

**Welcome to Landmark Chambers and Pinsent Masons' webinar  
“*Planning for the Future*” White Paper – Analysis and Discussion**

**The recording may be accessed [here](#).**

# Introduction – “Tear it down and start again”

**Rupert Warren QC, Landmark Chambers  
12th August 2020**

# Your speakers today are...



**Topic:**  
“Planning for the Future” White Paper:  
Local Plans, decisions  
and the shape of the  
new system

**Rupert Warren QC (Chair)**  
Barrister, Landmark Chambers



**Topic:**  
“Planning for the Future” White Paper:  
Housing

**Zack Simons**  
Barrister, Landmark Chambers



**Topic:**  
Planning White Paper  
– Consolidated  
Infrastructure Levy  
including potential  
abolition of S106

**Richard Ford**  
Partner, Pinsent Masons



**Topic:**  
Planning White Paper –  
What does it mean for  
Environment and ‘Beauty’?

**Jan Bessell**  
Strategic Planning Advisor, Pinsent Masons

## Our aims today

- A degree of explanation of the proposals themselves but mainly focused on drawing out issues, consequences, uncertainties, opportunities and risks
- Sectoral and issue-specific analysis for a later date
- Are we sure about the positioning of the reforms: Gvt wishes to show it's faster, delivers more, is simpler, without risking what is cherished?
- Is it fair to say that systemic change needs to be comprehensive? – so a piece on the effect on the entire system probably needed?
- Aim to explore the critical issues for consultation – national level points (eg the setting of housing requirements); recasting of the big ticket delivery agenda; what happens to local control – how will it find itself exercised?
- Initial thoughts on opportunities and risks, and wider issues, eg, will this be a more trusted system by the majority of stakeholders?

***“Planning for the Future”* White Paper:  
Local Plans, decisions and the shape of the new  
system**

**Rupert Warren QC, Landmark Chambers  
12th August 2020**

## Local Plans

- Pillar 1: proposals 1-5, 8-9 and Pillar 2 Proposal 16
- Primary and secondary legislation, NPPF and PPG changes required
- Preliminary stage at the national level – housing numbers/distribution/constraints
- Single “sustainability” test for plan – scope/definition
- Local Plans tripartite division of all land into Growth, Renewal and Protected
- Local plan process: which category? How much detail? How to deliver the detailed stage – RM, LDO, even DCO – how do these articulate?
- Decision-making processes tied into the plan more closely/automatically
- DM general policies removed and kept in NPPF
- But parallel design coding/pattern book/NP design work
- Become a route to Outline PP, but otherwise s.38(6) perhaps amended

## At the national level first – questions to raise

- Housing numbers and distribution – Marsham Street. National political agenda/levelling up/Growth deals/HE/lobbying/transparency – law or policy?
- Process? Evidence of constraints – what test applied and how assessed – what engagement/formal decision – JR? In effect a national plan for housing, or will infrastructure/viability/other objectives also be taken into account?
- How will constraints be taken into account – eg GB exceptional circs? Without DtC, how will needs of all kinds be ensured to be met?
- If Mayors/Joint Plans etc have more control over distribution, will this lead to de facto sub-regionalisation eg Bucks/Oxfordshire/OxCam?
- Timescale? Must be the prior exercise and be framed by the new law and policy suite, but over what period and how does it relate to the transition?
- Resourcing – MHCLG/Inspectorate/LPAs – just to engage at this stage?
- Rolling 5 year periods, or will entire system be re-set at Year 1?
- Centralisation shifts the burden of credibility of the system to the centre

## Three colours: red/amber/green (or red/white/blue)

- For the LPA but with National Policy to guide, perhaps law? Examined for compliance legally as well as against 'single test'? Spatial plan or mainly about delivery outcomes of the three categories?
- Growth - large Greenfield sites/regen sites – substantial in size but envisaged largely as outside existing urban areas – but still a cross-over or debate about protection (settings/environmental issues like flooding)
- Renewal – urban – multi-faceted areas with overlapping objectives – how will cross-boundary issues be dealt with (eg in larger urban areas)
- Protected – presumably iterative (if not pre-determined by national assessment) eg GB may have to flex/heritage harm may be outweighed by benefits of new development – irreducible level of discretionary evaluation at the plan making stage
- How different will this be except presentationally – on surface – but need to think through the process of examining the sustainability of the categories given the procedural consequences (eg PIP)



## Effect of a Growth area allocation

- Outline Permission/PIP – (therefore all of the major outlines all at once in the plan)
- During plan making process the Masterplan/Concept plan/parameters/governance will need to be addressed – rights are being determined by the plan (so art 6 engaged?)
- Space for flexible PIPs – good for the market - perhaps hybrid allocations
- Space for resistance to development – details perhaps but still a hurdle to consent/delivery; a debate about fixity or flexibility (when some things – eg education requirements or infrastructure needs – may not be known?)
- How would LDO/DCO potentially articulate with this?
- Worked examples needed in the consultation

## The rest of the system?

- **Comprehensiveness?** This scale of change without reviewing how TWA/2008 Act/Highways Act/LBCA Act all articulate? Re-wiring and new façade rather than the PM's new house? Practicality of such turmoil in 2021?
- **Flexibility v fixity:** S.38(6) – will be able to make applications in any event: mapped onto an 'allocation PIP/OPP' as a fallback? How will the stat test of plan-led presumption be changed effectively? In the end, will weight still be a matter for the decision maker, or will there be legal rules more closely defining permissible exceptions? If not – are we repeating the current system with top-down housing numbers and shorter plans, but just as much delay/complexity?
- **NPPF?** Para 11, out-of-date and the PFSD (to be kept in some form) because plans are not produced on a Fordist production line and parts of them go out of date very quickly and unexpectedly – separate consultation?

## Areas to focus on

- Clarity about the role, process and consequences of the **national level** aspect
- Needs a review of how the new system looks **as a whole** – eg, will Growth area OPPs be capable of being judged “sustainable” without a spatial plan, IDP that can be relied on, and controls/more precise definition of details/design incl Masterplanning and parameters/Governance issues at the local level – where the LPA has control – will be needed? Eg, if HDT still drives para 11 and s.38(6), and market controls delivery, how does new system promote growth?
- **Balance between speed/standardisation and flexibility/discretion at the local plan stage** - given that there will be irreconcilable differences between stakeholder interests, how will the new system adjust the locations where political and social pressure will be felt

## Discussion

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# “*Planning for the Future*” White Paper:

## Housing

**Zack Simons, Landmark Chambers**  
**12<sup>th</sup> August 2020**



## How did we get here?

- **Localism Act 2011** – SoS Eric Pickles abolished regional strategies:

*“putting a swift end to Whitehall’s grip on local planning policy by scrapping regional strategies and their **centrally imposed building targets that failed to increase housebuilding** [...] **Regional edicts, which allowed communities no say, injected poison into the planning system** which stymied development.”*

*“Councils will now have the freedom to prepare their local plans without having to follow top-down targets from regional quangos and bureaucrats that prescribe exactly what, where and when to build.”*

*“Communities will no longer have to endure the previous government’s **failed Soviet tractor style top-down planning targets** - they were a **terrible, expensive, time-consuming** way to impose house building”*

*“They were a **national disaster** that robbed local people of their democratic voice, alienating them and entrenching opposition against new development.”*

# “*Planning for the Future*” proposals (1)

## New LPA-by-LPA Housing Requirements fixed by MHCLG

- “*Binding*” new standard method target fixed centrally for each local plan.
- **Incorporating** constraints (*NB Green Belt policy unchanged*), opportunities to use PDL, accommodating non-housing uses and a buffer = no more “*policy on/off*” debates. But how?
- LPAs can agree alternative distributions (but will they?) & Mayors can oversee strategic distribution of numbers (*no strategic oversight so far proposed outside Mayors*).
- **Kept**: HDT & “*presumption in favour*”.
- **Ditched**: 5yhl requirement brought in by PPS3 in 2006.



# “*Planning for the Future*” proposals (2)

## Promoting residential-led schemes

- Sliding scale of detail in “allocation” through growth & renewal areas:

*Height / density / use parameters* →

*Design code / pattern books* →

*LDO / adopted scheme-specific masterplan.*

- How to promote housing sites through the sped-up plan examination process:
  - Stage 1: “call for” growth or renewal areas (depending on if your scheme is “*substantial*”).
  - Stage 3: comments on LPA’s “*Statement of Reasons*”.
  - Stage 4: reps to examining Inspector (in person, in writing and/or online)



# “*Planning for the Future*” proposals (3)

## Promoting residential-led schemes

- Even if you're "allocated", applications are probably required:
  - RMs applications required in the “growth” area (unless you have an LDO linked to a masterplan).
  - New settlements in “growth areas” may require a DCO.
  - In “renewal” areas, you’ll need a planning application or an LDO unless you’re PD by meeting design / prior approval standards – the so-called “*fast track to beauty*” which Jan will return to.
  - In “protect” areas, you’ll need a planning permission. But without a 5yhlis target or the concept of “out-of-date” local plans, are you likely to get one?
- Appeals?

# Questions

- How will the new binding standard method be calculated?  
*(NB the answer is not in the consultation on updates to the existing standard method).*
- What procedure(s) will fix the housing target for each LPA?
- In the 3-zone world, how can you assess if a local plan has allocated enough land for housing?
- Risks of inflexibility in the “*protect*” zone?
- What role for:
  - “*Deliverable*” sites?
  - “*Out of date*” plans?
  - Neighbourhood plans – which can’t zone / allocate land for housing.
- How to guarantee delivery of scheme-specific infrastructure without s.106 – Richard will discuss this.

## Discussion

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# Planning White Paper – What does it mean for Environment and ‘Beauty’?

**Jan Bessell**  
**Strategic Planning Advisor**

12 August 2020



Pinsent Masons



# Simplification of Assessment Processes – what is it about?

- Seeks to identify the challenge we face:
  - Not enough focus on design
  - Little incentive for high quality new homes and places
- Identifies that Planning Matters – Places affect us from the air we breathe to our sense of purpose and wellbeing
- A question of Social Justice
- Wish to promote stewardship of countryside and environment, ensuring:
  - Important natural and heritage assets are preserved
  - Development potential of brownfield land maximised
  - Support net gains for biodiversity and wider environment
  - Actively address challenges of climate change



# Pillar 1 – Planning for Development

- **Proposal 3** – single statutory “*sustainable development*” test, replacing existing tests of soundness
  - Simpler test – fewer requirements for assessments
  - Specifically:
    - Abolish sustainability appraisal
    - Develop simplified environmental impact of plans – to continue to satisfy UK and international law and treaties
  - Alternative option:
    - Reform tests of soundness – less prescriptive



# Pillar 2 – Planning for beautiful & sustainable places

- **Proposal 11** – more binding design guidance and codes prepared locally
- **Proposal 12** – body to support provably locally-popular design codes and chief officer for design and placemaking
- **Proposal 13** – national leadership, delivering better beautiful places through Homes England strategic objectives
- **Proposal 14** – fast track for beauty – policy/legislative change – incentivise and accelerate high quality development
- **Proposal 15** – reform to mitigate/adapt to climate change – maximise environmental benefits
- **Proposal 16** – quick simpler assessment of environmental impacts and enhancement opportunities – protecting and enhancing most valuable and important habitats and species
- **Proposal 17** – conserving and enhancing historic buildings and areas
- **Proposal 18** – ambitious improvements in energy efficient standards – delivering net zero



# Opportunities and Risks - 1

## Abolition of sustainability appraisal and soundness

- What will statutory “sustainable development” test be – do we really know what sustainable development is and how it will ensure same level of protection and compliance?

➤ **Opportunity** – Holistic approach, better transparency and diagnoses of the challenges, including: housing; climate; natural capital; health; poverty/social justice; engagement and interactive planning; and integrated interventions and outcomes

➤ **Risk** – Endless debate on definition of “sustainable development” – No detail on how simplified process to provide level of protection and legal compliance with Strategic Environmental Assessment. Particular concern, given rules based proposals and local area-based planning system that would grant automatic outline planning permissions





# Opportunities and Risks - 2

## New focus on design and sustainability – priority for beautiful developments

- Will potential be realised by standards, codes and design Chief Officer?

➤ **Opportunity** – Ensure design codes and standards inspire, incentivise and encourage innovation and integration with constantly improving standards requiring strategic coordination of infrastructure investment with high quality development set within an ecosystems and net zero framework

➤ **Welcome** – an improved role for Homes England and real investment in local authority skills and resources

➤ **Risk** – loss of diversity, uniqueness of place and innovation – visual over substance. Will “provably locally-popular design codes” create new vision, sustainable development and equitable, rich and diverse communities for future generations? Will we lose the rich tapestry that is England?



# Opportunities and Risks - 3

## New system of environmental assessments

- Rightly acknowledges need to consider environment properly and critical role of planning system. Light on detail at the moment – more to come
  - **Opportunity** – to rationalise duplication of effort and make proportionate and more transparent – aligning assessment against a unified set of "legal tests" and the use of a combined baseline methodology, big data and digital inclusive platforms
  - **Risk** – Un-identified and un-mitigated harm – failure to meet legal and international obligations – needs to be fully integrated with government's [25 Year Environment Plan](#), published in January 2018, and with the proposals set out in the Environment Bill published in January 2020
    - “Fast track for Beauty” – will this just be de-risked standardisation?





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# Discussion

## [Outlaw Article](#)

Planning White Paper:

What it means for Design and the Environment

<https://www.pinsentmasons.com/out-law/analysis/planning-white-paper-design-the-environment>





# Planning White Paper – Consolidated Infrastructure Levy including potential abolition of S106

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12 August 2020



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# Pillar 3: Consolidated Infrastructure Levy including potential abolition of S106

- **Context**

- Government's updated [report on developer contributions](#) (August 2020) in relation to CIL and S106 in England in 2018-19 (£c.7billion)
- White Paper seeks to address common criticisms:
  - time spent negotiating agreements
  - "dark art" of viability discussions
  - some perceptions of inefficiency and inconsistency in capturing land value uplift of the current system

- **Immediate Term Proposals**

- Immediate term minor changes to the CIL Regs to allow First Homes to be eligible for relief like other types of affordable housing





# Pillar 3: Consolidated Infrastructure Levy including potential abolition of S106

- **Proposals for new mandatory consolidated national Infrastructure Levy (nos. 19 to 22)**
  - Nationally set levy as a fixed proportion of the final development value (or an assessment of the sales value if development is not sold e.g. rental homes)
  - To be set nationally in a single rate or area-specific rates, with an aim of increasing national revenue compared to the current system. Revenue to continue to be collected and spent locally
  - Paid at the point of occupation (not commencement) but figure based on the applicable rate at the point planning permission is granted
  - Would cover all use classes and development above a certain value-based viability threshold, reflecting **average build costs per sqm, with a “small fixed allowance” for land costs**
  - Would include affordable housing (on site “in kind” provision or on-site or off-site land would count as an offset against the levy – see later slide) and all other S106 planning obligation contributions.
- Proposed that S106 agreements would be abolished



# Pillar 3: Consolidated Infrastructure Levy including potential abolition of S106

- **Proposal for new mandatory consolidated national Infrastructure Levy**
  - Would apply to changes of use which require planning permission or are PD - including office to resi conversions, not just new floorspace – big change from CIL
  - Maintain current CIL exemption of self and custom build from the new levy
  - The Mayor of London's CIL and potential Combined Authority CIL would still be retained
  - In low value areas, viability threshold may not be exceeded so no or low levy; in higher value areas, viability threshold would be exceeded more so higher levy
  - Allow Local Authorities to borrow against Infrastructure Levy so they could forward fund infrastructure (and incentivises them to do so) but note that funding may be used more flexibly than CIL including on council services or reducing Council Tax and a proportion may be used to fund core planning services so may not all be spent on infrastructure
  - Not clear (other than for AH) whether works in kind by developers would be an offset
- **Alternative option**
  - Infrastructure levy optional and set by LAs but as cannot use S106, would be an incentive to impose the levy



# Pillar 3: Consolidated Infrastructure Levy including potential abolition of S106

- **On-Site affordable housing “in kind” offset against the levy**
  - On site in-kind provision would count as an offset against the levy. Could be made mandatory where an authority has a requirement, capability and wishes to do so
  - LAs to have the “means to **specify** the forms and tenures of the on-site provision, working with a nominated RP”. RP buys unit at a discount and the discount against market rate would be the in-kind offset against the levy
  - First Homes discount to market when sold direct to the customer would offset the levy
  - Dynamic response options in relation to a market downturn:
    - LAs could be allowed to “flip” a proportion of affordable units back to market units where the affordable housing in-kind offset has become greater than the levy itself.
    - Alternatively, the developer would have no rights to reclaim overpayments.
    - Government could provide standardised **agreements** to codify risk sharing
  - If no RP wants the units due to poor quality, LA have the option to revert back to cash contributions





# Pillar 3: Consolidated Infrastructure Levy including potential abolition of S106

- **Alternative “right to purchase” option for on-site affordable housing**
  - Right of first refusal for LA or RP to buy up to a set proportion of on-site units (on a sqm basis) at a discounted price, broadly equivalent to build costs
  - Proportion would be set nationally and developer would have discretion over which units were sold in this way
  - Threshold for smaller sites, below which on-site delivery would not be required and cash payment could be made in lieu
  - Where on-site units were purchased, these could be used for AH or sold on or back to the developer to raise money to purchase AH elsewhere. LA could use levy funds or other funds to purchase units



# Pillar 3: Consolidated Infrastructure Levy including potential abolition of S106

## Issues

- **Standard rate averaging drawbacks:** Standard percentage rate of development value is a blunt instrument with an inherent “averaging problem” i.e. seeking to reconcile different site costs & values characteristics e.g. greenfield v urban. End up with either a lowish rate (but then no S106 top up so lose out) or a higher rate that allows exceptions but that then re-introduces some negotiation
- **Phasing clarity:** Phasing and timing of payments for large and phased developments needs explanation (e.g. occupation of a block, phase or unit?)
- **Any better than CIL?** Same discounts and exemptions? Will require better legislation and a less-complex procedure than CIL to be any better. Latest CIL reforms were well received...
- **Levy can be used for wider purposes** - risk levy may not be spent on infrastructure need created by the development
- **On-Site AH** – Absent S106 agreements, agreements still likely to be needed regarding the AH specification and terms/value of transfer so why not keep S106 agreements?



# Pillar 3: Consolidated Infrastructure Levy including potential abolition of S106

## Issues

- **Wider role of S106 agreements:** S106 agreements do more than just secure payment of contributions and delivery of a specific affordable housing percentage e.g.
  - secure affordable housing in perpetuity by legally binding the land and can give local people priority in taking an affordable dwelling
  - secure sustainable travel methods, encourage the employment of local people in development construction jobs, provide retail units at an affordable rent and secure on-site facilities such as open space, schools, doctors' surgeries and community facilities
  - secure mitigation which cannot easily be conditioned on a planning permission, such as the payment for air quality monitoring stations and the payment for ecological off-setting land
- **In-kind non AH works:** will there be an offset in relation to all on-site “in kind” infrastructure provided, as is being suggested for AH, e.g. schools, GP surgeries etc?



# Pillar 3: Consolidated Infrastructure Levy including potential abolition of S106

## Opportunities

- ✓ Allow levy to be worked out for each LA area, not nationally, to avoid “averaging problem”. Give clear methodology in national guidance
- ✓ Allow levy to be spent on AH & focus on the detail of in-kind on site AH provision & offset
- ✓ Do charge levy on occupation to eliminate viability reviews and reduce complexity
- ✓ Do allow (and don't forget the CIL lessons learnt re) payments by instalments, works in kind for all works (not just AH) and exemptions carried forward from CIL
- ✓ S106 Agreements could still be slimmed down significantly and a national model form produced (and therefore timescales speeded up) due to the levy including AH but do not abolish S106 agreements as they perform other important roles and will be needed in some elements of AH agreements with RP's and LA's too
- ✓ Do provide for most/if not all of the levy to be spent on infrastructure
- ✓ Do allow LA borrowing against levy receipts but give guidance to LAs





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# Discussion

**Outlaw Articles**

Planning White Paper:

<https://www.pinsentmasons.com/out-law/analysis/planning-white-paper>



# Thank you for listening

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