GERALDEVE

PLANNING UPDATE
August 2020

Lisa Webb
Partner
Tel. +44 (0)20 7333 6225
lwebb@geraldeve.com

Nick Brindley
Partner
Tel. +44 (0)20 7333 6362
nbrindley@geraldeve.com

James Wickham
Partner
Tel. +44 (0)20 7333 6353
jwickham@geraldeve.com

PLANNING FOR THE FUTURE – GERALD EVE BRIEFING ON WHITE PAPER

INTRODUCTION

1. On the 6th August 2020, the Government published a White Paper ("the Paper") setting out proposals for the reform of the Planning System in England. The document, titled **"Planning for the Future"**, although more akin to a Green Paper than a White Paper, sets out **"radical reform"**, which if taken forward would represent the biggest shake up of the planning system in England since the 1947 Town and Country Planning Act which was the foundation of modern town and country planning in the UK. The Paper seeks **"end-to-end reform"**, rather than piecemeal change within the existing system.

2. It seeks to create a system that is **"simpler, quicker to navigate, and delivering results in weeks and months."**

3. Our Briefing is in two parts. The first sets out our initial response and commentary on key aspects of the proposed reforms. The second provides a more detailed synopsis of the proposals themselves.

PART 1

A BEAUTIFUL PLANNING SYSTEM?

4. The Paper starts with a critique of the current planning system and identifies its perceived shortcomings. It is acknowledged by the Government that there has been significant progress made in recent years in increasing house building, but that fundamental issues in the system remain.

5. The introduction sets the context for the "new vision" and the **three pillars** that the planning reform seeks to address:

   - Pillar One – Planning for development,
   - Pillar Two – Planning for beautiful and sustainable places, and
   - Pillar Three – Planning for infrastructure and connected places.

6. The Paper aims to create a system that is better at **unlocking growth and opportunity** in all parts of the country, **encouraging beautiful new places**, supporting the stewardship and **rebirth of town and city centres**, and **supporting the revitalisation of existing buildings as well as supporting new development**.

7. The scope of the proposals is **ambitious**. Anything that can genuinely simplify, speed up, and provide more certainty for investors and those building new homes, offices and infrastructure is welcome.

8. In particular, trimming – or indeed slashing – much of the complex **procedural and regulatory undergrowth** that has accumulated in the system, so that resources could be more focused on the topics and areas that require them, is overdue.

9. On the face of it, it is hard to argue with many of the ideas behind these reforms. They aim to create a simpler, quicker, more certain planning system using 21st century technology, streamlining policies and planning applications. Ambitions for more homes and sustainable, beautiful buildings and green places will be welcomed by all. As ever with these things, whilst the objectives may be laudable, there is a lot of detailed work that needs to be worked through in respect of the practical implementation of the proposals.

THE MORE THINGS CHANGE…

10. What the Paper **would not** change is as instructive as what would change. The proposals would not lead to England switching out-right to a US, or Australian-style, zoning system with development rights enshrined in a legally-expressed zoning code, or similar.

11. Instead, it would seek to impose **simplicity upon local plans** which most practitioners – not least members of the public – would recognise as having become overlong in places, complex and repetitious. This simplicity is to be enforced through the discipline of **"annotating" land for growth, renewal or protection**, with varying rights flowing from these designations, including the reliance on design codes in some instances.

12. The ability to apply for planning permission, as now, and to seek a **discretionary approval** would, however, remain. Indeed, the Paper indicates that this will remain the only way within "Protect" areas, including Conservation Areas (which often cover the centres of key towns and cities, including London).

13. The need for **local discussion, consultation and compromise** – especially within those conservation areas – would therefore remain, although possibly within a system where the scales become more heavily weighted in favour of plan-led decisions, rather than the "other material considerations" that can currently be weighed against the plan.[1]

14. The Paper would seek to accelerate planning decision making, although concern would remain that a **hard cut-off for decisions after eight or 13 week**s could lead to applications being refused, or withdrawn and resubmitted, unnecessarily.

15. Whilst much of the White Paper will require additional legislation, the basic **machinery for the determination of a planning application** would, presumably, need to remain. The new "corpus" of law is promised **only for plan-making**. Certainly, the Paper anticipates the retention of the Use Classes Order and, by implication, other key parts of the current system.

16. Likewise, the proposal simplification of Local Plans may, in fact, mean a **reversion of those plans to a simpler form**, such as the pre-2004 Act Local Plans, the pre-1968 Town Maps or even London's Interim Development Plans of the 1950s. Much of that simplification would be welcome, if it led to the faster preparation of more focused plans, rather than the unnecessary repetition of national policy. Likewise, the removal of procedural complexity around environmental assessment that often delays both larger development proposals and plan-making, whilst adding little to the understanding, management and mitigation of environmental effects, would also seem sensible.

17. The broad framework of **land use constraints** and opportunities to which we are accustomed, such as conservation areas, listed buildings, World Heritage Sites and – importantly – the Green Belt will also remain.

18. Whether a system that leaves in place these **basic building blocks** represents an entirely radical departure from the past could be questioned.

HOME IS WHERE THE HEART IS

19. Whilst purportedly addressing the planning system as a whole, the White Paper seems almost entirely **focused upon housing**, with a vision for housing that is potentially highly centralising.

20. For housing, it envisages standardised Local Plans – potentially all on the same map base, covering all England – using a small selection of nationally prescribed tools, such as design codes, **standardised 'annotations'** and development management policies from the NPPF, doing little more than showing how, in each area, centrally-allocated housing requirements will be satisfied, along with some localised design preferences.

21. The unspoken assumption underpinning the Paper is, therefore, that **a Standard Methodology** reconciling need, constraints and availability, and distributing housing accordingly can be developed, with LPAs obliged to meet the allocated figure. The structure proposed by the Paper appears to require the production of nothing less than a National Housing Plan for England. Central planning can often struggle to reconcile supply and demand, especially in markets as complex as housing, land and construction. This would represent another significant centralising step.

22. The slightly ambiguous references to **Homes England** suggest an expansion to its role, as is already happening with its 'active engagement', to possibly include both a plan-making role, and possibly a purse-string-holding role as well in respect of funds raised from the Infrastructure Levy.

[1] Section 38(6) of the Planning and Compulsory Purchase Act 2004 currently requires that planning decisions are made in accordance with the Development Plan unless material considerations indicate otherwise.

23. In a similar vein, there is a single mention of the use of **Development Consent Orders** ('DCO') for "exceptionally large" sites. There is, otherwise, no reference to land assembly or Compulsory purchase order (CPO) powers. The implication here is that the DCO process could now be used to consent planning and land assembly for very large scale developments, such as new towns, to assist with housing delivery to provide the much needed certainty that developers require. This would not, itself, change the basis of valuation of land for compensation or limit land values to existing use values.

24. We anticipate that this would require very significant change to the legal basis of the Development Consent Order/ Nationally Significant Infrastructure Project regime, which is currently designed for infrastructure.

IS THERE MORE TO PLANNING THAN THIS?

25. Whilst the Paper does indicate that Local Plans should "identify areas to meet a range of development needs – such as homes, businesses and community facilities" including "land needed to take advantage of local opportunities for economic growth" it otherwise says very little about non-housing sectors of the economy. **Employment, retail, industrial and logistics are not addressed**. Indeed, beyond that reference to a "range of development needs", these crucial sectors do not feature.

26. It may be that the Government feels that the current system is, in fact, adequately addressing their needs. Nevertheless, it is vital that the importance of these sectors and the role of Local Plans in enabling and supporting them, rather than constraining them, continues to be recognised. A planning system so focused on building new homes – of types supported by local people – could be at risk of taking its eye off the ball of supporting economic growth, especially in areas with strong demand for a wide range of land uses.

27. For example, ilocal alongside the Paper, could increase the housing requirement in Westminster, in central London, from 985/year under the draft London Plan, to well over 5,000 homes per year. This is highly unlikely to be achievable, although it is important to note that the interim proposed Standard Methodology does not take into account constraints.

GOING BEYOND THE LOCAL

28. Clusters of economic growth and activity, especially in England's larger towns and cities, are often of a sub-regional, regional or national importance. Any new local plans should take into account, and give voice, to the wider importance of sustaining this economic growth and activity. Wider consultation than simply local residents is likely to be required on the scale of need and any associated design codes or design policy that would be applied to economic development proposals.

29. In the absence of the Duty to Cooperate (which is to be removed) cross-border or regional-scale planning may become more challenging. Here, the Paper provides no solutions beyond a commitment to 'further consideration' on the issue.

30. In areas such as London and Manchester, the regional plans are – whilst not perfect – a genuine attempt to address these broader regional issues. It is unclear how these Mayoral plans will relate to the new local plans. Will the requirement for local plans to be in 'general conformity' with the London Plan, for example, remain? The Paper simply says that Mayoral plans will be able to reallocate a conurbation's overall requirement across individual authorities but is otherwise silent on the wider role of the plan. The White Paper may call into question the relevance of the regional planning tier and raise questions about the future of the London Plan in its current form.

INFRASTRUCTURE FUNDING – NOT SO CILY ANY MORE

31. This is one area where the proposals may approach the 'radical', in shifting away from a combination of Community Infrastructure Levy (CIL) tariffs, which LPAs are not obliged to impose, and negotiated s106 contributions to what will be called an **Infrastructure Levy (IL)** but which will, essentially, be a development sales tax based on the **Final Value** of a development.

32. A few points are notable. All development where planning permission is granted would be required to be valued at the point of the decision unless it fell below a **value-based minimum threshold**. Payment of the levy would be at the **point of occupation**.

33. This system will keep affordable housing 'delivered through developer contributions' at the same level. In the context of the IL, this appears to mean payment of the Levy 'in kind' by on-site affordable housing provision, which could still be mandated. However, by grouping affordable housing and infrastructure contributions, the Paper appears to recognise that, ultimately, funds for both come from the same 'pot' and that increasing one will reduce the other.

34. The consultation is unapologetic in referring to capturing "planning gain" – a term which has generally been seen as slightly pejorative. It goes on to say that its intention is to collect more than collected under the current system. As the IL will apply above a certain minimum value threshold, higher value developments, especially in London, may be particularly exposed to a greater tax take.

35. Again, this appears to be a centralising element. It would introduce a standardised approach development taxation and, by permitting local authorities to borrow against expected receipts, effectively require them to approach central Government for funding to deliver the necessary infrastructure 'now' against anticipated future tax income. This has similarities to Tax Increment Funding (TIF).

36. Other practical problems will remain. CIL has always struggled on larger sites that can be acceptable only where the development commits to certain pieces of infrastructure. The regulations will need careful design to enable appropriate on-site delivery of necessary infrastructure as an offset against the IL, whilst still demonstrably securing wider benefits, such as affordable housing.

37. Potentially complex Final Value issues are also raised as is currently the case in supporting viability assessments. These could include large scale complex developments, mixed use and phased schemes, specialist commercial developments. Final Value assessments could take the form of RICS Red Book valuations that are submitted by the applicant prior to determination of the application.

38. In setting the minimum threshold for the levy on a national basis, some regard to viability would be needed, where **average build costs, fixed allowance for land** costs values and returns would need assessing in establishing the minimum threshold. The intention from the proposals, it would seem, is to then disaggregate and back the results out, based on a sales value per square metre (where to be sold or a valuation if to be retained as an investment). How this will be undertaken or relate to more complex mixed-use schemes or specialist uses is currently unclear. The degree to which the minimum threshold is kept under review is not addressed in the proposals but clearly as the market changes so will the viability of schemes that may be subject to the charge, or exempt.

39. It would appear the proposals do not anticipate indexing the **Final Value** once this has been established, at the point of planning permission being granted. It may be that this is envisaged as being controlled by reviewing the levy to be applied on a regular basis. This may however detract from the certainty the proposals are seeking to introduce.

40. The IL proposals therefore shift from the cost of providing the infrastructure to one based of the value of the development.

41. The IL does make Government's 'levelling-up' agenda more practical. Often, projects are in competition with one another for funding to pay for infrastructure. Competition will remain as it is likely that this 'centralised' approach will mean that there is some kind of bidding process for money. This will however provide some kind of national transparency about where money is being spent and on what.

42. If viability is therefore centrally controlled – Government can use the IL as a means of ramping up or slowing down delivery by adjusting the levy as it could do in any other fiscal regime.

VAULTING AMBITION, WHICH O'ERLEAPS ITSELF

43. The Government has set itself a very long "to-do" list to implement these reforms. These include, *inter alia*:

    a. Replacing the "entire corpus" of plan-making law;

    b. Changing the NPPF, including the incorporation of national development management policies and changes recommended by the Building Better, Building Beautiful Commission;

    c. Alongside changes to the NPPF, we would envisage extensive changes to the guidance in the PPG also being required;

    d. Developing national data standards for plans, planning applications and information sought by consultees;

    e. Producing a new National Model Design Code, and a national body to support the creation of local design codes;

    f. The necessary legislation and guidance for the creation of the Infrastructure Levy;

    g. Widening, or amending, Permitted Development rights to support Building Beautiful;

    h. Reviewing the planning framework for heritage assets.

44. None of this is impossible, and since the Covid-19 outbreak the Government has shown some speed and efficacy in reform and change. Nevertheless, each of these items, on their own, are complex topics which have often defied previous attempts at satisfactory reform. Advancing simultaneously on all fronts, whilst addressing other Governmental issues as well, such as Covid and Brexit, is likely to consume significant resourcing, attention and political capital.

45. The Prime Minister's direct, hand-on experience of these matters from his time as Mayor of London could give additional focus and impetus to implementation of these reforms.

46. The new framework would need to be in place by the end of 2021, on the basis that the new Local Plans would require 2.5 years to produce, in most cases, in order to meet the Paper's deadline of having new Local Plans by the next general election, currently scheduled for May 2024.

PART 2

LOCAL PLAN MAKING

47. **Local Plans are to be "simplified"** (and no more than about a third of their current length) with a more focused role for Local Plans in determining how **need**, including housing need, is determined in accordance with a new, standardised, national method, to be met and distributed within the planning authority's area, identifying site- and area-specific requirements, alongside **locally produced design codes**. They are expected to return to being **map-based**, with open data standards.

48. **The National Planning Policy Framework is expected to become the primary source of policies for development management**, along with guidance in the PPG. There would be no provision for the inclusion of generic development management policies which simply repeat national policy within Local Plans, such as protections for listed buildings. This would mean that Local Plans would be expected to be **much shorter** in length as they would no longer contain a long list of "policies" of varying specificity – just a core set of standards and requirements for development, and limited to no more than setting out site – or area-specific locations, parameters and opportunities.

49. Local Plans will identify **land under three categories** –

    > **Growth areas** suitable for substantial development. These areas would automatically gain **outline permission** on the adoption of the plan for forms and types of development specified in the Plan e.g. new settlements and urban extension sites, and areas for redevelopment, such as former industrial sites or urban regeneration sites. Further details would be agreed, and full permission achieved through streamlined and faster consent routes which focus on securing good design and addressing site-specific technical issues. This could include design coding and masterplans. It has been suggested that submitting sites for consideration for inclusion as 'growth areas' could attract a fee, to resource the system.

    > **Renewal areas suitable for some development**, such as **"gentle densification"**, infill of residential areas, development in town centres, and development in rural areas that is not annotated as Growth or Protected areas. There would be a statutory presumption in favour of development being granted for the uses specified as being suitable in each area, and

    > **Protected areas** where – as the name suggests – **development is restricted**. The Paper indicates this would include Green Belt, Areas of Outstanding Natural Beauty (AONBs), **Conservation Areas**, Local Wildlife Sites, areas of significant flood risk and important areas of green space. Within these areas, the current, discretionary system would continue.

50. The Paper notes that in Growth and Renewal areas, the key and accompanying text in Local Plans would set out suitable development uses, as well **as limitations on height and/or density as relevant**, and it goes on to explain that these **could be specified for sub-areas** within each category, **determined locally** but having regard to national policy, guidance and legislation (including the National Model Design Code and flexibilities in use allowed by virtue of the new Use Classes Order and permitted development). However the Paper acknowledges that alternative options may need to be considered and that it **may be appropriate for some areas to be identified as suitable for higher-density residential development, or for high streets and town centres to be identified as distinct areas**. RIBA's initial reaction to the use of design codes and more automated permissions has been strongly critical.

51. In both the Growth and Renewal areas it is noted that it would still be possible for **a proposal which is different to the plan to come forward** (if, for example, local circumstances had changed suddenly, or an unanticipated opportunity arose), but this would require a specific planning application, and is expected to be **"the exception rather than the rule."** It is suggested that the statutory presumption in favour of the local plan could be strengthened.

52. This allocation process is envisaged at **halving the time it takes to secure planning permission** on larger sites identified in plans.

53. LPAs will be required to meet a statutory timetable (of no more than **30 months** in total [2]) for key stages of the process, and there will be **sanctions for those who fail** to do so. This timetable will be expected to be achieved **alongside a democratisation of the planning process** by putting a new emphasis on engagement at the plan-making stage. The Paper seeks a "a radically and profoundly re-invented **engagement with local communities** so that more democracy takes place effectively at the plan-making stage". **Alternative options** set out in the Paper include **reforming the existing Examination process or remove the Examination stage entirely** – instead requiring Local Planning Authorities to undertake a process of self-assessment against set criteria and guidance.

[2] **or 42 months** for local planning authorities who have adopted a Local Plan within the previous three years or where a Local Plan has been submitted to the Secretary of State for examination. In the latter case, the 42-month period would commence from the point at which the legislation is brought into force, or upon adoption of the most recent plan, whichever is later

54. Local Plans will be the subject to a single statutory **“sustainable development test”**, with current assessments, including Duty to Cooperate and Sustainability Appraisals to be abolished. The soundness test is also proposed to be scrapped. The Paper states that a simpler test “should mean fewer requirements for assessments that add disproportionate delay to the plan-making process”.

55. Alongside this streamlined system, local planning authorities are still expected to undertake appropriate infrastructure planning, and sites should not be included in the plan where there is no reasonable prospect of any infrastructure that may be needed, coming forward within the plan period.

56. Alongside the preparation of Local Plans, it is expected that local planning authorities and neighbourhoods (through Neighbourhood Plans) would play a “crucial” role in producing required **design guides and codes** to provide certainty and reflect **local character and preferences about the form and appearance of development**.

57. **Development management policies and code requirements**, at national, local and neighbourhood level, are to be written in a **machine-readable format** so that wherever feasible, they can be used by **digital services to automatically screen developments** and help identify where they align with policies and/or codes. 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.

NEIGHBOURHOOD PLANNING

58. Unsurprisingly **Neighbourhood Plans** are expected to be retained as an **important means of community input**. The Paper notes that they have become an important tool in helping to **‘bring the democracy forward’** in planning, and the Paper encourages their continued use.

DECISION MAKING

59. Decision-making is expected to be **faster and more certain**, within firm deadlines, and with greater use of data and **digital technology**. The Paper makes much of the need for a digital-first approach to the planning process. The Paper confirms that 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**. There is once again the suggestion that there will be **automatic refunds of the planning fee** for applications if local planning authorities **fail to determine an application within the time limit.**

60. The Paper proposes that **applications will be “shorter and more standardised”**. The amount of key information required as part of the application should be reduced considerably and made machine-readable. For major developments, 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. The Paper also envisages **greater standardisation of technical supporting information**, for instance about local highway impacts, flood risk and heritage matters. The Government envisages **design codes will help to reduce the need for significant supplementary information**, but there may still be a need to be site specific information to mitigate wider impacts. For these issues, it is expected there should be clear national data standards and templates developed in conjunction with statutory consultees. To support open access to planning documents and improve public engagement in the plan making process, the Paper makes clear that Local Plans should be fully digitised and web-based following agreed web standards rather than document based. It is said that this will allow for any updates to be published instantaneously and makes it easier to share across all parties and the wider public.

61. The Paper places increased emphasis on **design and sustainability** in the decision making process, with the objective of delivering a **world-leading commitment to net-zero by 2050**. In addition, the Paper seeks an enhanced emphasis on ‘placemaking’ **and ‘the creation of beautiful places’.**

62. The Paper anticipates the **introduction design guidance and codes** (including establishing a new body to support the delivery of design codes in every part of the country); and ensuring that each local planning authority has **a chief officer for design and place-making.**

63. The design **guidance and codes are expected to be prepared locally and to be based on genuine community involvement** (“rather than meaningless consultation”) – considering empirical evidence of what is popular and characteristic in the local area. To underpin the importance of this, the Government intend to make clear that designs and codes should **only be given weight** in the planning process if they can demonstrate that this input has been secured. And, where this is the case, decisions on design should be made in line with these documents.

64. There is a proposal for **more delegation of detailed planning decisions** to planning officers. The Paper envisages that there would be fewer appeals. Where applications do end up at appeal, it is proposed that applicants will be entitled to an **automatic rebate** of their planning application fee if they are successful [at appeal].

65. The Paper also identifies that there will be a **strengthening of enforcement powers** to give confidence that the new rules will be upheld. In particular, the Paper notes that the Government will want to ensure that high standards for the design, environmental performance and safety of new and refurbished buildings are monitored and enforced. The paper anticipates that the reforms will free up resourcing in other areas of planning, allowing greater focus on enforcement.

66. The use of **Development Consent Orders**, under the Nationally Significant Infrastructure Projects regime, is mooted for "exceptionally large [residential] sites"; a widening of their current use.

FAST TRACK FOR BEAUTY

67. The Paper envisages making it easier for those who want to build beautifully through the introduction of a "fast-track for beauty". It indicates that this is to be achieved in three ways:

    a. The NPPF will make it clear that schemes which comply with local design guides and codes have a positive advantage and greater certainty about their prospects of swift approval;

    b. Where plans identify areas for significant development (Growth areas), a masterplan and site-specific code will be legally required as a condition of the permission in principle which is granted through the plan;

    c. Permitted development rights will be changed and widened, so that they enable "popular and replicable" forms of development to be approved easily and quickly, helping to support 'gentle intensification' of towns and cities, but in accordance with design principles.

SUSTAINABILITY

68. On sustainability, the Paper calls for support for **climate change mitigation and adaptation**. This includes delivering on the commitment to make all new streets tree-lined, and maximising walking, cycling and public transport opportunities. The Government highlights that there are important opportunities to strengthen the way that environmental issues are considered through the planning system.

69. However, it is considered that there is scope to marry these changes with a simpler, effective approach to assessing environmental impacts. The Paper recognises that Sustainability Appraisals, and **Environmental Impact Assessments can lead to duplication of effort and overly-long reports** which inhibit transparency and add unnecessary delay. Whilst acknowledging that a new system for environmental assessment and mitigation needs to be quicker and speed up decision-making, alternative approaches are not put forward at this stage. This could include identifying more clearly to the public where environmental effects are expected and any mitigation measures proposed.

70. From 2025, the Government expects new homes to produce 75-80 per cent lower CO_2 emissions compared to current levels. These **homes will be 'zero carbon ready'**, with the ability to become fully zero carbon homes over time as the electricity grid decarbonises, without the need for further costly retrofitting work.

HISTORIC ENVIRONMENT

71. The additional statutory protections of listed building consent and conservation area status is considered to have **worked well to date**. In particular though, the Government wants to see more historic buildings have the right energy efficiency measures to support zero carbon objectives. Key to this will be ensuring the planning consent framework is sufficiently responsive to sympathetic changes, and timely and informed decisions are made.

72. In addition, the Government wants to explore whether there are **new and better ways of securing consent for routine works**, to enable local planning authorities to concentrate on conserving and enhancing the most important historic buildings. This includes exploring whether suitably experienced architectural specialists can have earned autonomy from routine listed building consents.

THE LEVY

73. Securing contributions from developers and **capturing more land value uplift** generated by planning decisions to deliver new infrastructure and affordable housing **is seen as central to the vision for renewal of the planning system**. The reforms to developer contributions are proposed to be responsive to local needs, transparent, consistent and simplified and **buoyant** (so that when prices go up the benefits are shared fairly between developers and the local community, and when prices go down there is no need to re-negotiate agreements). Unlike the current system it is envisaged the **Levy will be levied at point of occupation, with prevention of occupation** being a potential sanction for non-payment. Local Authorities will be allowed to borrow against Infrastructure Levy revenues so that they could forward fund infrastructure. This would be a form of tax incremental funding seen elsewhere in different countries and seen as a way of speeding up the provision of infrastructure.

74. The Paper sets out that Government could seek to use developer contributions to **capture a greater proportion of the land value uplift that occurs through the grant of planning permission**, and use this to enhance infrastructure delivery. The value captured is described as "depend[ing] on a range of factors including the development value, the existing use value of the land, and the relevant tax structure." It is acknowledged though that whilst increasing **value capture** could be an important source of infrastructure funding it would need to be balanced against **risks to development viability.**

75. The Paper sets out that the Community Infrastructure Levy and the current system of s106 planning obligations will be reformed as a **nationally set, value-based flat rate charge (the 'Infrastructure Levy')**. A single rate or varied rates could be set. It is explained that the Levy will enable the system to **"sweep away months of negotiation of Section 106 agreements and the need to consider site viability"**. As a value-based charge across all use classes, the Government believe it would be both more effective at capturing increases in value and would be more sensitive to economic downturns. In **higher value areas**, which if set nationally, is expected to encompass the whole of London, the Paper envisages that a **much greater proportion of the development value would be above the exempt amount, and subject to the levy.**

76. **Alternative approaches** are also suggested in the Paper including that the Infrastructure Levy could remain optional and would be **set by individual local authorities**; or that the **Government set parameters.** There is also the suggestion of **"in kind delivery on site"** [through affordable housing provision], which would offset from the final cash liability to the Levy. It is expected that a threshold would be set for smaller sites, below which on-site delivery was not required, and cash payment could be made in lieu.

77. The Paper notes that **the scope of the Infrastructure Levy would be extended** to better capture **changes of use** which require planning permission, even where there is no additional floorspace, and **for some permitted development rights** including office to residential conversions and new demolition and rebuild permitted development rights.

78. Under this approach the Government appear to recognise that there is some **risk** transferring to the local planning authority, and that they would need to mitigate that risk in order to maintain existing levels of on-site affordable housing delivery. The Government believe that this risk can be fully **addressed through policy design**. In particular, in the event of a market fall, the Paper notes that the Government could allow local planning authorities to **'flip' a proportion of units back to market units** which the developer can sell, if Levy liabilities are insufficient to cover the value secured through in-kind contributions.

79. It is noted that local authorities will be given greater powers to determine how developer contributions are used, including by expanding the scope of the Levy to cover affordable housing provision to allow local planning authorities to drive up the provision of affordable homes.

80. Under this approach the London **Mayoral Community Infrastructure Levy** could be retained as part of the Infrastructure Levy to support the funding of strategic infrastructure.

81. Finally it is noted that the proposals in referring to plan delivery and tests that supporting viability assessments may still play a part in the Local Plan process.

HOUSING

82. A new "standard method" for establishing **housing requirement figures** is proposed. The Paper sets out that Local Authorities "will need to identify areas to meet a range of development needs – such as homes, businesses and community facilities – for a minimum period of 10 years". It also notes that the **new standard requirement** would differ from the current system of local housing need in that it would be binding, and so drive **greater land release**. It proposes that the standard method "would be a means of distributing the national housebuilding target of **300,000 new homes annually**" (and one million homes over this Parliamentary period). As part of the standard method, it is expected that local planning authorities will have regard to *inter alia*: the opportunities to better use existing brownfield land for housing, including through greater densification, and the need to make an allowance for land required for other (non-residential) development.

83. The new Standard Method would – unlike the current method, and the interim method proposed in the parallel consultation on immediate reforms – take into account constraints on a local authority's area in determining the housing target.

84. It is expected that the proposed new approach will ensure that enough land is planned for, and with sufficient certainty about its availability for development, to avoid a continuing requirement to be able to demonstrate five-year supply of land. However, to ensure delivery, it is **proposed to maintain the Housing Delivery Test and the presumption in favour of sustainable development** as part of the new system.

PLANNING COSTS

85. The Paper notes that the **cost** of operating the new planning system should be principally funded by the **beneficiaries of planning gain** – landowners and developers – rather than the national or local taxpayer. It is noted that if a new approach to development contributions is implemented, a small proportion of the income should be earmarked to local planning authorities to cover their overall planning costs, including the preparation and review of Local Plans and design codes and enforcement activities – the cost of preparing Local Plans and enforcement activities is now largely funded from the local planning authority's own resources.

86. The Paper also confirms that planning fees should continue to be set on a national basis and cover at least the full cost of processing the application type based on clear national benchmarking. This should involve the **greater regulation of discretionary pre-application charging** to ensure it is fair and proportionate.

TIMINGS…

87. The timescale for converting the White Paper into legislation is highly uncertain and the prospect of doing so looks a daunting task for Whitehall. The Paper notes that the Government **wants to "make rapid progress toward this new planning system".**

88. We would expect some ideas, where feasible, to come forward in advance of primary and secondary legalisation, and alongside the White Paper the Government also published a **consultation on four shorter-term measures** which are said to improve the immediate effectiveness of the current system (see below).

89. The Paper notes that **"The proposals allow 30 months for new Local Plans to be in place so a new planning framework, so we would expect new Local Plans to be in place by the end of the Parliament"** [sic] i.e. May 2024.

90. The Paper also notes that for the **Autumn spending review**, the Government will prepare a specific, investable proposal for modernising planning systems in local government.

91. The Paper also notes that the Government will also bring forward proposals later this year for improving the resourcing of planning departments more broadly.

92. There is also mention of changes to the National Planning Policy Framework which will be consulted on in the autumn.

93. The White Paper also confirms that the Government will respond shortly to the consultation at the end of last year on changes to the legislative framework for development corporations. The Paper notes that delivery mechanisms, including development corporations, have a part to play in the process.

94. The Paper also touches upon **potential transitional arrangements** to ensure that recently approved plans, existing permissions and any associated planning obligations can continue to be implemented as intended; and that there are clear transitional arrangements for bringing forward new plans and development proposals as the new system begins to be implemented. Beyond this, there are no specific details on the potential transitional arrangements.

95. One area that will be of significant interest to developers and authorities alike will be the **transitional arrangements around the phasing out of negotiated section 106 agreements and the movement of those authorities with CIL in place to the national IL.** We anticipate this could be in the region of 2 to 4 years. We would expect specific transitional arrangement to be put in place through perhaps PPG which would set a specific date for those schemes permitted before and those after that date which would be subject to the new regime. There may be legacy CIL schemes that continue for some time after the transition date.

ADDITIONAL CONSULTATIONS

96. Alongside the White Paper consultation the Government has also published a separate consultation setting out proposals to improve the effectiveness of the "current" planning system. These cover:

    a. **The standard method for assessing housing for local plans:** Proposals to revise the standard method to increase the overall number of homes being planned for and achieve a more appropriate distribution.

    b. **Delivering First Homes:** Following a consultation on the First Homes proposals in February 2020, the Government have published a response and which sets a requirement that 25% of all affordable housing secured through developer contributions should be First Homes. The Government are consulting on options for the remaining 75% of affordable housing secured through developer contributions, and seeking views on transitional arrangements, level of discount, interaction with the Community Infrastructure Levy and how we propose First Homes would be delivered through exception sites.

c. **S106 and small sites:** Proposals to temporarily raise the threshold below which developers do not need to contribute to affordable housing, to up to 40 or 50 units for an 18-month period. In designated rural areas, the consultation proposes to maintain the current threshold. It also seeks views on whether there are any other barriers for SMEs to access and progress sites.

d. **Permission in Principle:** Proposals to increase the threshold for Permission in Principle by application, to cover sites suitable for major housing-led development, rather than being restricted to just minor housing development.

e. A Call for Evidence on proposals to **improve the transparency of land options.**

80. **Consultation** on the White Paper extends to **29 October 2020**, and until 01 October for the consultation to relating to the current planning system.

12 August 2020

Disclaimer & Copyright
Gerald Eve's Planning Update is a short summary and is not intended to be definitive advice. No responsibility can be accepted for loss or damage caused by any reliance on it.

© All rights reserved. The reproduction of the whole or part of this publication is strictly prohibited without permission from Gerald Eve LLP.