

**Planning safeguards to be axed when the planning system is torn down**  
**Comments on 2020 government proposals**

- 1) The government has published a White paper and a consultation document, called Changes to the current planning system, setting out radical changes to the planning system. This guide comments on both documents. and the para and page numbers listed relate to the White paper.
- 2) **Tearing down the current planning system** In the Foreword to the White paper, the Prime Minister says at page 6, 'The whole thing [the planning system] 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. That is what this paper proposes.' Later on the Prime Minister says, 'It will be a whole new planning system for England.'
- 3) Planning is a complex balance between the interests of the local community, those who seek to build etc. and the public interest. Within it are very important safeguards. Tearing down the planning system is a wholly inappropriate approach.
- 4) **The three great false promises of the scheme Simplicity, clarity and faster planning decisions** The Prime Minister says the new system will be simpler, clearer and produce results faster, see page 6. Owing to the lack of specifics and the structure of the new system, it is likely to be more complex and professionals will have difficulty grappling with all the difficulties it presents. The current system looks to local authorities to find land for houses to be built who processes applications from owners and developers. The proposed system instead of only dealing with suitable land has to divide England into three planning zones, Growth, Renewal and Protected areas. This would be a huge and very expensive exercise which would take years. Because of the this, the new system will be more complex, less clear and make the grant of planning permissions slower for the term of this Parliament.
- 5) An example of how complex the system is can be shown by how the housing targets are going to be fixed. The consultation sets this out at pages 12-17. There are two steps, which are:

**'Step 1**

**Setting the baseline – providing stability and certainty by incorporating a blend of household projections and stock**

Para 23. We consider that the baseline for the standard method should be whichever is the higher of 0.5% of existing housing stock in each local authority OR the latest projected average annual household growth over a 10-year period.

Paras 24-28 [Not listed]

**Step 2**

**Adjusting for market signals – maintaining price signals using the current affordability ratio and the change in affordability over the last 10 years**

Para 29 We propose the standard method will include two adjustments to the baseline using the workplace-based median house price to median earnings ratio<sup>1</sup>. Initially it is proposed that the ratio for the most recent year for which data is available in order to address current affordability of homes would be used. Then how affordability has changed over the last 10 years of published data would be incorporated, using that same statistic.

Para 30 The precise formula is as follows:

$$\begin{aligned}
 & \textit{Adjustment Factor} \\
 & = \left[ \left( \left( \frac{\textit{Local affordability ratio}_{t=0} - 4}{4} \right) \times 0.25 \right) \right. \\
 & \quad \left. + \left( \left( \textit{Local affordability ratio}_{t=0} - \textit{Local affordability ratio}_{t=-10} \right) \times 0.25 \right) \right] \\
 & \quad + 1 \\
 & \textit{Where } t = 0 \textit{ is current year and } t = -10 \textit{ is 10 years back.}
 \end{aligned}$$

[end of quote]

- 6) The complexity only increases when the not listed paragraphs above are read.
- 7) **Is the current system failing to produce sufficient houses?** The inference from the documents is that the new system is designed to produce more houses. That is explicitly stated at para 1.9. However, para 1.8 of the White paper says, ‘Last year we delivered over 241,000 homes, more new homes than at any point in the last 30 years.’ Also at para 1.8 and at para 2.25 the paper says the ambition is to create ‘One million new homes over this Parliament’. If the current system produces the same number of houses each year over a five-year parliamentary term, it will produce 1,205,000 homes over the five years. The justification for tearing down the planning system is on very poor foundations.
- 8) **The division of country into ‘Growth areas, renewal areas and protected areas’** This is at para 28 of the White paper. The test local authorities have to apply is whether the site in question is suitable for development. That test provides no clarity because the description does not reveal the criteria to be used, just that it has to be suitable. Even in Renewal areas there is a presumption of development. Nowhere does it state how this vacuous test should be applied. What guidance there is gives hardly any assistance. The current system of looking for land where building would be suitable is simpler and quicker. To designate a whole local authority area into the three zones would take a long time. Once designated, the new system would not determine whether development is suitable. To split the planning process in this way would cause delay, uncertainty and unnecessary expense, as stated in para 4.
- 9) **Making more land available** The White paper promises that more land for building will be created, see para 1.25. The question is where it is to be found. It is said that development will be automatic in Growth areas, but it is not said what the test for such

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<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoworkplacebasedearningslowerquartileandmedian>

sites will be, see Proposal 5, which is above para 2.30. The problem with automatic permission is that circumstances and knowledge about the site will change and parts of growth-designated land will change and become unsuitable. If the designation remains correct, having to ask permission in principle will hardly delay the planning application. The inference is that the planning rules will be relaxed so more sites will pass the development test. One planning rule that is to be relaxed is housing density, see para Proposal 4, which is above para 2.23. Proper housing density is very important for healthy living. Too high a density would create the slums of the future and particularly in urban areas foster social unrest.

- 10) **Areas of Outstanding Natural Beauty (AONBs)** In rural areas the preservation of the countryside is very important. Once built over it cannot be reclaimed. It is lost for ever. England's countryside is a very important heritage asset. In Rother District Council 90% of the district is in the High Weald AONB. It is of exceptional beauty.
- 11) Chris Katkowski QC was the senior lawyer on the government working party that made the proposals. He was sent this document and invited to explain 'how will the High Weald Area of Outstanding Natural Beauty be protected. Will it be automatically listed as being in the Protected zone? If so, how will the extra housing be found in Rother District Council, when about 80% of the District is in the AONB and about 90% is in protected zones (AONB, Site of Special Scientific Interest etc.)?' He replied saying that he did not 'think it appropriate to offer the commentary that was requested'.
- 12) **The one million unbuilt housing units with planning permission** The irony in the White paper is that there is a target of one million new homes within the term of this Parliament. At the same time there are estimated to be around one million housing units which have planning permission but are unbuilt (known as the land bank). The explanation for this is that land with planning permission for housing is a commercial asset like investments or gold. It often makes sense to store commercial assets on the anticipation that there will be an increase in value of the commodity.
- 13) The White paper makes no mention of the land bank. If planning controls are loosened, the extra housing units with planning permission are likely only to increase the land bank. Government proposals should concentrate on proposals which will reduce the land bank rather than increasing it. The White paper is a missed opportunity for make use of the land bank.
- 14) **Creating a new dispute period** The current proposals say that the dispute at the initial planning stage will be removed because planning permission will be automatic in one of the zones. The declared aim is to make planning applications simpler and cheaper. In fact, the proposals are likely to have the opposite effect. A dispute about a planning application is a helpful exercise because it tests the application. With the proposed automatic planning procedure a dispute is not avoided. A dispute is created at the time the decision is made as to whether a piece of land falls into a Growth area. It is likely to be just as contentious as if a planning application were submitted. However, it would lack an application so it would not be such a useful exercise as under the current system where all issues are often considered at once.
- 15) **The new targets** According to a Times article dated 27 August 2020, Litchfields, a frequently quoted planning consultant, said that if the proposals are implemented, the new housing will be predominantly in London and the South-East. The numbers in the

South-East would increase by 57% to 61,000. They also estimate that the Rother District Council housing target of 736 will convert to a housing requirement of 1,173. In Nottingham there would be a fall of 30%, in Leicester there would be a fall of 32% and in Liverpool there would be a fall of 59%. One interpretation is that the South-East is singled out for attack and growth in the cities outside the South-East will be scaled back.

- 16) **Affordable homes/Social housing** Local surveys in rural Sussex indicate that the real housing need is for social housing (once called council houses and then housing association houses) for young people who cannot afford a house priced at the market rent and elderly people who need to downsize from their houses, often into a bungalow. There is no mention of social housing in the White paper, so a large percentage of those who grew up in our village have no prospect of obtaining a house here as they are priced out of the market.
- 17) Currently, affordable housing is secured by contracts between developers and local authorities. These are known as Section 106 agreements. In Rother District Council, the proportion of affordable housing has to be 40% of the housing units for planning applications of six or more housing units in rural villages. Under the proposed system, the local authority would nominate an affordable home provider who could purchase housing for affordable homes using the Community Infrastructure Levy (CIL) money. At the moment, CIL money cannot be spent on affordable homes. This proposed scheme would be a huge benefit to developers and drastically reduce the number of affordable homes. It is also likely to cause the price of housing land to rise.
- 18) The contradiction in the plans is that in the White paper at para 1.19, it says 'We will ... deliver at least as much – if not more – on-site affordable housing'. It is claimed this will be by spending the proposed new Infrastructure Levy. In the consultation paper it says at para 76. 'To stimulate economic recovery with a particular focus on SMEs the threshold for affordable housing contributions could be raised. This would reduce the burden of developer contributions, as smaller sites are more likely to be built out by SMEs. as at present.' Small and Medium sized Enterprises and the White paper extends to small and medium sized developers and builders, see para 25.
- 19) The EU defines SMEs as businesses which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million. The Home Builders Federation (the trade body for builders) defines Small and Medium builders as builders who build 1,000 or less homes a year. The White paper provides no definition of SMEs. If either of the official definitions are used all developments in the Rother district will be exempt from the normal affordable homes threshold. In the consultation paper it is suggested at page 27 Q18 that the threshold might be raised to 40 or 50 homes. This would apply to virtually every or all developments in northern part of Rother District Council.
- 20) The plans don't actually state that the 40% figure will be removed, but that is inevitable. Yet at the end of the Affordable section at para 4.25, it is clear that there is no definite plan. A White paper should have clear understandable proposals on such an important issue if the current system is to be torn up. However the indications are that the affordable homes provision will cease to apply to rural areas such as ours.
- 21) Action with Communities in Rural Areas (ACRE) in their letter to the Secretary of State for Housing dated 18 August 2020, is rightly concerned about the loss of affordable

homes by the proposal to raise the threshold that triggers affordable housing contributions from 10 to 40-50 dwellings. ACRE is a facilitator for affordable and social housing. The principle of affordable homes will be replaced by developers' convenience. ACRE is also worried about the new First Homes Exception Sites proposal, which despite its name, will discourage exception sites. These sites provide discounted prices for homes, which are particularly valuable in rural communities.

- 22) **The uncertainty and dramatic change will lead to delay, confusion and unnecessary expense** Looking at the legislation over the last 30 years, it can be seen that radical change and new systems cause trouble. Incremental change works well. It is manageable and focused. The current proposals will lead to confusion and, for a while, two systems will be in force at the same time. It is accepted that there will have to be transitional arrangements, which inevitably cause many problems, see para 5.2. The promise there that the transition will be smooth is an empty one. The upheaval will cost a lot of money which central government and local authorities do not have. Local authorities are struggling to cope with their current workload. The proposals will also create a plethora of legal challenges. The issues would then be unclear until each legal challenge has been decided. With appeals this can take years. The first legal challenge has already started. On 28 August 2020, the Times reported that Rights: Community Action group is bringing a judicial review case saying that the proposed plans were a breach of equity law and there was a failure to hold an environmental assessment. These challenges, which would be unnecessary if there was well-considered incremental change, will drag on for five or more years.
- 23) **Changes to the Community Infrastructure Levy (CIL)** The White paper at para 4.1 sketches some of the problems for the CIL. It does not state the advantages of the CIL scheme. The proposal is to 'abolish the system of planning obligations', see Proposal 19, which is above para 4.8. [That is the Section 106 system.] The proposal is that a threshold will be created before a community payment is required. Above that threshold, payment will only be for the value of the development above the threshold, see para 4.9. This would provide extra money for developers and deny local authorities much-needed money.
- 24) **A quicker and simpler framework for assessing environmental impact** These proposals are at para 3.27. The current system requires in substantial cases an environmental assessment to be served. This is then tested by the local authority ecologist. This system is both simple and practical. A quicker framework has dangers. Some environmental assessments can only be done at a particular time of year; if not done, the assessment is defective.
- 25) **The new timetables** New short timetables will be set, see para 2.48 Timetables have advantages but most councils are so overwhelmed with planning matters and have such restricted resources that shorter timetables will only result in poorer planning decisions. Meeting the current timetable is exceptionally difficult for many local authorities due to lack of resources. Also, a council does not control when applications are submitted. If Rother District Council receives three big planning applications in the same week, stricter timetables will lead to officials being unable to fulfil important checks.
- 26) **The merging of county councils and district councils** The Times, 27 August 2020, page 40, reported that the government, in a devolution paper to be published next month,

plans to merge county councils and district councils. Such an upheaval will cause chaos and drastically erode a local community's say on planning. This proposal is in direct contradiction to the stated aim in the White paper at Proposal 12 that the government will 'support the transition to a planning system which is more visible and rooted in local preferences and character'. Later reports indicate this change will apply to urban areas. People who live in urban areas are entitled to proper planning procedure as much as those who live in rural areas.

- 27) As stated before Chris Katkowski QC was the senior lawyer on the government working party that made the proposals. He was sent this document and invited to comment on this document and the contradiction in para 18. He replied saying that he had read this document but did not 'think it appropriate to offer the commentary that was requested'. It appears he considers that it appropriate to promote the proposals on all the webinars he says he has been involved in but not to explain vital points in the proposals. Interestingly he was specifically asked to correct any factual errors in this document and he did not do so. He has also not sought to challenge any opinions in this document either.
- 28) There are, however, some positive recommendations in the paper:
- a) The White paper states that local plans will be made simpler. Local plans are the district councils' rules for planning. If the new system stops the problem of duplication between the National Planning Policy Framework (NPPF) and local plans, that would be most welcome. Many local plans have too much confusing padding and too many aspirations. An obvious improvement would be plans to include just what is not in the NPPF and what makes an acceptable or unacceptable planning application. Housing targets should be in a separate document.
  - b) The greater use of digital technology, see para 2.38. This proposal is hardly White paper material as the government should encourage it in the normal way. However, it must be remembered that many people do not have access to digital tools and a greater number have difficulty in using them. If the system moves entirely to digital procedures it would disenfranchise the vulnerable, the elderly and the disadvantaged. A pink notice which is attached to a site where planning permission is applied for is an important feature of the planning process. If the requirement to have a pink notice is removed, applications could be waved through without the neighbours knowing about it.
  - c) Neighbourhood plans will be retained, see para 2.55.
  - d) The commitment to good design, to protecting the Green belt and Areas of Outstanding Natural Beauty (AONB). However, these commitments are not new policies. What is not stated is how the AONB and Green Belt will be protected in areas like Rother District Council where most of the land is so designated and there are insufficient areas for housing left.
  - e) The White paper promises that enforcement will be strengthened, see para 5.29. More enforcement powers will be provided. These changes are welcome. A promise at the same para to consider higher fines is revealing. The authors of the White paper appear to be unaware that for all the key offences, unlimited fines are available.

29) The opinions expressed about these proposals are very strong. Newspaper indications suggest that strong feelings are widespread.

30) Comments on the scheme, which are set out in a separate document, include:

Alan Jones, **President of the Royal Institute of British Architects**: 'There is every chance the proposals could lead to the development of the next generation of slum housing.'

**Shelter**: 'Social housing could face extinction if the government removes the requirement for developers to build it.'

Links:

White Paper: Planning for the Future

<https://www.gov.uk/government/consultations/planning-for-the-future>

Deadline for comments is 11.45 pm on **29 October 2020**

Consultation document: Changes to the current planning system

<https://www.gov.uk/government/consultations/changes-to-the-current-planning-system>

Deadline for comments is 11.45 pm on **1 October 2020**

Robert Banks

14 September 2020

Burwash: Save our Fields

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