



Plan-making in a changing climate

10am 6th November 2020

Cornerstone Barristers
Planning Week 2020

Speaker



Wayne Beglan

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Planning Week 2020



Tuesday 3rd - 10am - **Case Law Update - Part 1**

Speakers: Ryan Kohli, Emma Dring, John Fitzsimons; Introduction: Josef Cannon – available online



Tuesday 3rd - 2pm - **Is Net Zero still cool?**

Speakers: Michael Bedford QC, Estelle Dehon – available online soon



Wednesday 4th - 2pm - **Panel discussion on regeneration.**

Guest speaker: Jeremy Potter, Spatial Planning Manager, Chelmsford City Council.

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Thursday 5th - 10am - **Case Law Update - Part 2.**

Speakers: Robin Green, Emmaline Lambert, Ben Du Feu

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Friday 6th - 2pm - **Remote events: where are we now?**

Speakers: Dr Ashley Bowes, Ruchi Parekh

Topics for This Morning



1. The White Paper – Plan Making
2. Duty to Co-operate – What next
3. Sustainability Appraisal – Some possibilities
4. Questions?



Local Plan Webinar Series

1. SEA/SA – James Findlay QC, Rob Williams, Emma Dring
2. Joint planning across authority lines - Michael Bedford QC, Joe Cannon, Dr Ashley Bowes
3. Green Belt release - Paul Shadarevian QC, Jonathan Clay, Wayne Beglan
4. Viability and funding infrastructure, including in relation to Garden Communities - Michael Bedford QC, Wayne Beglan, Clare Parry



1. The White Paper

Nature of the Discussion



- White Paper (c. 50 pages)
- Consultation closed, but no Government feedback as yet
- Controversial consultation
- Primary legislation? Yes.
- Secondary legislation? Yes.
- Guidance? Yes.
- An unavoidable lack of fine detail at this point
- Fundamental planks of suggested changes under challenge

The White Paper – Foreword (PM)



- The ambition:
 - “tear it down and start again . . .
 - That is what this paper proposes.
 - Radical reform unlike anything we have seen since the Second World War. . .
 - Not more fiddling around the edges, not simply painting over the damp patches, but levelling the foundations and building, from the ground up, a whole new planning system for England”

Foreword (PM)



- The ambition - result

“And, above all, that gives the people of this country the homes we need in the places we want to live at prices we can afford, so that all of us are free to live where we can connect our talents with opportunity

= 300,000 dpa at national level

= Building Better, Building Beautiful

NB: Very real debate about whether the proposed geographical distribution of units is truly building homes where most needed

Existing Challenges



Local Plan Process Flaws

- Complex
- Discretion
- Protracted
- Complicated assessments
- Public trust

9 challenges identified. Five changes relate most to Local Plan process.

- A system based on rules
- Requires a (simplified) framework
- Framework will be the local plan
- So, critical that should be (a) in place; (b) up to date
- C.f. current position
 - Only 50% of LPA have up to date plan in place
 - Preparation averages 7 years

Proposed Local Plan approach



- Growth / Growth

- Renewal

- Protected

The Area Approach

- Substantial development, of type specified in the Plan
- Some development, e.g. gentle densification
- Development “*restricted*”
- NB: Not “*precluded*”
- Will have similar application approach to the existing application process

Growth / Growth



Substantial development,
as defined in forthcoming guidance
To “*remove any debate*” on meaning of phrase

SD of a type specified in the Plan

- housing / retail / employment / mixed use?
- comprehensive development

Consequence of meeting specification

- Automatic outline approval
- Faster consent route for (a) securing good design; (b) site-specific technical issues
- 3 routes for technical approval

Growth / Growth – some questions



? What if proposals don't meet plan: Can still come forward as “application” – exceptionally

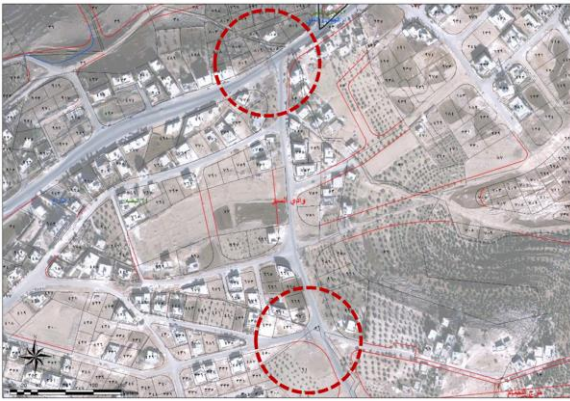
? How to ensure that in Growth Areas the specification for types of development will be respected in planning applications and decisions actually made, without prohibiting other kinds of development

? Will LPAs be adequately resourced to conduct up-front evaluation to identify the right Growth Areas. “Chicken and Egg” resourcing problems?

? Will LPAs be cautious about allocation of Growth Areas if there is a perceived lack of control once designated

? What, in fact, will the guiding criteria be for whether areas should be designated as Growth or Renewal, beyond development capacity (spatial considerations)

Renewal



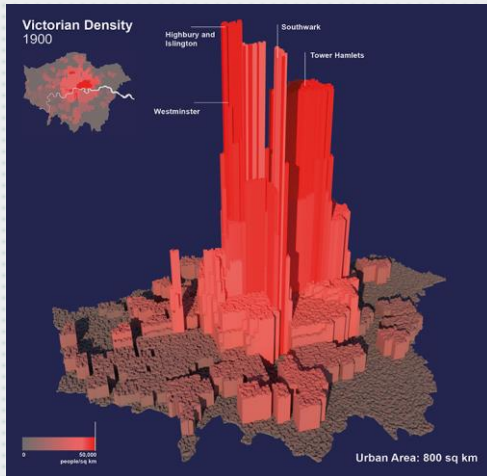
Designation for existing built up areas

- where smaller scale development is appropriate.
- a general presumption in favour of development,
- the terms of which will be set out in legislation

The presumption will be based on a strengthening of the emphasis on a plan-led approach

Again, 3 types of detail application envisaged

Renewal – some questions



Not subject to as much consultation debate

The “slight densification” example

Clearly capable of covering areas with vastly different characteristics



May be here that tension between rules and discretion comes most sharply into focus?

KEY: Will be the way the general presumption for these areas is framed

Protected

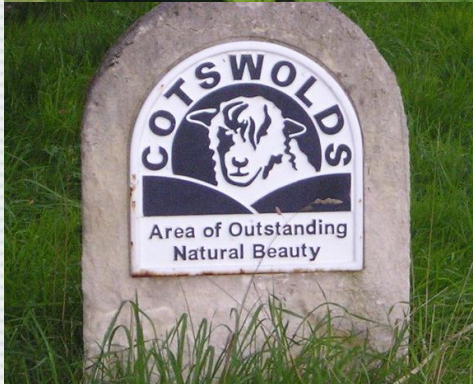


Any development (outside of PD rights etc) must come forward with planning application

And will be judged against policies in the NPPF

“This would include areas such as Green Belt, Areas of Outstanding Natural Beauty (AONBs), Conservation Areas, Local Wildlife Sites, areas of significant flood risk and important areas of green space. At a smaller scale it can continue to include gardens in line with existing policy in the National Planning Policy Framework. It would also include areas of open countryside outside of land in *Growth* or *Renewal* areas. Some areas would be defined nationally, others locally on the basis of national policy, but all would be annotated in Local Plan maps and clearly signpost the relevant development restrictions defined in the National Planning Policy Framework”

Protected – some questions



? How will zones/areas deal with “tension at the edges” between at a Renewal/Protected border, or Growth/Protected border

? How will weights to environmental characteristics be ascribed in a “rules based” system

? How will guidance at national level permit an adequate response to sites where Protection arises from highly site specific circumstances?

The new single Local Plan test [1]



- “[1] contribute to achieving”
- [2] sustainable development
- [3] in accordance with policy issued by the SoS”

[1] Contribute to achieving

Will be the hurdle to surmount
Being introduced in to address the
“challenges” set out earlier

- 50% coverage of LPs
- 7 years of process
- (against 5 year review requirement)

C.f. the existing four tests of soundness in
para 35 NPPF

A contribution will be sufficient

The new single Local Plan test [2]



- “[1] contribute to achieving
- [2] sustainable development
- [3] in accordance with policy issued by the SoS”

Sustainable development

- Retained on basis of being existing and well understood test
- SA process will be abolished; with new streamlined alternative
- DTC also abolished
- A simplified approach to viability

The new single Local Plan test [3]



- “[1] contribute to achieving
- [2] sustainable development
- [3] in accordance with policy issued by the SoS”

The \$64,000 question!

Referenced under proposal 3, but then not further discussed in substantial detail

Some indicators:

Green Belt protection will remain substantially the same

Heritage statutory protection and guidance has been working well

A “fast track for beauty”

Provision for Growth/Renewal permission to be conditional upon Masterplanning and Site-Specific Design Codes

Proposed Stages to Examination



5 Stage Process

- Call for “areas” [6 months] Opportunity for public consultation
- Draw up plan + evidence base [12 months]
- Submission and publication [6 weeks] A streamlined procedure – the second opportunity for public consultation
- Examination [9 months] Applying the single test and making binding recommendations
- Adoption [6 weeks]



2. The Duty to Co-Operate

The Webinar Series - Recap



- Binary nature of DtC
- The legislation
- Applies to strategic matters
- The Main Cases
- “Mirror Principle”
- Focus: Outcomes
- Audit

DtC – Recognition of the issues



White Paper plainly identifies DtC as major barrier to successful plan making

Proposes abolition – but unclear what mechanism might replace it

Remains a clear need for strategic co-operation – how will that be incentivised?

And what provision will be made in meantime?

DtC – Possible transitional approaches



- New legislation
 - Introduce greater level of flexibility;
- Revise PPG further
 - Or idea that DtC should be tested against reasonable judgments of the LPA;
 - Allow a definitive basis for demonstrating compliance with DtC;
 - Require focus on whether DtC bodies themselves are maintaining objections based on matters which cannot be addressed during DM;
 - Introduce power to allow inspectors to direct what further steps would secure compliance (at Reg 18 or Reg 19 stage)



3. Sustainability Appraisal

SA – Taking Stock



- White Paper
- BREXIT
- New legislation
- Abolition of SA
- Improving SA guidance

White Paper proposals to abolish SA

Seen as one of the fundamental issues behind eLP failure; unnecessarily levels of complexity to approach

And even now, many years on, lack of clear guidance as to what can definitively be the basis of sound SA, in particular in relation to “reasonable alternatives”; what conclusions need to cover; proposed structure and format

Continuing requirement for greater certainty – due to number of plans coming through

SA – Key Messages for future



- Complementary

The SA process should be genuinely complementary to Local Plan
- Examination process

It is the Plan which is under examination, SA (or successor) should not dictate plan contents

Evaluation of LPA judgments should be given appropriate deference (Runnymede)
- Public participation

Debate to be had about overlaying “planning objectivity” over weight given to MPCs during consultation – where is balance to be struck?



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SEE YOU AGAIN FOR OUR OTHER EXCITING PLANNING WEEK 2020 SESSIONS!



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