

# THE FUTURE OF LOCAL PLAN-MAKING UNDER NEW 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

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<sup>1</sup> With the assistance of an earlier draft by Hugh Richards

<sup>2</sup> 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.<sup>3</sup>
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;

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<sup>3</sup> <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;<sup>4</sup>

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

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.

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<sup>4</sup> <https://www.planningresource.co.uk/article/1795489/why-electricity-connection-logjam-prompted-housing-delivery-fears-among-london-councils-developers>

<sup>5</sup> <https://www.planningresource.co.uk/article/1797343/council-withdraws-900-homes-appeal-lawyers-advise-cannot-defend-indefensible>

## II) PLAN-MAKING

13. In this first section of the paper, we shall (1) describe the core proposals for changes to the structure of plan-making under the LURB and associated policy reform announcements, and then (2) explain, what, in our judgment and experience, is likely to be their effect and effectiveness.

### Continuity

14. It is important first to emphasise those elements that are not intended to change.
  - (i) The two core Planning Acts: the TCPA 1990 and PCPA 2004 will remain in place (subject to the significant transplant of Part 2 of the latter);
  - (ii) The planning system will continue to be plan-led. The overall message from the government's various announcements seems to be that (a) it wants to achieve and then maintain greater up-to-date plan coverage and (as importantly) (b) a faster plan-making process leading to "simpler" and "meaningful" local plans.
  - (iii) Local Planning Authorities will continue to be responsible for plan-making. They may do so individually or chose to do so collectively. There seems to be a 'theme' which will give "local people" and/or "local leaders" greater power in how much development is needed, where it takes place and what it looks like. However:
  - (iv) Plans will continue to be independently examined prior to adoption. Local Plans will remain subject to a "soundness" test as set out in a revised NPPF. The "right to be heard" will be retained for Local Plans.
  - (v) The Green Belt will remain an important spatial planning tool.
  - (vi) The process of producing plans will need to be accelerated.

- (vii) Plan-making will remain a political ‘hot potato’.
- (viii) Local Plans will continue to be the primary vehicle for: (a) Delivering development (including infrastructure) that meets assessed need; (b) Restricting development on land that is judged to be worthy of protection; (c) The creation of beautiful places; (d) Greater certainty in decision-taking on planning applications.

### **The New Structure of Local Plans**

- 15. Buried back in the LURB under Schedule 7 are the extensive proposals for change to the structure of Local Plans.
- 16. The proposals do allow for easy generalisation: they are conservative in parts and radical in others; they preserve significant elements of the existing system whilst overhauling others; they both demonstrate a clear and comprehensive programme for change and park other elements for secondary legislation.

### **Schedule 7**

- 17. Clause 90 introduces Schedule 7 (very briefly and neutrally given its scale):

*"Schedule 7 contains provision for, and in connection with, joint spatial development strategies, local plans, minerals and waste plans and supplementary plans."*

- 18. Schedule 7 is then sub-divided into an extensive list of new Sections 15A through to 15LH, which collectively seek to re-shape the current development plan structure.
- 19. The proposed Sections 15A to 15AI formalised the arrangements for joint spatial development strategies as the (optional) top level of the three-part structure. The provisions, in part, build upon the existing legislation for SDSs, with key provisions preserved in respect of a prohibition on “Section 15A(b) “specify particular sites where development should take place” and a restriction on the right to be heard: Section 15AC(6). In the absence of very clear policy, governance of financial

incentives, these provisions seem set to be of more academic than practical utility – reflecting the tortuous experience of multi-LPA spatial planning in recent years.

20. Section 15B (Local Plan Timetable) is a pivotal provision. It sets out a revamped approach to the current Local Development Scheme, with an important emphasis on timing:

*(2) The local plan timetable must specify—*

*(a) the matters which the authority's local plan for their area is to deal with,*

*(b) the geographical area to which the authority's local plan is to relate,*

*(c) any supplementary plans which the authority are to prepare,*

*(d) the subject matter and geographical area, site or sites to which each of those supplementary plans is to relate,*

*(e) how the authority propose to comply with the requirement in section 15F(1) (requirement in relation to design code),*

*(f) whether the authority's local plan for their area is to be a joint local plan and, if so, each other local planning authority for whose area the joint local plan is to be their local plan,*

*(g) whether the authority are to prepare a joint supplementary plan and, if so, each other local planning authority who are to prepare that joint supplementary plan with them, ]*

*(h) any matter or area in respect of which the authority have agreed (or propose to agree) to the constitution of a joint committee under section 15J, and*

*(i) **a timetable for the preparation of the authority's local plan for their area**, and any supplementary plans the authority are to make, which is consistent with this Part and any regulations made under it.*

21. Section 15B(9) states, starkly: “Once the local plan timetable has effect, the local planning authority must comply with it.” That creates a potentially very interesting range of arguments as to how decision-makers, including Inspectors, should deal with either slippage or non-performance against the timetable.

22. Section 15C (Local Plans) covers what will be the centrepiece of the new system: the Local Plan. Many of the provisions here and under Section 15CA mirror or consolidate elements of the PCPA 2004 and parts of the Local Planning Regulations 2012. However there are lots of important additions (underlined below):

15C Local plans

(1) Each local planning authority must prepare a document to be known as their “local plan”.

(2) Only one local plan may have effect in relation to a local planning authority’s area at any one time.

(3) The local plan must set out policies of the local planning authority (however expressed) in relation to the amount, type and location of, and timetable for, development in the local planning authority’s area.

(4) The local plan may include—

(a) other policies (however expressed) in relation to the use or development of land in the local planning authority’s area which are designed to achieve objectives that relate to the particular characteristics or circumstances of their area, any part of their area or one or more specific sites in their area;

(b) details of any infrastructure requirements, or requirements for affordable housing, to which development in accordance 25 with the policies, included in the plan under subsection (3) or paragraph (a) of this subsection, would give rise;

(c) requirements with respect to design that relate to development, or development of a particular description, throughout the local planning authority’s area, in any part of their area or at one or more specific sites in their area,

which the local planning authority consider should be met for planning permission for the development to be granted.

(5) The Secretary of State may prescribe further matters which the local plan may, or must, deal with.

(6) The local plan must be designed to secure that the use and development of land in the local planning authority’s area contribute to the mitigation of, and adaption to, climate change.

(7) The local plan must not—

include anything that is not permitted or required by or under subsections (3) to (5) or (8) or regulations under section 15CA(7)(a), or be inconsistent with or (in substance) repeat any national development management policy.

...

23. The changes can be summarised as follows:

- (1) A greater focus on specificity – as to numbers and locations;
- (2) Full recognition of the centrality of affordable housing

(3) Parallel references to design

24. Section 15CC then innovates the supplementary plan, the bottom tier of the LPA-level plans:

*15CC Supplementary plans*

*(1) Each relevant plan-making authority may prepare one or more documents, each of which is to be known as a “supplementary plan”.*

...

*(3) A supplementary plan prepared by a local planning authority may include—*

*(a) policies (however expressed) in relation to the amount, type and location of, or timetable for, development at a specific site in their area or at two or more specific sites in their area which the authority consider to be nearby to each other;*

*(b) other policies (however expressed) in relation to the use or development of land in the local planning authority’s area which are designed to achieve objectives that relate to the particular characteristics or circumstances of a specific site in their area or two or more specific sites in their area which 20 the authority consider to be nearby to each other;*

*(c) details of any infrastructure requirements, or requirements for affordable housing, to which development in accordance with any policies, included in the plan under paragraph (a) or (b), would give rise; 25*

*(d) requirements with respect to design that relate to development, or development of a particular description, throughout the local planning authority’s area, in any part of their area or at one or more specific sites in their area,*

*which the local planning authority consider should be met 30 for planning permission for the development to be granted.*

25. Supplementary plans will be subject to a lighter-touch form of examination, Under Section 15DB, they may be submitted to the Secretary of State and thereafter examined by an Inspector, but they may also be examined by

*(2)(b) a person who, in the opinion of the relevant plan-making authority*

*(i) is independent of the authority,*

*(ii) does not have an interest in any land that may be affected by the supplementary plan, and*



*(iii) has appropriate qualifications and experience.*

26. These provisions are of course transferred from the neighbourhood plan context. As with that context under Section 15DB(6):

*(6) The general rule is that the independent examination is to take the 25 form of written representations.*

*(7) But the examiner must cause a hearing to be held for the purposes*

*of receiving oral representations in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of an issue or that a person has a fair chance to put a case.*

27. Given the scope of supplementary plans to replace area action plans, the choice of a written representation procedure is a decision in favour of speed over participation, and may be the subject of early controversy once implemented.

28. The rest of Schedule 7 can be addressed more briskly. Section 15F makes provision for Design Codes which are rendered mandatory:

*15F Design code for whole area*

*Requirement in relation to design code*

*(1) A local planning authority must ensure that, for every part of their area, the development plan includes requirements with respect to design that relate to development, or development of a particular description, which the authority consider should be met for planning permission for the development to be granted.*

*(2) Subsection (1) does not require the local planning authority to ensure—*

*(a) that there are requirements for every description of development for every part of their area, or*

*(b) that there are requirements in relation to every aspect of design.*

29. Section 15H contains a range of provisions in respect of Secretary of State intervention. Section 15I provides for joint plans and 15K for neighbourhood priorities statements (a lighter-touch, non-examined statement of a qualifying body's intentions locally, short of a full NDP).

30. Finally, Sections 15LB to LD provide for considerably greater clarity in the spatial depiction of development (aligned with the digital reforms proposed elsewhere in the LURB):

**15LB Guidance**

*(1) In the exercise of any function conferred by or under this Part a relevant plan-making authority must have regard to any guidance issued by the Secretary of State.*

*(2) The Secretary of State must issue guidance for local planning authorities on how their local plan and any supplementary plans (taken as a whole) should address housing needs that result from old age or disability.*

**15LC Monitoring information**

*(1) The Secretary of State may prescribe information within subsection (3) which each local planning authority must make available to the public.*

*(2) The Secretary of State may prescribe information within subsection 20 (3) which each local planning authority must provide to the Secretary of State.*

*(3) Information is within this subsection if it relates to—*

*(a) the implementation of the local planning authority's local plan timetable;*

*(b) the implementation of policies in their local plan and any supplementary plans they have prepared;*

*(c) the implementation of any policies which relate to the authority's area, in any spatial development strategy that is operative in relation to their area; 30*

*(d) the extent to which specified environmental outcomes (within the meaning of Part 6 of the Levelling-up and Regeneration Act 2023) are being delivered in relation to the authority's area.*

*(4) The information must be in such form, and made available or provided in such manner, as may be prescribed.*

**15LD Policies map**

*(1) Each local planning authority must ensure that a map, to be known as a "policies map", is prepared, and kept up to date, which illustrates the geographical application of the development plan for the authority's area.*

*(2) The map prepared and kept up to date under subsection (1)—*

*(a) must be in such form, and have such content, as may be prescribed,*

*(b) must be revised at such times, or in such circumstances, as may be prescribed, and*

*(c) must be made available to the public.*

31. It is clear that Government wants to move to greater real-time reporting of plan-making and delivery performance, alongside a national map of planning designations to fit the national planning data map:

<https://www.planning.data.gov.uk/map/>?

### **Delivering development (including infrastructure) that meets need.**

32. How will “need” be determined under the new system? Who should decide? There is no doubt that the introduction of the “standard method” was a ‘good thing’ in so far as efficient plan-making is concerned.
33. Language is important – as professionals we are used to distinguishing between “need” and a “requirement” (policy-off and policy-on in old money).
34. With the publication of the NPPF reform proposals in December, Government appears (at least temporarily) to have abandoned some of the most important and effective mechanisms of the past decade.
35. There is a rhetorical reference to the retention of the current national target / ambition / desire to build 300,000 homes per year across the nation, but what can best be described as either a “leap of faith” or “triumph of hope over expectation” as to how this might be delivered:

*Chapter 1, paragraph 6. The government remains committed to delivering 300,000 homes a year by the mid-2020s and many of the immediate changes focus on how we plan to deliver the homes our communities need. We know that the best way to secure more high-quality homes in the right places is through the adoption of local plans. At present, fewer than half of local authorities have up-to-date plans (adopted in the past 5 years). Our proposed reforms create clear incentives for more local authorities to adopt*

*plans. And our analysis shows that having a sound plan in place means housing delivery increases compared to those local authorities with an out-of-date plan, or no plan at all[footnote 2]. If communities know they can protect valuable green space and natural habitats as well as requiring new developments to be high quality and beautiful, plans are more likely to be both durable and robust....*

*Chapter 4, 8. Using an alternative method: local authorities will be expected to continue to use local housing need, assessed through the standard method, to inform the preparation of their plans; although the ability to use an alternative approach where there are exceptional circumstances that can be justified will be retained. We will, though, make clearer in the Framework that the outcome of the standard method is an advisory starting-point to inform plan-making – a guide that is not mandatory – and also propose to give more explicit indications in planning guidance of the types of local characteristics which may justify the use of an alternative method, such as islands with a high percentage of elderly residents, or university towns with an above-average proportion of students. We would welcome views on the sort of demographic and geographic factors which could be used to demonstrate these exceptional circumstances in practice.*

36. This was met with understandable scepticism and almost universal criticism from those seeking to promote development.
37. If the Government does not proceed with this ill-judged proposal, it is fair to ask what the alternative should be – ideally in the politically safer territory post-Local Elections.
38. Assuming that “need” does have to be translated into “requirement” to be inserted into the Local Plan, who should decide and what basis?
39. The “Further Information” published alongside the Bill states that one of the “fronts” the Bill is moving on is:  
  
*“Improving the planning process, so that it gives local communities control over what is built, where it is built, and what it looks like, and so creates an incentive to welcome development provided it meets the standards which are set.”*
40. Should “control over what is built” mean LPA (effectively the elected members) decide how much is built? That seems to be the impression that many MPs and local communities have got. Or is this another “muscular localism” point that will emerge once electioneering is over?

41. If an LPA genuinely cannot meet its “need” and a Local Plan is adopted following independent examination, what happens to the residual need if the Local Plan contains a “requirement” that is lower? The Duty to Cooperate is to be abolished to be replaced by a policy requirement for “alignment”. The Bill currently says nothing about the detail of this and the new NPPF does not much help either. It must therefore be a matter for yet further NPPF revision.
42. There are two possible consequences / outcomes to this uncertainty:
  - (i) If a LPA is permitted to adopt a Local Plan without meeting all of its need, the residual need will not be met at all.
  - (ii) There will be some as yet unannounced mechanism for requiring an LPA to include an element of unmet neighbouring need in its requirement. If the Green Belt remains sacrosanct (see below) will unmet need in urban conurbations surrounded by Green Belt have to be met beyond it?

### Infrastructure

43. What infrastructure should developers provide? The Bill is clear that the present CIL will be replaced in England (not Wales) by a new Infrastructure Levy (“IL”). Mayoral CIL will continue to apply in London. The IL will continue to require LPA to issue a charging schedule and for it to be independently examined. The definition of “Infrastructure” now includes affordable housing (as the PA 2008 did before that reference was removed by the CIL Regulations), and the regulation-making power still includes power to amend the definition of infrastructure for IL purposes.
44. The Further Information policy paper describes the IL as *“A simple, non-negotiable, locally set Infrastructure Levy will ensure that developers pay their fair share to deliver the infrastructure that communities need.”* The rationale is that *“The government wants to make sure that more of the money accrued by landowners and developers goes towards funding the local infrastructure - affordable housing, schools, GP surgeries, and roads - that new development creates the need for. To do this, the Bill will replace the current system of developer contributions with a simple, mandatory, and locally*

*determined Infrastructure Levy. The Bill sets out the framework for the new Levy, and the detailed design will be delivered through regulations.”*

45. The Bill requires LPA to prepare Infrastructure Delivery Strategies – presumably with or as part of the evidence base of a Local Plan.
46. The Government undoubtedly wants developers/landowners to pay more towards infrastructure. The IL will be charged on the value of property when it is sold. The rates will be set as a percentage of gross development value rather than based on floorspace as is the case now with CIL. Presumably, any infrastructure that cannot be funded by the IL will have to be delivered using public funds.
47. What does this mean for viability and land values? We do not think there will be much change in the assumptions for developer profits in the IL. Inevitably, if there is to be more money extracted from development value it will have to come from the land value to the landowner.
48. The intention to put a ‘squeeze’ on land values is also illustrated by proposals for Community Land Auctions:

*“We intend to bring forward legislation to enable the piloting of Community Land Auctions. Piloting authorities will pioneer an alternative way of identifying and allocating land for development, in a way which seeks to maximise the potential uplift in land value. Landowners will be able to submit their land into an allocation process as part of an emerging local plan, offering the local planning authority an option on the land at a price set by the landowner. The local authority will allocate land based on both planning considerations and the option price. It will then auction the development rights onto a successful bidder once land is allocated in the adopted plan. The difference between the option price offered by landowners, and the price offered to develop allocated land, will be retained by local authorities for the benefit of local communities.”*

49. Presumably these land auctions would have to find their place before / within the 30 month plan-making process.
50. The IL is to be introduced through “a ‘test and learn’ approach. This means it will be rolled out nationally over several years, allowing for careful monitoring and evaluation, in order to design the most effective system possible.” It seems,

therefore, that before IL is introduced in a particular area, development sites will continue to be subject to current CIL and s106 requirements and that this is the assumption that will have to be made in plan-making.

### **Protective Designations**

51. The requirements of the Environment Act 2021 for tackling climate change and improving the natural environment will need to be embedded in local plans through the revisions to the NPPF and the production of the NDMP.
52. International & national designations: Current statutory provisions relating to designated heritage assets will remain – and the Bill will give important categories of designated heritage assets, including scheduled monuments, registered parks and gardens, World Heritage Sites, and registered battlefields, the same statutory protection in the planning system as listed buildings and conservation areas. The Government intends that the increased weight given to development plans and national policy by the Bill will give more assurance that areas of environmental importance - such as National Parks, Areas of Outstanding Natural Beauty and areas at high risk of flooding - will be respected in decisions on planning applications and appeals
53. Local designations: There is little mention yet of the future for local designations. We assume that non-designated heritage assets will continue to enjoy some protection in a revised NPPF. There will no doubt continue to be pressure / enthusiasm for the inclusion of local landscape, wildlife and other environmental designations in local plans.
54. The Green Belt: The Government is politically powerless to make any significant changes to Green Belt policy. To even suggest such a thing would be electoral suicide. The Further Information policy statement simply states: “*Existing Green Belt protections will remain*” but adds “*and we will pursue options to make the Green Belt even greener.*” Does this signal a greater environmental role for the Green Belt over and above its status as a spatial strategy tool?

55. The NPPF Consultation provision has focussed on the impenetrable new paragraph 142:

*142. Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. **Green Belt boundaries are not required to be reviewed and altered if this would be the only means of meeting the objectively assessed need for housing over the plan period.** Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through non- strategic policies, including neighbourhood plans.*

56. This provision seems assured to be amended, as on its face, the suggestion that Green Belt boundaries cannot be altered to meet housing needs would cause plan-making to grind to a halt in many LPAs.
57. Opponents of Green Belt release often point to the 'availability' of brownfield sites. The Government's aims include "*Enabling the regeneration of brownfield and other underused land to support local economic growth, whilst rejuvenating town centres by reducing blight and enabling high streets to thrive.*" The Bill has sections dealing with support for speeding up land assembly and regeneration with the aim of making better use of brownfield land. It remains to be seen what part the availability of these powers might play in the assessment of the soundness of future local plans.

### **Beautiful Places**

58. The Government's aims for the planning system include "*Ensuring new development meets clear design standards which reflect community views, a strengthened framework of environmental outcomes, and expanded protections for the places people value.*"
59. As we have set out above, the Bill requires every LPA to produce Design Codes for its area either as part of the Local Plan or as a Supplementary Plan. The 'Office for Place' will support local planning authorities and communities to turn their visions of beautiful design into local standards all new development should meet, to deliver design codes and better design outcomes.



60. We suspect the detail of local design codes will be hotly contested. Beauty, after all “is in the eye of the beholder”.

### **Certainty in Decision-Taking**

61. For applicants this is important. If even half of the money now spent on appeals was instead devoted to additional infrastructure or other net gains in return for ‘certainty’ this would deliver benefits for all.
62. No doubt professional planning officers too would welcome additional certainty. For planning committees we are not so sure. Recent examples of refusals on allocated sites ostensibly on grounds of detail only serve to demonstrate that the political climate over an individual site can change with the make-up of a planning committee. The ‘front-loading’ of head.
63. While the NDMP and some of the revisions to the NPPF will give some certainty, there will still be a need to frame local plan policies appropriately. There is always something of a trade-off between prescriptive policies in support of an allocation in a plan that gives rise to certainty of requirement and leaving room for discretion / discussion / argument at the decision-taking stage.

### **Accelerating the Plan-making Process**

64. The government proposes in the Bill and explains in the Further Information that “

*“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.*

*Several other changes are provided for to improve the process for preparing local plans and minerals and waste plans: digital powers in the Bill will allow more standardised and reusable data to inform plan-making; a series of ‘Gateway’ checks during production will help to spot and correct any problems at an early stage; there will be a new duty for infrastructure providers to engage in the process where needed; and the*

*'duty to cooperate' contained in existing legislation will be repealed and replaced with a more flexible alignment test set out in national policy (see below). New Local Plan Commissioners may be deployed to support or ultimately take over plan-making if local planning authorities fail to meet their statutory duties. These changes will increase the numbers of authorities with up-to-date plans in place (currently only at 39%), giving more communities a meaningful say over new development in their area while supporting new homebuilding.*

*Opportunities for communities and other interested parties to influence and comment on emerging plans will be retained, with the digital powers allowing both plans and underpinning data to be accessed and understood more easily.*

*Local planning authorities will have a new power to prepare 'supplementary plans', where policies for specific sites or groups of sites need to be prepared quickly (e.g., in response to a new regeneration opportunity), or to set out design standards. These plans will replace the 'supplementary planning documents' which councils produce currently, but which do not carry the same weight."*

65. The NPPF Consultation document contains a range of similar references to speeding planning up, but few concrete proposals.
66. The current requirements for Strategic Environmental Assessment and Sustainability Appraisal in plan-making are to be reformed. A new system of Environmental Outcome Reports will be introduced. For plan-making this is said to mean "a clearer and simpler process" where plans "are assessed against tangible environmental outcomes set by government, rather than in Brussels." The detail is left to Regulations. Note however that the Bill creates a duty on the Secretary of State to ensure that the new system of environmental assessment does not reduce the overall level of environmental protection.
67. So, increased speed will be achieved by a combination of the following:
  - (i) The introduction of NDMP. This is intended to remove from the Local Plan policy approach to development management policy should be effectively common to all local plans. We have not seen the detail yet, but obvious candidates seem to be matters such as designated Heritage, national landscape designations (eg AONB, National Parks) and national

environmental designations (eg SSSI). A revised NPPF would set out the guidance for plan-making (as now) but the decision-taking elements of the NPPF would be moved to the new NDMP. There has been some speculation in the planning press that this is a fundamental 'rowing back' from the primacy of the local plan. But taken at face value it is merely a reflection of what happens now in decision-taking, particularly on appeal – if a decision-taker wants to know how to approach the potential impact of proposed development the NPPF is often the starting point rather than the local plan's heritage policies. The new approach will make local plans shorter in length, and reduce the number of hearing sessions at examination, and therefore reduce the time taken to produce and examine a plan.

- (ii) The use of new statutory supplementary plans (as a replacement for SPD). In theory a Local Plan could be simpler and quicker to produce if the allocations were akin to "outline" and the site policy requirements were left to a supplementary plan. However, in order to bring forward even an outline planning application, a developer needs to understand the policy requirements for a site. There may be a 'trade-off' between speed in Local Plan making and the achievement of 'complete plan coverage' in order to speed up the delivery of development (as opposed to the making of a local plan). For genuinely new sites, the supplementary plan may have advantages over what would currently need to be a local plan review. The 'devil will be in the detail'. It is understood that these supplementary plans will, in the main, be independently examined using a 'written reps' procedure.
- (iii) Once we all get used to "digital planning" using standardised data this should speed up the process. But we suspect it will take longer than the government thinks. In the early days, there could be delays caused by rejection of data that is not in the required format.
- (iv) A clearer and simpler replacement for SEA / SA.
- (v) Early "gateway checks" to reduce the risk of a local plan being found to be unsound at examination (the concept of 'soundness' is retained – but can be

redefined in revised NPPF). This sounds like a welcome idea. But they will have to be earlier and more 'hands on' than the current 'informal advice' from inspectors currently available. We await details on the topics to be covered in a gateway check, whether LPA will be required to act on the gateway check outcomes (at present the Bill provides only that the outcomes must be published and had regard to), and indeed the status of that outcome in the plan-making process going forward. If the LPA either fail to engage with the outcomes or indeed ignore it, that has the potential for further argument and therefore scope for delay.

- (vi) The ability of the Secretary of State to introduce Regulations to prescribe the content, template and form of a local plan and its map-based elements.
- (vii) Requiring infrastructure providers to engage. Again, this sounds welcome. We can all think of examples of where a LPA is being 'held up' by the need for assessment / input from, for example, a local highway authority.
- (viii) Once a local plan has been submitted, it may only be withdrawn following a recommendation from the inspector or a direction from the Secretary of State. The LPA will not be able to unilaterally withdraw a plan. If a plan has been found sound at examination, the Secretary of State may direct its adoption by the LPA.
- (ix) There is not enough detail at present to offer a view as to whether / how new powers for Commissioners will speed up the process. Much will depend on the 'triggers' for intervention.

68. The intention is that:

*"[R]egulations 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."*

69. This was then clarified under the NPPF consultation, with an ever-extending calendar of dates:

*Setting out the timeline for preparing local plans, spatial development strategies, minerals and waste plans and supplementary plans under the reformed system*

*6. Under the reformed system, which we expect to go live in late 2024, there will be a requirement for local planning authorities and minerals and waste planning authorities to start work on new plans by, at the latest, 5 years after adoption of their previous plan, and to adopt that new plan within 30 months.*

*7. Authorities that have prepared a local plan, spatial development strategy or minerals and waste plan which is more than 5 years old when the new system goes live (and are not proactively working towards the 30 June 2025 submission deadline under the current system, as set out above), will be required to begin preparing a new style local plan, spatial development strategy or minerals and waste plan straight away.*

*8. Authorities that have prepared a local plan, spatial development strategy or minerals and waste plan which is less than 5 years old when the new system goes live will not be required to begin preparing a new-style plan until their existing plan is 5 years old. So, for example, if an authority last adopted a local plan on 31 March 2022, the preparation of a new plan must start by 1 April 2027. For a plan adopted in mid-December 2026, the preparation of a new plan must start by mid-December 2031. The period of 5 years applies from the date of adoption. Authorities can begin preparing a new plan sooner if they wish.*

*9. Authorities that do not meet the 30 June 2025 submission deadline for 'old-style' plans (as set out previously) will need to prepare plans under the new plan-making system.*

*10. We understand the importance of mitigating the risks of moving from one system of plan-making to the other, particularly the risk of local planning authorities being exposed to speculative applications while preparing their first new-style plan, if their existing local plan becomes out-of-date shortly after the new system is introduced. Therefore, in addition to the arrangements described above, we also intend to set out that plans that will become more than 5 years old during the first 30 months of the new system (i.e. while the local planning authority is preparing their new plan), will continue to be considered 'up-to-date' for decision-making purposes for 30 months after the new system starts.*

*11. Additionally, where a plan has been found sound subject to an early update requirement, and the Inspector has given a deadline to submit an updated plan within the first 30-months of the new system going live, this deadline will be extended to 30-months after the new system goes live. This will ensure that local planning authorities are protected from the risk of speculative development while preparing their new plan.*

70. In summary:

- (i) The timetable will be set out in secondary legislation (Statutory Instrument) not policy.

- (ii) The default “expectation” is 30 months to adoption including the rounds of community engagement (but presumably not including a preliminary ‘evidence gathering’ phase) and also including (?) time for any ‘main mods’ arising from independent examination.
- (iii) Overall, LPA should be setting in train a process that will see a replacement local plan adopted within 5 years of the adoption of its current Local Plan. This is re-enforced by the provisions on the need to demonstrate a ‘five-year supply’.
- (iv) It is not clear what consequences will follow to the plan-making process if the “expectation” is not being met. An obvious question is: Under what circumstances will Commissioners be deployed?

71. What will have to get better? We think:

- (i) LPA and communities will have to be ‘weaned off’ a formal, slow, process that starts with Issues and Options, progresses to Preferred Options followed by a draft plan before finally arriving at a Submission Draft. Successive rounds of what are now ‘Reg 18’ consultations will have to be streamlined.
- (ii) ‘Evidence gathering’ – call for sites, need assessments, impact assessments / outcome reports of all descriptions, community preference, site selection and the like will need to become slicker. LPA and developers will need to be more pro-active.
- (iii) LPA plan-making will have to be better resourced to be able to recruit sufficient officers for the task and achieving the timetable.

72. Will joint plan-making slow things down? On the face of it, enabling groups of LPA to produce a voluntary joint Spatial Development Strategy for issues that cut across their areas is ‘a good thing’. BUT:

- (i) Will they want to do it once the Duty to Cooperate vanishes? Much depends on the replacement (see above).

- (ii) Will it make adopting a Local Plan every 5 years achievable? If too much is left to the Local Plan we have our doubts, even though the Bill provides that the timetable for the production of a joint SDS must be consistent with the individual local plan timetables for each constituent authority. The permitted content of a Joint SDS mirrors those produced by the Mayor of London and MCAs. They will only focus on strategic matters and not cover ground that is better suited to local plans. SDS cannot identify specific sites for development, but can identify areas which are suitable for or have capacity for development. The Bill's explanatory notes gives the following example:
- "A joint SDS could identify a broad area for an approximate scale of development, such as, to the north-west of town x and the south of river y there is scope for new development of at least xx new homes, capacity of yy new jobs, and the provision of 2 new schools, a health facility, expansion of waste water treatment capacity and the provision of a new railway station.*

*The SDS could not however specify that, for example, the railway station will be on land bounded by features w,x,y, or shown on map z or that any specific piece of land was to be used or protected for a specific purpose."*

- (iii) The power for LPA to prepare a joint local plan remains.
- (iv) Will political will by the constituent LPAs survive the process if embarked upon? The Bill gives the Secretary of State power to direct a LPA to continue with joint plan preparation and/or adoption.

73. We would therefore offer the following tips to both LPAs and the development industry:

- (i) Engage with the Government's reform proposals. Respond to consultations / calls for evidence, including the NDMP consultation when available. Engage with parliament and MPs.
- (ii) Look to produce simpler, slimmer local plans. The more that the plan contains, the more scope there is for objection. Consider each part of the draft plan against this simple test – is what I am about to write likely ever to

feature in a report to committee? Should “the usual” introductory chapters even be in the local plan at all – should they rather be in a non-statutory overarching Council “vision” instead?

(iii) Front-load engagement in a local plan-making process. So, for example:

- i. LPAs – don’t rely wholly on a reactive “call for sites” process. If there is land you might want to consider as part of options, be proactive in testing whether it might be available. Talk through options, requirements and identify solutions with statutory consultees early in the process. Make good use of the new powers to require assistance from infrastructure providers.
- ii. Landowners/developers – get your ideas forming “part of the wall-paper” at the LPA as soon as possible. Don’t, for example, leave promoting a sustainable urban extension or new village to the second round of community consultation.
- iii. Both – find ways of taking the local community along with you.
- iv. Both – find innovative ways of using the new powers for regenerating / reusing brownfield land.

### **Implementation**

74. The Government’s current expectation is that the Bill’s provisions and those of a revised NPPF will take effect in 2024. There is a lot to do. We do not believe the 2024 target date took into account of the inevitable hiatus of a change in government and a review of the last government’s proposals. The Secretary of State might well want to take some time to confirm the direction ahead.

75. Whenever the new provisions take effect, there will doubtless be transitional arrangements – the government does not want plan-making to stop in the meantime.



## Politics

76. Plan-making has always involved a high degree of politics. A ruling party (at both national and local level) in electoral difficulty (real or perceived), or an opposition courting popularity in the hope of electoral advance, will often over-promise and then quietly under-deliver. The 2010 election manifestos and the 2011 Localism Act show that. But this time could be different:

- (i) The planning reform agenda process is underway.
- (ii) The next general election is going to be difficult for the incumbent party on the economy, health, and education. Planning is one of the few levers it can pull for a favourable outcome and point to delivery (new Act and new NPPF) just before the next general election.
- (iii) Westminster government party politicians are not shying from populist rhetoric. They are concerned for their seats.
- (iv) Established norms are under attack at the highest level as being top-down “Stalinism”. Notwithstanding some softening under the current administration, there is little indication as to how this thinking can be reversed within Government.
- (v) Local government politicians are responding to ‘signals’ they perceive they are receiving from Westminster. Emerging Local Plans are being withdrawn at all stages of the plan-making process.

77. The “Localism 2.0” genie appears to be well and truly out of the bottle. This time it may not be possible to put it back in again.

## Conclusions

78. What will plan-making look like? In terms of process, reform is perfectly possible to achieve simplicity and speed. Given political will and local resourcing there is no reason why the measurers announced should not achieve the suggested aims.
  
79. The key question, to which the answer is wholly unclear, is “what will local plans actually plan for?”. Clarity will have to await proposals for a revised NPPF. How is “need” to be assessed? Under what circumstances will an individual LPA be permitted to include a requirement in a local plan that falls short of assessed need? Will residual need be met elsewhere, and if so, how?
  
80. Will decision-taking become more predictable? Only if the plan-led system delivers local plans that remain up-to-date over their life-time

