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Welcome to Landmark Chambers and Pinsent Masons' 'Digital Planning' webinar

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

Your speakers today are...



Nicholle Kingsley (Chair)
Partner, Pinsent Masons



Zack Simons
Landmark Chambers



Dr Sue Chadwick
Strategic Planning Advisor,
Pinsent Masons

Topic:
Digital Planning: a few thoughts

Digital Planning: a few thoughts



Dr Sue Chadwick,
Pinsent Masons



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1947

- February
 - Alan Turing gives a lecture to the London Mathematical Society introducing the Automatic Computing Engine
 - Notes that “the possibilities as to what one may do are immense” and that “we shall need a number of efficient librarian types to keep us in order”
- August
 - First modern planning act, including notion of land as a “corporeal hereditament”



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2021

- The Government's response to the Building Better Building Beautiful report states that
 - digital technology can and should transform the way in which the planning system operates.
 - This...could also allow for a certain level of automation
 - Greater use of digital tools...have already shown the ability to improve the quality of local engagement.
- We are still defining land as we did in 1947 – ignoring its digital identity and potential
- Is the planning system ready to jump from 1947 to 2021?



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Outline:

- Consideration of what digital planning means in practice
- The current framework for information/data management
- Key areas where emerging technologies will disrupt existing processes and the legal risks emerging:
 - Smart consultation and “Gunning” principles
 - Non-interpretible decisions
 - Equalities
 - Human Rights
- The main components of digital governance - and the changes we could start making now



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What IS digital planning

- There is no legal or formal definition, the term is used in a variety of contexts to describe processes and techniques
- It can simply mean substituting electronic for paper materials, but it can also include
 - Electronic engagement, virtual meetings and hearings
 - Population of documents and processes with real time information, including biometric monitoring
 - Automated processes and predictive tools based on machine learning
 - Digital twins of buildings and cities where buildings, environment, infrastructure and humans merge



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Digital change - current

- replacing paper documents with electronic, machine readable versions
- Replacing paper notices with electronic ones
- Replacing physical with digital service
- Replacing physical with digital deposit
- Online meetings and hearings
- Visual images generated by drones, viewed on virtual sites
- Electronic methods used to engage future as well as existing populations



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Digital change - future

- Increasing awareness of the ‘digital twin’
 - Allows modelling of developments, could make repurposing proposals easier to assess in advance
 - Will be required (to a limited extent) as the recommendations of the Hackitt review are brought forward in the Building Safety Bill
- Increased automation of processes including
 - Call for sites on local plans
 - Validation of applications
 - Back office functions
 - Environmental assessment



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What does the PWP say

- Open Data (p14, 7) data standards (23, 31, 33), digital processes (31) and services (33)
- Automated validation (31) data rich registers (32), digital templates (32), digitally decision making (57)
- Digital tools for civic engagement (17,33,53)
- Digital Local Plans(57) with digitally consumable rules (p17) interactive maps (24), and policies (33) data-driven insights (27), accessible by smartphone (19, 33) Automatic screening for plan compliance (26)
- Modernised modular software (17, 31) Digital co-creation platforms for neighbourhood plans (36)
- Involve PropTech sector (17,31,33,58)



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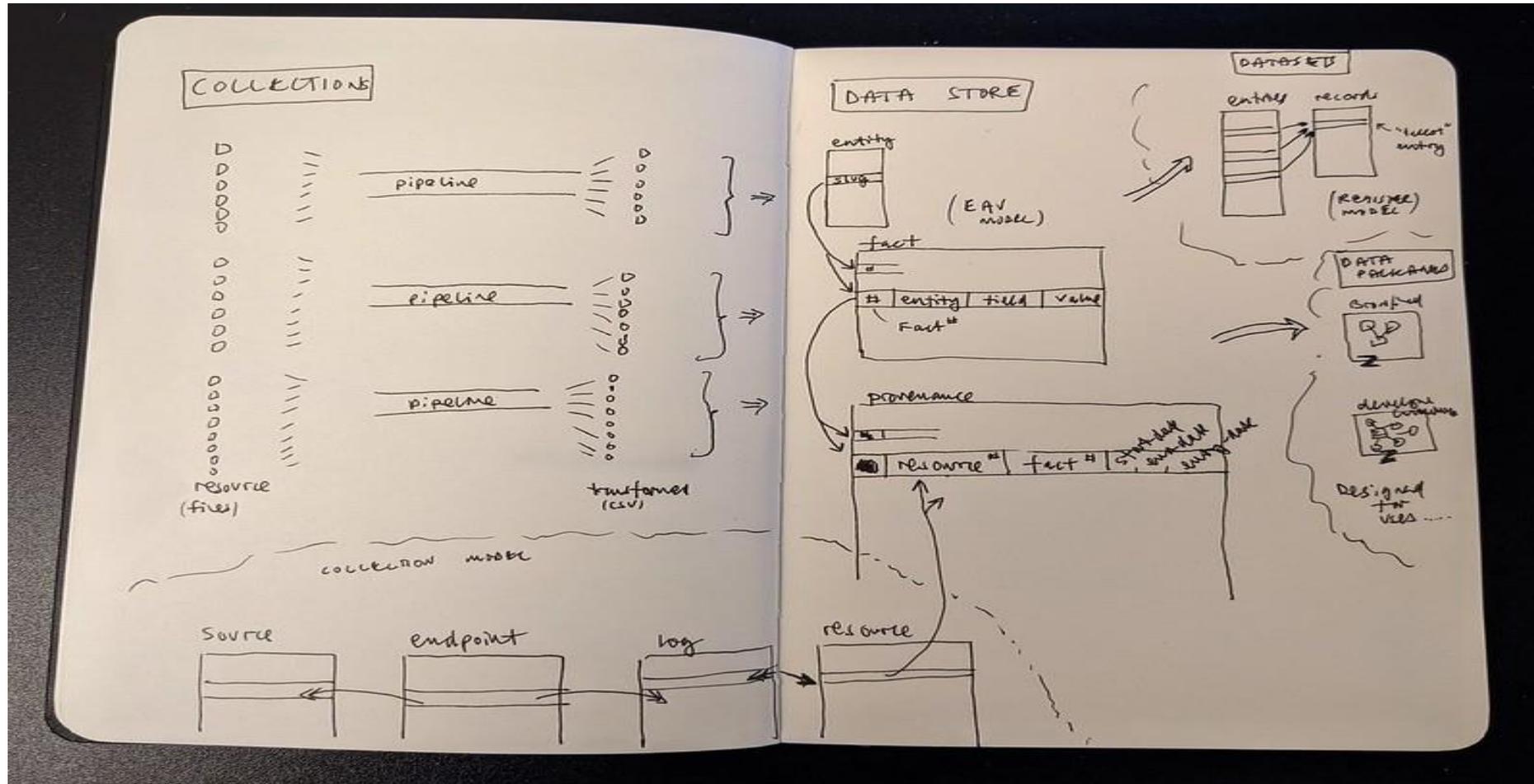
From this..



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To this?



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From this



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To this?



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(Hopefully not) to this..



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Data - current regulatory framework

- DMPO 2015 regulates a wide range of issues relevant to planning information, from pre-application submission through to post-completion publication of documents on the planning register
- EIR Regulations 2004 give the public rights of access to specific categories of information
- The Local Government Act 1972 has specific provisions relevant to disclosure of information including Section 100D (background papers for committee reports)
- *Holborn Studios v London Borough of Hackney* - the latest permission quashed for non-compliance with this section



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Data - wider regulatory framework:

- Data Protection Act 2018 (DPA 2018) and the General Data Protection Regulation (GDPR).
- The Infrastructure for Spatial Information in the European Community Regulations 2009 (INSPIRE) implement Directive 2007/2/EC require public authorities to make spatial data sets publicly available in a consistent and useable electronic format
- The Re-use of Public Sector Information Regulations 2015 (RPSI) give the public the right to request the re-use of public sector information and detail how public bodies can charge for re-use and licence the information



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Disruption (1) consultation

- On the one hand:
 - dramatically improved “access” to a site
 - The scope of engagement is widened to a much and made more interesting through social media etc
 - Social Media facilitates greater engagement with the community
- On the other
 - Digital exclusion and discrimination
 - Issues surrounding social media (and virtual meetings)
 - Recent changes to the DMPO are mostly temporary



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Consultation legal issues

- For planning, primarily regulated by the 2015 DMPO
- The Gunning principles still apply to every consultation.
 - Consult at a formative stage
 - Sufficient reasons to facilitate intelligent consideration and response
 - Adequate time for consideration and response
 - Take the product of consultation conscientiously into account
- Government itself recently criticised for not consulting on making some changes permanent (Legislation Scrutiny Committee [Forty Second Report \(parliament.uk\)](#))



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Disruption (2): dealing with data

- On the one hand increased awareness of the need to digitalise the planning function, the benefits of digitalisation and consequent willingness to begin the process of change
- On the other
 - The ‘statutory scheme’ for planning decisions originates in 1990
 - The legal framework for committee decisions originates in 1972
 - There is no use simply acquiring data if it cannot be used, shared and stored effectively



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Risks of ignoring the digital twin

- Avoidance of need to digitise because of the scale and complexity of the problem
- Subcontracting of elements of planning function to the ‘Proptech’ industry with insufficient regard to interoperability, cybersecurity, GDPR compliance, etc
- Increased risk of challenges, complaints and reduction in public trust
- Recent [CDEI report](#) on use of data during Covid-19” *Good data governance was top of mind for all our participants, ...Participants commented on the difficulty of translating theoretical frameworks into practical steps*



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Disruption (3): AI

- AI – and particularly Machine Learning – is being used in an increasing range of situations
- It is an effective and efficient way to improve the evidence base for complex decisions especially those relying on environmental data
- It is also likely improve the efficiency of the planning function, through automation of processes such as back office function and application validation
- Pilot studies are getting closer to adoption eg
 - Open Systems Lab and RIPA
 - DXW and monitoring affordable housing
 - Urban Intelligence and call for sites



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AI legal issues...

- This is a pervasive technology - as its capacity expands, so does the scope for procedural and legal error.
- GDPR – the nearer we get to the machine making the whole decision, the more easy it is to breach Article 22
- It is becoming increasingly easy to assert:
 - insufficient regard to uncertainty in the application of predictive algorithms or use of complex metrics,
 - too much reliance on data produced from a non-interpretable algorithm, leading to a decision that cannot be fully reasoned
- There are also ethical issues...



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AI and Human rights

- Divisions between digital and physical, building and human, environment and infrastructure are increasingly blurred
- Use of technology to measure biometric information – faces, fingerprints, speech, gait, temperature – is improving all the time.
- There is already case law recognising that use of AFR engages and infringes Article 8 – the right to a private life
- As buildings become ever more sensory – and cognate – we need to recognise the human rights impacts and take them properly into account



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AI and equalities

- A new gap is opening - the digital divide and there is an emerging concept of digital discrimination – related often to age and socio-economic status
- The Environment Bill includes a definition of a “digitally excluded person”
- In addition there is increasing awareness of the inequalities that are already baked in to machine-based learning: not “mutant algorithms” but poor data sets and training practices
- Current understandings of equalities impacts need to adapt to these new challenges



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Responses - consultation

- Procurement of software:
 - need to build in checks specific to software, including equalities considerations, cybersecurity, data privacy
- Make use of software transparent, ideally with formal adoption (even delegated officer report)
- Make further changes to DMPO and GDPO to make submission digital by default – begin with approvals for prior consent?
- Add guidance on data management and sharing to the NPPG



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Response – recognising digital twins

- DMPO could
 - Require digital access statements
 - Embed recognised data standards
- Engage with the idea of an application as a digital entity, evolving into the digital twin of any future built form, or infrastructure system
- Begin to secure packets of important information – in the future this will be required as the Building Safety Bill becomes law
- Consider provisions on data management and sharing as part of planning benefits?



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Response – digital ethics

- Increased awareness of the risks and benefits of using smart solutions
- Include guidance in NPPG on
 - procurement of digital software, hardware, or professional services
 - Technology specific considerations such as interoperability, cybersecurity and data protection
- Encourage transparent adoption of AI
 - As part of application
 - At service level
 - Within individual decision making



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Conclusion

We can only see a short distance ahead, but we can see plenty there that needs to be done.

Alan Turing



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Panel Discussion

Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.



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Thank you for listening

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