposal 6: Decision-making should be faster and more certain, with firm deadlines, and make greater use of digital technology

2.38. For all types of planning applications regardless of the category of land, we want to see a much more streamlined and digitally enabled end to end process which is proportionate to the scale and nature of the development proposed, to ensure decisions are made faster. The well-established time limits of eight or 13 weeks for determining an application from validation to decision should be a firm deadline – not an aspiration which can be got around through extensions of time as routinely happens now.

2.39. To achieve this, we propose:

- the greater digitalisation of the application process to make it easier for applicants, especially those proposing smaller developments, to have certainty when they apply and engage with local planning authorities. In particular, the validation of applications should be integrated with the submission of the application so that the right information is provided at the start of the process. For Spending Review, the Government will prepare a specific, investable proposal for modernising planning systems in local government;
- A new, more modular, software landscape to encourage digital innovation and provide access to underlying data. This will help automate routine processes, such as knowing whether new applications are within the rules, which will support faster and more certain decision-making. We will work with tech companies and local planning authorities to modernise the software used for case-managing a planning application to improve the user-experience for those applying and reduce the errors and costs currently experienced by planning authorities;
- shorter and more standardised applications. The amount of key information required as part of the application should be reduced considerably and made machine-readable. A national data standard for smaller applications should be created. For major development, beyond relevant drawings and plans, there should only be one key standardised planning statement of no more than 50 pages to justify the development proposals in relation to the Local Plan and National Planning Policy Framework;

- data-rich planning application registers will be created so that planning application information can be easily found and monitored at a national scale, and new digital services can be built to help people use this data in innovative ways
- data sets that underpin the planning system, including planning decisions and developer contributions, need to be standardised and made open and digitally accessible:
 - a digital template for planning notices will be created so that planning application information can be more effectively communicated and understood by local communities and used by new digital services;
 - greater standardisation of technical supporting information, for instance about local highway impacts, flood risk and heritage matters. We envisage design codes will help to reduce the need for significant supplementary information, but we recognise there may still need to be site specific information to mitigate wider impacts. For these issues, there should be clear national data standards and templates developed in conjunction with statutory consultees;
 - clearer and more consistent planning conditions, with standard national conditions to cover common issues;
 - a streamlined approach to developer contributions, which is discussed further under Pillar Three;
 - the delegation of detailed planning decisions to planning officers where the principle of development has been established, as detailed matters for consideration should be principally a matter for professional planning judgment.

...

Proposal 7: Local Plans should be visual and map-based, standardised, based on the latest digital technology, and supported by a new template.

2.43. Interactive, map-based Local Plans will be built upon data standards and digital principles. To support local authorities in developing plans in this new format, we will publish a guide to the new Local Plan system and data standards and digital principles, including clearer expectations around the more limited evidence that will be expected to support “sustainable” Local Plans, accompanied by a “model” template for Local Plans and subsequent updates, well in advance of the legislation being brought into force. This will support standardisation of Local Plans across the country. The text-based component of plans should be limited to spatially-specific matters and capable of being accessible in a range of different formats, including through simple digital services on a smartphone.

2.44. To support open access to planning documents and improve public engagement in the plan-making process, plans should be fully digitised and web-based following agreed web standards rather than document based. This will allow for any updates to be published instantaneously and makes it easier to share across all parties and the wider public. Those digital plans should be carefully designed with the user in mind and to ensure inclusivity, so that they can be accessed in different formats, on different devices, and are accessible and understandable by all. Geospatial information associated with plans, such as sites and areas, should also be standardised and made openly available online. Taken together, these changes will enable a digital register of planning policies to be created so that new digital services can

be built using this data, and this will also enable any existing or future mapping platforms to access and visualise Local Plans. This will make it easier for anyone to identify what can be built where. The data will be accessed by software used across the public sector and also by external PropTech entrepreneurs to improve transparency, decision-making and productivity in the sector. There should also be a long-term aim for any data produced to support Local Plans to be open and accessible online in machine-readable format and linked to the relevant policies and areas.

2.45. By shifting plan-making processes from documents to data, new digital civic engagement processes will be enabled, making it easier for people to understand what is being proposed where and how it will affect them. These tools have the potential to transform how communities engage with Local Plans, opening up new ways for people to feed their views into the system, including through social networks and via mobile phones. Early pilots from local planning authorities using emerging digital civic engagement tools have shown increased public participation from a broader audience, with one PropTech SME reporting that 70% of their users are under the age of 45.

2.46. To encourage this step-change, we want to support local authorities to radically rethink how they produce their Local Plans, and profoundly re-invent the ambition, depth and breadth with which they engage with communities. We will set up a series of pilots to work with local authorities and tech companies (the emerging 'PropTech' sector) to develop innovative solutions to support plan-making activities and make community involvement more accessible and engaging. This could include measures to improve access to live information and data or the use of 3D visualisations and other tools to support good community engagement.

73. Amongst the subsequent political furore over other parts of the White Paper, the energy behind this part of the reforms remained.
74. DLUHC's Digital Planning unit have continued to build new services and support local authorities through various pilot initiatives and funding, as well as the PropTech industry. On 28 June 2022, DLUHC's Chief Digital Officer described three core objectives:¹⁴
1. Digital citizen engagement
 2. Modern development management software
 3. Planning data that is easy to find, use and trust
75. The Planning Inspectorate is also significantly engaged with reform, exploring whether the appeal process could do away with appeal questionnaires and core

¹⁴ <https://dluhcdigital.blog.gov.uk/2022/06/28/digital-planning-reform-an-overview/>

documents, by relying on Council's own websites. This would require significant standardisation of the presentation of documents on such websites and rigorous enforcement of this at appeal (perhaps even through hard-edged standards to be enforced by litigation). Ensuring that Inspectors can access planning information from the same location as everyone else could be of considerable assistance in shortening timescales for determination and simplifying aspects of the appeal process.

76. From all of this, one discern at least five key objectives to the modernisation of the application / appeals process:

(1) To speed up the determination of applications and appeals;

(2) To promote economic growth;

(3) To improve local engagement;

(4) To reduce costs;

(5) To improve the collection of data at the central level.

77. The objectives are easy to state and relatively straightforward to understand in isolation. Yet there are internal tensions between them. A faster system with better visualisations is not necessarily one in which local engagement may be considered more effective by *objectors*. Equally, a modernised system is unlikely to be a cheaper system, at least initially as there will be significant up-front costs for local authorities and also for the development sector.

78. Central government will need to build a package of measures alongside the Regulations, which balances the competing objectives.

79. First, it will need to provide direct funding to local authorities, far in excess of the sums that have presently been spent in the pilots. There will need to be general

upskilling and training across local government, at a time when the current system is experiencing a staffing/recruitment crisis.

80. Second, Government will therefore need to instil confidence amongst applicants, as the primary customers of the new system. There will need to be a sufficient period of transition. There may also need to be some incentivisation, either in the policy text or even through the appeal process to ensure additional investment in applications.
81. Third, Government will need to strike the right balance between central control and local initiative. This is a highly charged, and somewhat ideological question. Government can mandate particular forms of software and even make funding conditional upon their use. However, at the same time, it will need to be cautious about one-size-fits-all approaches and stimulating a genuine, competitive market for new technologies.
82. The fifth objective of centralising data is extremely important. The current process of monitoring has significant inefficiencies. Consider for example the process of recording dwelling completions on a quarterly basis. Through the innovation of unique property reference numbers (UPRNs), there is scope for dwelling completions to be recorded and shared with Central Government in real time, with the consequence that it may even be possible for live monitoring of a given LPA's performance. When this is matched to the flexibility of NDMPs it is possible to envisage a system in which Government might design policy in a more responsive way, by temporarily incentivising the grant of permission at local level to make up shortfalls.
83. In summary, it is best to understand the planning data reforms as the first prototype for significant changes to the planning system throughout the next decade and beyond. They have a significant potential to increase centralisation, especially through standardisation. Difficult questions remain as to funding and the extent to which diversification will be allowed at the local level.

Local Authorities

84. Currently, most LPAs lack the expertise and funding to overhaul their capabilities to receive and assess applications in prescribed digital formats. There must inevitably be major questions about how long it will take to achieve sector transformation.
85. Within the DLUHC-run pilots, much work to date has been “alpha” and “beta” focussing on simpler processes: for example, householder applications, permitted development rights and the process of validation.
86. Some of officers’ task will need to be contracted out. Smaller authorities may need to pool resources, perhaps to centralise certain functions at county and regional level.
87. Within all of this uncertainty, three key advantages are identifiable.
88. First, case officer’s functions will change – and arguably much for the better, centring on the more creative and spatial aspects of the job. The automation of the validation process, and direct assessment against the digital plan and NDMPs would allow for a greater focus on those tasks which requiring planning judgment: for example questions of design and layout. It is possible to envisage whole sections of Officer’s Reports being generated automatically.
89. Second, the application’s life cycle will likely itself be concentrated in one location online, with outline and detailed phases (including discharge of conditions) accessible from a single portal. Separate application numbers and case files should give way to geographically focussed entries with accessible sections recording the different phases of determination. For a glimpse of the potential, one should examine New York City’s New Zoning & Land Use Map (ZoLA)¹⁵ and its Zoning Application Portal (ZAP).¹⁶ ZoLA is a map-based reference system which allows one to zoom into an individual property and examine in a simpler user-interface: ownership, land use, plot size, alterations, unit numbers, zoning amendments and a considerable amount of other data. ZAP is another map-based system, which contains a complete record of applications for zoning map amendments. Documents submitted with the

¹⁵ <https://zola.planning.nyc.gov>

¹⁶ <https://zap.planning.nyc.gov/projects>

application are easily accessible from drop-down menus. The stages of consideration then appear below, showing the various stages of completion.

90. Third, in this new context, the scope for legal challenges over the content of Officer's Reports will shift from current questions of omission/error in policy interpretation, towards more technical questions of the accuracy of submitted data and the metrics applied. This does not necessarily mean more litigation, perhaps the opposite. By necessity, greater automation will still require human engagement and verification. It will also require considerable technical support. If the system is to be based upon the principle of improved access, enforced by hard-edged standards, then errors in presented data will need to be rapidly corrected.

3) The Development Sector

91. The development sector has itself been relatively slow to respond to greater digitisation. This is unsurprising given that there is limited advantage in abandoning existing documentary formats (notably PDF reports). Detailed visualisation work still remains the preserve of the largest, highest value projects.
92. There are however four key incentives to change:
93. First, if the Local Plan-making system is to become much more focussed on individual sites, with NDMPs capable of being mapped at the central level, then the land search exercise will increasingly become digitised. There are already a number of businesses offering such services. This aspect of the PropTech sector falls outside the scope of the paper.
94. Second, it is possible that planning data reforms will stimulate greater engagement by presently "silent" or "quiet" groups who may support greater development – especially those in need of housing / better housing. The current system could be said to stifle support for schemes: the reliance on neighbour notification, the requirement to declare one's address and generally the absence of good quality visualisation tools to show the demographic and social benefit to communities from delivering more houses. Direct forms of digital consultation, perhaps anonymised but verified, would allow for a more rounded picture of local attitudes to be

presented. This may be useful at application, before a Committee, or at appeal, before an Inspector.

95. Third, as set out above, the Inspectorate are looking actively at standardising and formalising the process by which they receive appeal submissions. Any move away from Appeal Form Questionnaires and Appendices towards use of LPA's own websites will lead to a major shift towards frontloading of evidence. It may even be accompanied by restrictions on the length and detail of appeal documentation/information – i.e. to focus only on remaining points in dispute beyond the submitted documents. Inspectors will both demand a high quality of accessible information at the appeal stage, but will also be more likely to grant such schemes.
96. Fourth, DLUHC's apparent long-term ambition is to measure delivery in a more centralised way, through the introduction of the Unique Property Reference Numbers (UPRNs), could lead to a greater focus upon "track record", including nationally.
97. For all these reasons, the development sector will need to radically upgrade their skillsets, including through training and parallel recruitment, over the next decade.

4) General Public

98. The final group worth considering are members of the general public. Much has already been discussed above. The general public will continue to be a source of objection and support for development. The Government plainly hopes for more of the latter, and less of the former.
99. Whilst no one can be naïve about the extent to which attitudes to new development will shift, what is clear is that decision-takers (whether Officers, Councillors, Inspectors or the Secretary of State) will scrutinise the extent to which an application has been presented in a manner that is accessible.

100. Form the White Paper and the background text, there is a clear suggestion that applicants should be prepared to provide much greater illustration and visualisation of the appearance of schemes. This may be through photomontages, 3D platforms or even video fly-throughs. The era of simply depicting a development through overhead plans, with little more in the Design and Access Statement is closing.
101. This may, and we stress *may*, lead to greater opportunities for persuasion of otherwise opposed individuals and communities. It should lead to more informed discussions at application stages and at appeal.

Summary

102. Beyond the technical term “planning data”, lies a huge area of possibility in decision-taking.
103. Central Government’s power to mandate specific forms of “planning” data has the real potential to ensure a more objective, data-driven approach to applications – alongside a greater creativity in how they are presented and how support is won.
104. It will plainly be a long road, but the LURB is nonetheless a foundational platform for considerable further work.

3) Environmental Outcome Reports

138 Power to specify environmental outcomes

(1) Regulations made by the Secretary of State under this Part (“EOR regulations”) may specify outcomes relating to environmental protection in the United Kingdom or a relevant offshore area that are to be “specified environmental outcomes” for the purposes of this Part.

(2) “Environmental protection” means—

- (a) protection of the natural environment, cultural heritage and the landscape from the effects of human activity;*
- (b) protection of people from the effects of human activity on the natural environment, cultural heritage and the landscape;*
- (c) maintenance, restoration or enhancement of the natural environment, cultural heritage or the landscape;*

(d) monitoring, assessing, considering, advising or reporting on anything in paragraphs (a) to (c).

(3) The “natural environment” means —

- (a) plants, wild animals and other living organisms,
- (b) their habitats,
- (c) land (except buildings or other structures), air and water, and the natural systems, cycles and processes through which they interact.

(4) “Cultural heritage” means any building, structure, other feature of the natural or built environment or site, which is of historic, architectural, archaeological or artistic interest.

(5) Before making any EOR regulations which contain provision about what the specified environmental outcomes are to be, the Secretary of State must have regard to the current **environmental improvement plan** (within the meaning of Part 1 of the Environment Act 2021).

139 Environmental outcomes reports for relevant consents and relevant plans

(1) EOR regulations may make provision requiring an environmental outcomes report to be prepared in relation to a proposed relevant consent or a proposed relevant plan.

(2) Where an environmental outcomes report is required to be prepared in relation to a proposed relevant consent —

- (a) the proposed relevant consent may not be given, unless an environmental outcomes report has been prepared in relation to it, and
- (b) that report must be taken into account or given effect, in accordance with EOR regulations, in determining whether and on what terms the proposed consent is to be given.

(3) Where an environmental outcomes report is required to be prepared in relation to a proposed relevant plan —

- (a) no step may be taken which would have the effect of bringing the proposed relevant plan into effect, unless an environmental outcomes report has been prepared in relation to it, and
- (b) that report must be taken into account or given effect, in accordance with EOR regulations, in determining whether and on what terms the proposed relevant plan is to have effect.

(4) An “environmental outcomes report”, in relation to a proposed relevant consent or proposed relevant plan, means a written report which assesses —

- (a) the extent to which the proposed relevant consent or proposed relevant plan would, or is likely to, impact on the delivery of specified environmental outcomes,
- (b) any steps that may be proposed for the purposes of—
 - (i) increasing the extent to which a specified environmental outcome is delivered;
 - (ii) avoiding the effects of a specified environmental outcome not being delivered to any extent;
 - (iii) so far as the effects of a specified environmental outcome not being delivered to any extent cannot be avoided, mitigating those effects;
 - (iv) so far as the effects of a specified environmental outcome not being delivered to any extent cannot be avoided or mitigated, remedying those effects;
 - (v) so far as the effects of a specified environmental outcome not being delivered to any extent cannot be avoided, mitigated or remedied, compensating for the specified environmental outcome not being delivered, and
- (c) any proposals about how —

- (i) the impact of the proposed relevant consent or proposed relevant plan on the delivery of a specified environmental outcome, or*
- (ii) the taking of any proposed steps of the kind mentioned in paragraph (b), should be monitored or secured.*

(5) The reference in subsection (4)(b) to steps includes—

- (a) reasonable alternatives to the relevant consent, to the project to which the relevant consent relates or to any element of either, or (as the case may be)*
- (b) reasonable alternatives to the relevant plan or any element of it.*

(6) Subsection (2) does not apply in relation to a relevant consent where—

- (a) the requirement for the consent is imposed under subsection (4) of section 118, and*
- (b) the consent is to be given or refused in an environmental outcomes report in accordance with provision under subsection (5) of that section.*

(7) EOR regulations may include provision about or in connection with—

- (a) what is to be taken to constitute the giving of a relevant consent for the purposes of subsection (2);*
- (b) the proposed relevant consents and proposed relevant plans for which an environmental outcomes report is, or may be, required;*
- (c) in relation to proposed relevant consents and proposed relevant plans for which an environmental outcomes report may be required, the circumstances in which a report is required;*
- (d) an environmental outcomes report not needing to assess the extent to which a proposed relevant consent or proposed relevant plan would, or is likely to, impact on the delivery of a specified environmental outcome, where an adequate assessment of the impact on delivery of the outcome has in effect already been, or is to be, carried out in a different environmental outcomes report;*
- (e) what proposals an environmental outcomes report may or must deal with under subsection (4)(b) and (c);*
- (f) how any of the assessments mentioned in subsection (4) are to be carried out;*
- (g) the information to be included in, and the content and form of, an environmental outcomes report, including provision requiring, or permitting a public authority to require, a report to deal with matters in addition to those provided for in subsection (4);*
- (h) how, and to what extent, environmental outcomes reports are to be taken into account or given effect by public authorities in considering, and making decisions in relation to, relevant consents or relevant plans;*
- (i) the carrying out of any proposals assessed in an environmental outcomes report under subsection (4)(b) or (c).*

[See also Clause 140 (Power to define ‘relevant consent’ and ‘relevant plan’ etc)

Clause 141 (Assessing and monitoring impact on outcomes etc)

Clause 142 (Safeguards: non-regression, international obligations and public engagement)]

105. Clauses 138 and 139 make provision for EOR Regulations (“Environmental Outcome Reports”), which will replace the Regulations in respect of Environmental Impact Assessment (“EIA”), with a focus on how this will impact on identified specified environmental outcomes.

106. Plainly a considerable amount will depend upon the drafting of the Regulations and accompanying guidance.
107. The Committee Stage debates (8 September 2022) confirmed the Government's current intentions as follows, reflecting the remarks of the (then) Minister of State (Paul Scully MP) who responded to various Labour requests for amendment in Committee.
108. Clause 138(2) is intended to build upon the definitions of environmental protection under the Environment Act 2021. Whilst not stated, this will allow consideration of additional matters such as human health and climate change, especially as subsection (2)(a) and (b) cover "effects of human activity" and the definition of "natural environment" extends to "natural systems, cycles and processes".
109. Clause 139(5) refers to the environmental improvement plan, which will be a key document for the Regulations and in turn the EOR – currently the 25-year environment plan, but intended as a dynamic document, re-issued every 5 years. The "outcomes" will "cover a broad range of topics". The primary legislation therefore currently eschews hard standards, but the Regulations will provide more detailed outcomes. No outcomes will be set for landscape and cultural heritage, which are not within the scope of the environmental improvement plan. The Government have rejected proposed amendments to subject the Regulations to additional scrutiny procedures in Parliament. However, under (former) Clause 125, the EOR Regulations will be subject to public consultation or consultation with stakeholders, followed by an official Government response explaining how those views have been taken into account in setting the detailed policy. Moreover, after the Bill receives Royal Assent, the Government intends to launch "a high-level consultation on the core elements of the new system—for example, on the outcomes-based approach to assessment and the use of the mitigation hierarchy in assessing reasonable alternatives...combined with conceptual roundtables and expert policy forums to inform the design of the new regulations and wider implementation."
110. The Government's assertions as to the Bill's impact are certainly ambitious. In concluding on Clause 138 and 139, the Minister stated:

“[Clause 116] [W]e are committed to delivering a modern system of environmental assessment that properly reflects the nation’s environmental priorities. The Bill allows us to introduce a new framework to replace the EU’s systems, while recognising the important role that environmental assessment plays. The previous regime could be overly bureaucratic and disproportionate. Expanding case law has led to a situation where unnecessary elements are being assessed for fear of legal challenges. The costs for big projects run into hundreds of thousands of pounds on occasions; yet, despite the lengthy reports, they often prove ineffective at securing better environmental outcomes or encouraging development to support the country’s most important environmental priorities.”

The 25-year environment plan acknowledges that the UK is one of the most nature-depleted countries of Europe. The 2019 “State of Nature” report led by conservation research organisations found that 41% of UK species are declining and one in 10 is threatened with extinction. Given the urgency with which we need to restore the environment to leave it in a better place for future generations, we desperately need a new approach.

The powers in the Bill will extend to all regimes currently covered by the EU system, to ensure the best approach for the interoperability between regimes, particularly for projects that are often in the scope of more than one regime, such as planning and marine. The new approach will be centred around the creation of environmental outcomes reports, which will directly set out how consents and plans should support the delivery of environmental priorities by assessing the extent to which they support the delivery of better environmental outcomes. That moves us away from the uncertainty of assessing likely significant effects to a more tangible framework that provides more clarity on what should be assessed and when.

***Assessing consents and plans directly against those outcomes will ensure that reporting is focused on those matters that will make a real difference to environmental protection.** In turn, that will support more effective decision making and make reports more accessible to the public.*

The outcomes will be fairly high level and user-friendly, simply setting out environmental priorities. It will be the job of indicators underpinning those outcomes to measure the delivery towards the outcomes. Indicators will be created and outlined in guidance for the different types of plans and projects and for different spatial scales. For example, indicators could set out which air pollutants should be measured and against which limits to measure the contribution towards an air-quality outcome seeking to reduce emissions.

To implement that, clause 116 provides the Secretary of State with the power to set specified environmental outcomes. The second of those outcomes is essential to that more active approach to environmental assessment, drawing a strong link between assessment and the delivery of positive outcomes for the environment. The core outcomes against which consents and plans will be assessed will be set in regulations and will assure that the ambitions of the Government’s landmark Environment Act 2021 and the 25-year environment plan are reflected in the consenting process and truly inform decision making.

Setting out those [through] regulations also provides scope for the Government to add more ambitious outcomes in response to developments in technology and to keep in step with increasing societal expectations. It is important that outcomes are created collaboratively with sector experts and, therefore, regulations will be subject to the affirmative procedure, as we have discussed, and the setting of outcomes will be informed by public consultation. By being

up front about what needs to be assessed, the outcomes-based approach will strip away unnecessary bureaucracy and focus resources to where they can most effectively deliver for the environment. They are outcomes that will be for the purpose of environmental protection, which covers the protection of the natural environment and cultural heritage, and the natural processes and systems that affect our environment, such as climate change.

The definitions align with the landmark Environment Act 2021, reflecting that holistic cross-Government approach. Our approach to the definitions, which also include cultural heritage, provides the necessary flexibility to ensure all relevant aspects of the environment can be captured when drafting outcomes. Despite the different approach to definitions, outcomes will cover the same topics that are assessed currently—for example, air, biodiversity, climate and health. It is a key part to the clause and to meeting the Government’s ambitions on the climate. It allows us to make the necessary regulations to set those outcomes, signalling their importance at the heart of a new system, and I commend the clause to the Committee.

...

[Clause 117] The outcomes-based approach to assessment will ensure that the Government’s environmental commitments and priorities are placed right at the centre of the consenting process, in a system that is streamlined, transparent, accessible and clear. As outlined in the previous clause, we would want to make reports user-friendly and concise, enabling communities to understand what forms part of the assessment and how impacts are measured via indicators. We also want to improve the accessibility of reports and the data that underpins them by improving their format and avoiding multiple PDFs of tens of thousands of pages, for example.

In order to introduce the new outcomes-based approach to environmental assessment, the Government need the power to require the production of an environmental outcomes report for relevant proposed contents and plans. In taking that power, the Government are able to ensure that, where a report is required for a relevant consent or plan, the report must be completed before consent is granted or a plan is adopted.

Furthermore, the clause ensures that where an environmental outcomes report is produced, it must be considered by the relevant decision maker, which means that decisions are informed by quality information that fully considers the environmental effect of the plan or consent. It also sets out what the content of the reports should be. They will primarily assess how the proposed consent or plan would impact on specified environmental outcomes, supporting our ambition to move towards an outcomes-based system.

*In structuring the clause, we recognised the need to provide powers to support the reform of a wide range of environmental assessment regimes across Government, but we have sought to ensure that core requirements are brought to the fore. **For example, reports must consider reasonable alternatives to the proposed consent or plan and assess any steps taken in line with the mitigation hierarchy. This is the first time that explicit consideration of the mitigation hierarchy has been included in environmental legislation.** Importantly, that hierarchy recognises that prevention is better than cure. In every consideration, plans and projects should first seek to avoid the impact happening in the first place, before considering mitigation and finally compensation, which should be absolutely the last resort. That sequential approach will finally be enshrined in law.*

Having the powers to set out specifics in regulations rather than on the face of the Bill will ensure that the new system is more dynamic, allowing for updates to our approach to be

considered and consulted on as our understanding of the environment deepens. It will also allow the differences between regimes to be accommodated. The clause sets out crucial provisions required to implement outcomes reports and ensures that reports have sufficient weight and status in the decision-making process. ...

111. Further discussions on Clause 140 and 141 reveal the Government's clear intention to connect the proposals to the "planning data" provisions:

"At the moment, an environmental assessment is effectively prose that may or may not be adhered to, whereas an environmental outcome is far more data driven, so it can be measured and mitigated, as I have said. That will happen in the lead-up to planning, but a lot will clearly be about how it is followed up after planning permission is given. As we have just been discussing, that effectively sets a baseline, saying, "That is the report; that is what you said you are going to do. You must now adhere to that, and we can follow up afterwards." This is clearly a framework, and the teeth that the hon. Lady describes will need to be set out through enforcement teams and so on, but the measures provide a far more evidence-based approach to be able to follow up afterwards.

That is the point, because we will then have a dynamic monitoring process, which will account for any changes in conditions and available data to inform mitigation strategies. That is a significant benefit of the new system: it ensures that we take an ongoing approach to environmental protection rather than having just a snapshot in time. Monitoring the impacts over a longer period will allow for the collection of more high-quality data that can be used to drive better decision making and improve environmental outcomes.

We do not want an EOR to be an extra burden; we see it more as a rebalancing of resource and effort. We want a streamlined pre-consent process that provides up-front requirements and guidance, allowing more time to be spent on post-consent monitoring, which will be of far more value to the system in terms of both securing positive outcomes and making better use of the data produced so that we can learn from it.

Capturing that data also links to the digital powers in the Bill, and will ensure that the rich source of environmental data is put to use to inform future interventions and give a deeper and far wider understanding of the environment. It will be easier to form best practice and avoid making the same mistake twice. The clause is integral to ensuring that the environmental assessment process considers potential long-term environmental impacts, ensuring accountability and the delivery of outcomes, and ensuring that mitigation is working as it should. For all the reasons I have mentioned, I commend the clause to the Committee.

...

.... We will clearly be consulting on which developments require an EOR when certain criteria are met, and we will publish those following Royal Assent. In line with our commitment to non-regression, we will ensure that any plan or project requiring assessment under the current regime because of its potential impact on the environment will continue to do so under the new framework. We want to avoid unnecessary screening work, so it is likely that more plans and projects will

automatically be subject to a proportionate report, but only in borderline cases. As I said, we will work towards that through a consultation process on the criteria approach.

The regulations will determine the process for considering whether the plans or projects meet the criteria for a full environmental outcomes report, and clearly we will work with stakeholders to inform our approach to the criteria, and the processes for determining whether those criteria have been met. We want to ensure that the development management system continues to determine projects. We want the EOR to reform the process, but we do not want to replace it. The majority of consenting regimes base the consenting decision on a range of different factors. They will need to make a subsequent decision following assessment, but we want to ensure that the Secretary of State effectively has a light touch on this because, having done the consultation with stakeholders, this should be done at a local level as best we can.

The hon. Member for Greenwich and Woolwich talked about monitoring. The detail of monitoring regimes, including how long monitoring should be carried out for, will be set out in regulations to reflect the different approaches required for each assessment regime. It is not a one-size-fits-all system, because that is unlikely to be optimal, but the intention is that, with a more streamlined pre-consent process, more time and resource can be put into post-consent monitoring, which will likely be of far more value both in terms of securing positive outcomes and gathering useful environmental data to feed back into the system.

One thing that I am not sure I brought out enough in my speech is that the data that the exercise provides, being more data driven rather than the prose that I was talking about, will not only be useful for permissions and monitoring but have a far wider effect on our understanding of the environment in general, because some really interesting data will be brought out that cannot be captured in the analogue system that we have at the moment. I cannot answer the hon. Gentleman's question about the research to date, so I will write to him on that, and other points that I have not covered.

112. Finally, under discussions on the former Clause 120, the Minister confirmed that the wording of the non-regression clause was “drafted specifically to mirror the provisions of the EU-UK trade and co-operation agreement.” And re-stated:

As I have said, we are committed to ensuring that the new system of environmental assessment will provide at least the same level of overall environmental protection as the existing system. The clause enshrines that commitment, building on the landmark Environment Act 2021, and is in line with our commitments in the EU-UK trade and co-operation agreement.

It is a vital commitment, and it will ensure that EORs support the Government's objective to be the first generation to leave the environment in a better state than we found it. We want to make it clear that, in introducing these reports, we are not trying to lower standards or bypass important environmental protections, and so it is important that we enshrine in legislation this commitment to non-regression.

We have also ensured that the Secretary of State's powers are tightly constrained when considering whether overall levels of protection have been maintained. We have provided

significant commitments to consultation and secondary regulations, which will be laid under the affirmative procedure and will thereby enable parliamentary scrutiny on this issue.

This clause also sets out that regulations made may not be inconsistent with the implementation of the relevant international obligations of the UK. As in other parts of the planning system, public engagement is a crucial feature of environmental assessment, and the clause sets out our commitment to maintaining opportunities for public engagement to take place. This will ensure that the public can be involved in the process of preparing an environmental outcomes report, in line with the requirements of the Aarhus convention, which includes provision on public participation in decision making on environmental matters. The clause provides a strong commitment to non-regression and to maintaining opportunities for public engagement, as we move to that new system, and so I commend the clause to the Committee.

113. In summary, it is too early to suggest that the system will be either “lighter-touch” or less complex than current EIA. The safest guess is that the system will look remarkably similar, but with different terminology and different practices. The Government’s remarks in Committee suggest that similar thresholds will be used for screening, similar topic areas and with similar objectives.
114. Within current BNG and across a range of area, there appears to be an increasing movement towards “planning by numbers”, in which numerical targets are taking precedence over more nuanced, site-specific considerations of place-making, layout and public benefit (e.g. new facilities, affordable housing etc). It has arguably never been so complex to strike the right balance between competing planning considerations.
115. In summary, therefore, however much EOR is claimed as a simplification of EIA, there seems little sign of the application process becoming much less technical.

Self-Build and Custom-Build Housing

116. There are a number of amending provisions which sharpen up gaps/ambiguities in the legislation governing self-build and custom-build housing.

117. Clause 115 presently provides:

115. In section 2A of the Self-build and Custom Housebuilding Act 2015 (duty to grant planning permissions etc)—
(a) in subsection (2)—
(i) omit "suitable";
(ii) for "in respect of enough serviced plots" substitute "for the carrying out of self-build and custom housebuilding on enough serviced plots";
(b) omit subsection (6)(c).

118. This provides further clarity on how the duty to provide plots should be applied.

119. There are two further important amendments presently before the Lords, promoted by the Government and thus likely to be made in the final Act.

120. Amendment 281CB provides:

Clause 115, page 148, line 30, at end insert—
"(aa)
after subsection (5) insert—

"(5A) Regulations may make provision specifying descriptions of planning permissions or permissions in principle that are, or are not, to be treated as development permission for the carrying out of self-build and custom housebuilding for the purposes of this section.";

Member's explanatory statement

This amendment allows the Secretary of State to specify descriptions of planning permissions or permissions in principle that will count as development permissions for the purpose of a local planning authority complying with its duty to meet the demand for self-build and custom housebuilding in its area.

121. This ensure that there is a power to make regulations which specify descriptions of planning permissions or permissions in principle that will count as development permissions for the purpose of the duty.

122. Amendment 281CC then provides:

Clause 115, page 148, line 30, at end insert—

“(ab) in subsection (6), for paragraph (a) substitute—

“(a) the demand for self-build and custom housebuilding in an authority’s area in respect of a base period is the aggregate of—

(i) the demand for self-build and custom housebuilding arising in the authority’s area in the base period; and

(ii) any demand for self-build and custom housebuilding that arose in the authority’s area in an earlier base period and in relation to which—

(A) the time allowed for complying with the duty in subsection (2) expired during the base period in question, and

(B) the duty in subsection (2) has not been met;

(aa) the demand for self-build and custom housebuilding arising in an authority’s area in a base period is evidenced by the number of entries added during that period to the register under section 1 kept by the authority;”;

Member’s explanatory statement

This amendment provides that the demand for self-build and custom housebuilding in an authority’s area in a particular 12 month base period should be treated as including any demand from an earlier 12 month base period which has not been met within the time period allowed for complying with the duty to meet that demand.

123. This ensures that unmet demand for self-build and custom housebuilding in an authority’s area is cumulative.

Conclusion: Decision-Taking

124. We have identified four core legislative provisions which have the potential to change decision-taking significantly over the next decade.
125. Decisions as to the content of the Regulations on data standards and EOR would plainly need to await the latter part of the year. In themselves, these areas need not prove politically controversial and may therefore survive unamended.
126. The Clause 86/87 NDMP provisions are a different story. This will prove the focus of major discussion in terms of the future of the Bill, absent a significant appetite for centralised control and strengthening of the Parliamentary Party leadership.
127. Planning has rarely been more political. It is about to get even more so.