



The Planning White Paper – The TCPA’s initial analysis

September 2020

As we confront the scale of the health, climate and housing crises, the TCPA is concerned that the Planning White Paper fails to lay the foundations for a democratic and effective planning system

‘Thanks to our planning system, we have nowhere near enough homes in the right places. People cannot afford to move to where their talents can be matched with opportunity. Businesses cannot afford to grow and create jobs. The whole thing is beginning to crumble and the time has come to do what too many have for too long lacked the courage to do – tear it down and start again.’

Prime Minister’s Foreword to the Planning White Paper

The Prime Minister’s ambition to replace the worn-out 1947 planning system has resulted in a White Paper which is strong on rhetoric but limited on detail. Unlike many previous White Papers, the contents of *Planning for the Future*¹ can best be described as a ‘sketch’, with much of the key evidence about the problems facing the planning system absent. At the same time, many of the most profound questions we face – such as the roles of strategic and neighbourhood planning, or how radical reductions in carbon dioxide emissions are to be secured – are left unanswered.

A definitive analysis is thus difficult to achieve, but this paper gives a broad overview of the main proposals and highlights some of the TCPA’s key priorities for the reform agenda. If there is one headline to take from the White Paper, it is that the proposed new system would not deliver on its claim to democratise planning; neither would it necessarily deliver better outcomes. The achievement of the latter depends on a great deal more clarity on the operation of Local Plans and the proposed supporting codes and pattern books.

The TCPA’s point of departure

The TCPA believes in the power of democratic planning to help shape a fair and sustainable future for everyone. The planning system must operate in the public interest and should be both democratically accountable and genuinely participative. It must also reflect the complex social, environmental and economic geography of England and be fit to deal, not just with the current health crisis, but with the severe impacts of climate change and social inequality.

¹ *Planning for the Future*. White Paper. Ministry of Housing, Communities and Local Government, Aug. 2020. <https://www.gov.uk/government/consultations/planning-for-the-future>

Note: Paragraph numbers quoted in this paper relate to the ‘web accessible’ version of the White Paper available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907956/Planning_for_the_Future_web_accessible_version.pdf

The TCPA has long advocated the need to change the current system based on these principles, and through the Raynsford Review² has set out in detail how these changes should be implemented. The Review involved detailed evidence-gathering and a lengthy process of listening to voices from across all sectors, and its Final Report sought a system that would simultaneously deliver greater democracy and greater efficiency with the least possible disruption to the delivery of new homes. The TCPA remains committed to this positive, evidenced and measured pathway to planning reform.

The TCPA has been strongly critical of aspects of the government's planning reforms, and particularly the widespread expansion of permitted development, which has led to extremely poor housing standards that damage people's health. Its campaign for a Healthy Homes Act³ reflects the vital need to secure minimum standards in new homes and rebuild the link between how we plan and design places to secure the health and wellbeing of communities. The TCPA is concerned that the government's reform agenda will undermine attempts to secure these much-needed minimum standards.

Major themes

The Planning White Paper continues the decade-long trend of 'streamlining' the planning system. In practice, this means marginalising the voice of local communities and local government. Furthermore, the White Paper does not give clear commitments to the minimum safeguards for people and the environment that the TCPA has long advocated. While there are aspects of the White Paper agenda which the TCPA would support, taken as a whole it is not a sound basis for future reform. The government needs to think again and take the time to fully examine the existing evidence about the real problems of the planning system; and then build a measured and consensual platform for future reform that will help to tackle the health, climate and housing crises.

The need for evidence

The first 21 pages⁴ of the White Paper set out the government's case for radical reform and the broad objectives that should guide those changes. The most striking feature of these pages is the highly selective use of evidence about the problems confronting the current system. There is no effective discussion of the intensive reviews of the planning system that have been conducted in recent years, from Kate Barker's review in 2004⁵ to Oliver Letwin's review in 2019.⁶ The lessons provided by this rich evidence base are neither considered nor reflected in the White Paper's recommendations.

² *Planning 2020 – Final Report of the Raynsford Review of Planning in England*. TCPA, Nov. 2018. <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=30864427-d8dc-4b0b-88ed-c6e0f08c0edd>

³ Details of the TCPA's Healthy Homes Act campaign are available at <https://www.tcpa.org.uk/healthy-homes-act>

⁴ As noted above, paragraph numbers quoted in this paper relate to the 'web accessible' version of the White Paper, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907956/Planning_for_the_Future_web_accessible_version.pdf

⁵ K Barker: *Barker Review of Land Use Planning Final Report – Recommendations*. Barker Review of Land Use Planning, Dec. 2004. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228605/0118404857.pdf

⁶ O Letwin: *Independent Review of Build Out. Final Report*. Cm 9720. Letwin Review Report. Oct. 2018. <https://www.gov.uk/government/publications/independent-review-of-build-out-final-report> – while the Letwin Review is referenced once, the analysis and recommendations of the Review are not considered in the White Paper

The lack of analysis of previous reviews and the failure to digest the government's own evidence on the performance of the existing system, most notably on the outcomes of permitted development,⁷ has a knock-on effect on the coherence of the White Paper's recommendations. There is no shortage of available evidence on the real problems facing the planning system, nor on the merits or otherwise of zonal planning.⁸ But the White Paper criticises planning for problems it does not have – such as the production of housing *consents* – and fails to identify those problems it does have – primarily insufficient powers to *de-risk development* and *drive delivery*. There is no recognition of the contribution of ten years' worth of planning reform measures to the current problems – and particularly of how the lack of strategic planning has made Local Plan preparation extremely problematic.

The White Paper does undeniably offer strong rhetoric about good design, beauty, and democratisation. But there is a very significant gap between that rhetoric and the detail of the proposals set out under its 'three pillars'. In short, many of the claimed benefits of the changes are not matched against the precise proposals. This leads to a palpable tension between the White Paper's claims on issues such as democratisation and the specific proposals it contains, which clearly reduce accountability and participation.

The scope of the White Paper

Overall, the White Paper focuses on the Local Plan and development management regimes, predominately in terms of housing. The other big themes are proposed changes to Section 106 agreements and the Community Infrastructure Levy (CIL).

While there are major gaps between the aspirations of the White Paper and its specific provisions, there are also major parts of the planning system which are not discussed. For example, the White Paper proposes the abolition of the 'duty to co-operate',⁹ but is silent on the kind of effective strategic planning mechanisms for infrastructure, homes or flood risk that might replace it.¹⁰ While there are genuine differences of opinion about precisely what strategic planning framework should exist in England, there is a broad consensus that regional and sub-regional planning are vital to an effective system. The White Paper is also silent on its relationship with a national planning framework, including the National Infrastructure Strategy, and on all the compelling evidence produced by the 2070 Commission.¹¹ Certainly, no new planning system can succeed without resolution of the strategic question.

Meeting housing needs will always be a priority for the planning system, but it is not the only challenge that we face. The White Paper is particularly weak on reductions in carbon dioxide emissions in relation to zero-carbon homes. Nor is there any discussion of the rich seam of

⁷ B Clifford, P Canelas, J Ferm, N Livingstone, A Lord and R Dunning: *Research into the Quality Standard of Homes Delivered through Change of Use Permitted Development Rights*. University College London/University of Liverpool, for Ministry of Housing, Communities and Local Government, Jul. 2020. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902220/Research_report_quality_PDR_homes.pdf

⁸ Part of this evidence was published in *The Wrong Answers to the Wrong Questions*. Report by an independent group of planning academics. TCPA, Aug. 2020. <https://www.tcpa.org.uk/the-wrong-answers-to-the-wrong-questions>

⁹ Within 'Proposal 3', para. 2.19

¹⁰ Para. 2.26 suggests that combined authorities may have a role in this but offers no detail on how this will fit with Local Plans

¹¹ *Make No Little Plans: Acting at Scale for a Fairer and Stronger Future*. Final Report. UK2070 Commission, Feb. 2020. http://uk2070.org.uk/wp-content/uploads/2020/04/Declaration_of_Intent_Brochure.pdf

thinking on climate adaptation and of the need to potentially extend the planning regime to deal with upland land management in order to secure flood resilience. There are a multitude of other issues which are not dealt with through the White Paper's definition of three types of planning zones. In some areas housing growth will be priority, but in others action on health inequality or the relocation of communities in order to respond to sea level rise will be the dominant planning priority. The designation of zones needs to reflect the diversity of our geography and the wide variety of issues relevant to creating successful places.

The other major omission from the White Paper is detailed discussion of the barriers and solutions to effective housing *delivery*. Only one tangible delivery proposal, focused on diversifying the housebuilding sector, is included, but this does not guarantee an increase in new housing on the ground. Both Development Corporations and Development Consent Orders are mentioned,¹² but with no elaboration of how they might fit into the new system. The Letwin Review is also mentioned,¹³ but its detailed recommendations are not considered and do not feature in the White Paper proposals. The actions put forward in the White Paper will not, on their own, lead to any increase in housing delivery.

What kind of planning system does the White Paper propose?

Before the publication of the White Paper, much was made of the importance of international comparisons, but it is hard to find any direct parallel with the new system that White Paper sketches out. It can be most accurately described as a hybrid, based on three ideas:

- a residualised form of discretionary planning, functioning to a greater or lesser degree in all the three proposed planning zones ('Protected', 'Renewal' and 'Growth' areas – see below);
- a form of codified zonal planning, operating in 'Growth' and 'Renewal' areas; and
- straightforward deregulation, in the form of permitted development, which will exist across all three zones.

The framework created by the White Paper is a collision between the existing discretionary system and a codified framework. There is no evidence to suggest that such a system will necessarily produce better outcomes, but it is undoubtedly true that it will be procedurally complex.

How would the new system work?

The White Paper presents¹⁴ an indication of how Local Plans and development management would change but does not provide a definitive decision-making pathway that is easy to grasp. However, the system rests on the designation of three zones. Each zone would have a different regime for consent – with what, in fact, amounts to three distinct planning regimes for England:

- 'Protected areas', or zones, would be designated locally, but based on government guidance,¹⁵ and the traditional development management process would apply. In so far as policy would need to be applied to development management decisions it would be set out nationally in a set of development management policies.¹⁶ These zones would not be protected in the literal sense, because anyone could apply for planning permission for any scale of development. Nor would the current planning system simply apply, since decisions would be based on nationally described

¹² Paras 5.8-5.9 and para. 2.32, respectively

¹³ Para. 2.58

¹⁴ In 'Proposal 5'

¹⁵ Para. 2.8, bullet 3

¹⁶ Para. 2.13

development management policies. Outcomes for communities would depend entirely on the quality of those policies. Since the White Paper gives no sense of the scope or content of these national policies, it is not possible to form a judgement on their merit.

- 'Renewal areas' would feature a complex mixture of permitted development, permission in principle, and traditional development management. For some forms of development, design codes and pattern books would determine the outcome of 'gentle densification'.
- 'Growth areas' would see permission given 'automatically'¹⁷ at the plan stage, so that development would have planning permission subject to compliance with national and, where they exist, locally prepared design codes and pattern books. The White Paper is unclear about how the details of submissions would be checked for compliance with these codes before development takes place. Proposal 5 suggests three radically different routes for final consent: a 'reformed' reserved-matters stage, a Local Development Order (LDO), and the use of the national infrastructure planning regime. The latter course, through a Development Consent Order, seems a wholly inappropriate mechanism if the principle of consent has already been established in the plan.

It is impossible to judge how a reformed reserved-matters process would work because the White Paper offers no detail about what this 'reform' might mean. This is a fundamental point, because there is an immense difference between, on the one hand, a system in which outline permission is confirmed in the plan but a reserved-matters application is necessary before development can proceed and, on the other, a process in which automatic permission is granted in an LDO subject to a mechanistic compliance test. The latter system is more like a prior-approval process since the development prescribed in the LDO is permitted. Crucially, the current reserved-matters application system still allows some democratic oversight over a range of design and delivery issues.

Significantly, the certainty that the White Paper claims for the three-zone system is clearly undermined by provisions which allow developers to submit applications contrary to plans and codes in Growth areas.¹⁸

There are numerous questions about the detailed operation of this new system which the White Paper does not fully address. One matter of particular concern is the government's continuing belief that principle and detail can easily be separated in planning decisions. This can never be the case, because the principle of the suitability of a site depends entirely on the detailed impacts the proposal may have. To understand whether, in principle, development should take place, one first has to understand this detail. This is a practical reality, and so, if permission is to be given in principle in plans, then plans will require much more detailed site assessment processes. While national data sets can speed up this process, only detailed site investigations can ultimately reveal the suitability of a site in terms of archaeology, ecology, and flood risk.

It is also significant that, taken together, the new system would give developers certainty on land allocation while allowing them to retain the ability to submit applications speculatively, to be determined by national policy, and by local design guides where they exist. The developer's right to appeal against refusal decisions would also be retained. There can be no doubt that in principle this new system, including the parallel extension of permitted development rights, would give maximum benefit to the developer and minimum benefit to

¹⁷ Para. 1.16, bullet 1

¹⁸ Para. 2.41

communities. There is a grave risk of creating a system in which the current asymmetry in favour of the development sector is even more entrenched within the structure of local planning. A *genuinely* codified zonal system, in which development is allowed only if it complies with a code, has the disbenefit of inflexibility, but it would at least offer the benefit of a level playing field of certainty for all parties.

The impact that this new regime would have on democratic accountability is discussed below, but the degree to which the system may or may not produce better outcomes hangs entirely on the ability of national and local codes and pattern books to reflect all the considerations necessary to create healthy, sustainable places. This also requires the handling of detailed evidence on, for example, health impacts and carbon dioxide emissions in the formulation of plan – which then has to be translated into defined action in development plan policy to, for example, deliver the necessary reductions in carbon dioxide emissions. However, the White Paper is completely silent on how such evidence streams can be made effective, particularly when some decisions would be made against nationally determined development management policy.

The White Paper implies that design codes could be part of the development plan – or prepared as a Supplementary Planning Document (SPD). Clarity is needed on the government's preferred approach because SPDs do not have the legal weight of the development plan and offer no legal rights for communities to participate in their preparation. The White Paper does not set out the scope of these codes beyond a broad emphasis on aesthetic design, stating that guides and codes would 'reflect local character and preferences about the form and appearance of development'.¹⁹ There is no discussion of standards on space, light and freedom from pollution, which are all crucial to people's physical health. ***In practice, in order to shape a system in which no discretion is allowed at the final permitting stage, codes would have to be carefully evidenced and very detailed.*** It is extremely doubtful whether they could ever be made 'machine-readable',²⁰ because many issues in planning are and will remain a matter of judgement and interpretation.

Since the White Paper clearly states²¹ that plans will be two-thirds shorter than they are now, it is hard to see how they will be the locus for creative place-making. If codes and pattern books are to have a determinative role in decision-making, they must be formally part of the development plan, not least to avoid endless arguments in the courts about their role in the permitting stage. If they have such legal weight, they must in turn be subject to proper evidence and assessment, fully independently tested, and subject to democratic oversight and citizens' rights.

At no point does the White Paper make a credible case that the three-zone system will necessarily improve the outcomes of planning – this depends on information which the White Paper simply does not contain. ***Crucially, a great deal of development in both rural²² and urban locations will be subject to existing permitted development rights and therefore will sit beyond the meaningful control of design codes and pattern books.***

Neighbourhood Plans

¹⁹ Para. 2.14

²⁰ Para. 2.15

²¹ Para. 1.16, bullet 2

²² Class Q – agricultural buildings to dwellinghouses. The Town and Country Planning (General Permitted Development) (England) Order 2015.

<https://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/3/crossheading/class-q-agricultural-buildings-to-dwellinghouses/made>

The current planning system is a product of the reforms that this government has applied to the system over the last decade. That reform process was initiated on the basis that planning was too 'top down' and not sensitive enough to local needs. Neighbourhood planning was the flagship response to that concern and has been heavily promoted by government. However, it is unclear how Neighbourhood Plans would fit into the new three-zone system.²³ The White Paper does state that the government 'thinks' such plans should be retained, but there is a lack of clarity about the scope and power of such plans in decision-making. The degree to which neighbourhood planning has a meaningful role will depend on which zone one happens to live in, but with national design codes and centralised development management policy there appears to be little or no logical role for Neighbourhood Plans beyond contributing to local design guides. Clarification on the status and scope of Neighbourhood Plans is a vital pre-condition for the reform process.

More democracy or less?

Four elements have to operate successfully together in order to ensure that there is a democratic planning system:

- Direct democracy through referendum, which operates for Neighbourhood Plans where they exist.
- Representative democracy has to operate at national and local levels to ensure that decisions are ultimately accountable to the whole electorate.
- Participative democracy has to ensure that communities have a real measure of power to co-create decisions.
- Finally, citizens must have defined civil rights to ensure that their participation is meaningful – for example, rights to information, rights to be heard when policy is made, and rights to challenge decisions on public interest grounds.

Aspects of these four elements do currently exist in local planning, but there is no doubt that there is a pressing need for change in order to rebuild public trust. ***The problem is that far, from 'democratising planning',²⁴ the White Paper positively reduces democratic accountability and the individual rights of the citizen to participate.*** There are three key reasons for this:

- The key decision on the approval of new development in growth zones would shift to the plan-making stage. The traditional process of politicians deciding planning applications, with opportunities for the public to make representations, would effectively be at an end. In paragraph 1.16, third bullet point, the White Paper says this about the process:

'Our reforms will democratise the planning process by putting a new emphasis on engagement at the plan-making stage. At the same time, we will streamline the opportunity for consultation at the planning application stage, because this adds delay to the process and allows a small minority of voices, some from the local area and often some not, to shape outcomes.'

In the zone where most large-scale development takes place communities would have fewer opportunities for democratic input than is currently the case.

- The White Paper suggests, in paragraph 2.48, under 'Stage 4', that people's right to be heard in person will be changed. It states that planning inspectors will now have

²³ Para. 2.56

²⁴ Para. 1.16

discretion over what form an objector's representations might take. Under paragraph 2.53, which is an alternative option to the proposal in paragraph 2.48, the White Paper suggests that any form of 'right to be heard' might be removed.

The right to be heard under Section 20 (6) of the 2004 Planning Act is the only clear civil right that exists in the planning process for the individual citizen. It includes the important phrase: 'Any person who makes representations seeking to change a development plan document must (if he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination.' This allows an individual to appear in front of an inspector and exercise other opportunities to ask questions of witnesses. This opportunity for the public to interrogate the evidence is absent from the major infrastructure regime but crucial to any meaningful opportunity to participate. So the opportunity to appear at a public inquiry is to be replaced with the opportunity for inspectors to have a telephone conversation with the citizen, or ask for further written comments, if they choose to do so. This is not an increase in democratisation. The right to be heard in person is even more important because development plans will become the only meaningful opportunity for community engagement.

- ***The White Paper does not provide a single new right for community participation or a single new opportunity for democratic involvement in the plan-making process, but rather reduces both rights and opportunities to participate.*** There is no basis to the claim that this new system would 'democratise' planning. The only additional opportunity would come from the White Paper's hunch that digitising information will encourage community participation. Digital information can potentially lead to a more openness and would, hopefully, make planning more accessible, but ***it does nothing on its own to give communities more control over their future.*** That is only secured through clear democratic processes and clear individual civil rights.

The national 'Infrastructure Levy'

The question of a national infrastructure levy as a tax based on development values deserves a paper in its own right, but it is perhaps the issue on which the White Paper's tendency to 'sketch' ideas is at its least helpful. Proposal 19²⁵ posits a new nationally prescribed Infrastructure Levy that 'would be charged on the final value of a development (or to an assessment of the sales value where the development is not sold, e.g. for homes built for the rental market), based on the applicable rate at the point planning permission is granted'.²⁶ The levy would be based on nationally established policy, but collected and spent locally. A national or variable rate might be applied.²⁷ Crucially, the White Paper is clear that the levy would increase yields for public benefit, with paragraph 1.19, bullet points 1 and 2, committing to maintaining at least if not more 'on-site' affordable housing provision.

There is no doubt that there is merit in a nationally established levy for infrastructure, which could reduce the well documented transaction costs of Section 106 agreements. It is also the case that the TCPA has long advocated the capture and recycling of land values to more effectively deliver high-quality places secured over the long term through stewardship agreements. But a national levy needs to draw on the lessons of past attempts to capture a fair share of development values and to provide clarity on precisely how the overall yield of values would be increased. There are four key initial concerns here:

²⁵ Para. 4.7

²⁶ Para. 4.9, bullet 1

²⁷ Para. 1.19, bullet 1

- The mechanism of ‘right pricing’ land, where policy requirements are established upfront and then factored into land transactions, is a credible route to capturing values for public benefit. Changes in national policy and guidance on viability testing were made in 2019 to allow this mechanism to be more effectively deployed. A comprehensive economic assessment of the effectiveness of these changes is important in shaping the debate about future reform.
- In order to sustain the assertion that any new system would provide greater yields it is necessary to provide detailed modelling showing at what level the ‘value-based minimum threshold’²⁸ could be set and the impact of that threshold on development values, land prices, and developer profits. Given that some factors, such as build costs, are largely fixed, the delivery of increased public benefits rests on reducing developer profits or landowner returns.
- Development values are not a money tree. Landowners will not bring land to market if they think that they can wait for more positive policy conditions – this is the history of the three previous attempts at nationally organised betterment taxation. While capital gains tax is mentioned in the White Paper, land tax stamp duty is not – and this is important, because aspects of betterment values accruing to landowners are already subject to this taxation regime. These costs, plus the wider costs of delivering better design and the proposed new legal requirements for net gain for nature, have to be met by development values which are ultimately a finite resource.
- The proposals are silent on what would happen if landowners do not wish to sell, but we can infer that public authorities would need to compulsorily purchase the land. If that were to be the case, changes also need to be made to the compulsory purchase code, at least to clarify the differing application of hope value between viability testing and compulsory purchase compensation.

Any claim that the new Infrastructure Levy would necessarily yield more than the existing process is simply speculation without further detailed modelling which demonstrates how this will be made to happen. One obvious problem with the current regime, noted in paragraphs 4.12 and 4.15 but not dealt with by the White Paper, is the highly spatially regressive impact of Section 106 agreements. The current system yields most in high-demand areas and therefore disadvantages lower-demand places with real regeneration needs. The Final Report of the Raynsford Review discusses how elements of betterment values could be redistributed through both capital gains tax and land tax stamp duty; and it also advocates a more focused approach to capturing land values for large-scale development through Development Corporations. These measures remain a more practicable approach to the reform of Section 106 agreements and CIL.

Conclusion

The Prime Minister opens the Planning White Paper by describing the planning system as a much neglected building that now needs replacement. But this government has been the curator of this building, and during the last ten years the roof has been effectively removed through deregulation. There is, however, no sense in the White Paper of any responsibility for the impact that these changes have had on the system. The deregulation of planning goes on at pace in parallel to the Planning White Paper through the expansion of permitted development and the proposed introduction of permission in principle to major housing scheme allocations.

As a result, given its current state, maintaining the planning system in its present form is far from a desirable option. Reform of the planning system should be a non-negotiable objective if we are to have a system fit for the health, housing and climate crises that confront us. But

²⁸ Para. 4.9, bullet 3

the White Paper does not provide the scope, rigour or precision to guide us towards the changes that we need, particularly if these changes are to be introduced into law by 2021.

The TCPA has long campaigned for a planning system that gives people both procedural justice through democratic and participative decision-making and substantive justice in terms of the promotion social equity. But the claims of the White Paper in paragraphs 1.22 and 1.23 that its contents will enhance equity and public trust are in no way substantiated by the detailed measures it contains. In fact, accountability and participation will be *reduced*. In parallel, changes to permitted development have reinforced social inequality, both in terms of housing standards and, most obviously, in the reduced delivery of genuinely affordable homes.

The TCPA has a fully worked-up alternative to the White Paper framework, expressed in the Raynsford Review. The TCPA hopes that the government will reflect on the initial responses to the White Paper and clarify some of the important questions being raised by many cross-sector voices – perhaps most fundamentally clarifying whether this new planning system would serve the needs of all our communities in the wider public interest or is predicated on the convenience of the development sector.