



SCRUTINY COMMISSION – 14 SEPTEMBER 2020

PLANNING FOR THE FUTURE WHITE PAPER (AUGUST 2020)

REPORT OF THE CHIEF EXECUTIVE

Purpose of the Report

1. The purpose of this report is to brief the Commission on the content of the Planning for the Future White Paper (August 2020) and to seek its views on the draft consultation response (see Appendix attached to this report).

Policy Framework and Previous Decisions

2. The White Paper proposes significant change to the English planning system, which is likely to lead to new legislation and revised national planning policy. The outcome of the consultation will have a direct impact upon all five of the Council's strategic outcomes set out in its Strategic Plan (2018-2022), most notably the delivery of Affordable and Quality Homes. The White Paper also has implications for the Council's declaration on climate change.
3. The outcomes of the consultation on the Planning White Paper are likely to directly impact the Leicestershire Minerals and Waste Local Plan (adopted 2019) and the non-statutory Leicester and Leicestershire Strategic Growth Plan (approved 2018). Consideration of whether early reviews are required will need to be undertaken in the light of the changes to be made to the planning system in England.

Background

4. In August 2020, the government published a White Paper, 'Planning for the Future'. Its purpose is to set the framework for a wholesale reform of the planning system, to bring it up to date and make it less complex. The White Paper sets out how the original vision has become buried under layers of legislation and caselaw. It states that the system has faced decades of complexity and political argument, resulting in a system that provides insufficient homes and places that are not good enough.
5. The White Paper seeks to introduce a new planning system that is better able to unlock growth and opportunity. It seeks to improve towns and cities, revitalise buildings and supporting new development. It also seeks to enable planning services to be more efficient, inclusive and consistent.

6. The reform of the planning system proposes a series of ambitions, which are summarised below:
- Expect new development to be beautiful and to create net gain, not just no net harm.
 - Move democracy forward in the planning process, giving neighbourhoods and communities an earlier and more meaningful voice, harnessing digital technology.
 - Improve the user experience of the planning system, making information easier to find and understand.
 - Support home ownership, helping people and families to own beautiful, affordable, green and safe homes with ready access to better infrastructure and green space.
 - Increase the supply of land available for new homes where it is needed.
 - Help businesses to expand with access to the commercial space they need in places they want
 - Support innovative developers and housebuilders.
 - Promote the stewardship and improvement of countryside and the environment.
 - Create prosperity in villages, towns and cities, supporting renewal and regeneration.
 - Build more homes at gentle densities in and around town centres and high streets, on brownfield land and near existing infrastructure, helping to level up the economic and social opportunities available to communities.

7. The White Paper sets out a series of proposals for change and invites comments from stakeholders to inform a package of reform. These proposals are described as ‘fundamental’ and aim to address what the White Paper describes the planning system’s underlying weaknesses.

8. The White Paper structures the proposals into three ‘pillars’:

Pillar One – Planning for development

Pillar Two – Planning for beautiful and sustainable places

Pillar Three – Planning for infrastructure and connected places

9. Within each pillar, a series of 26 questions have been set. Views are being sought as part of this government consultation on responses to the 26 questions. The full list of questions set out by government, and the draft response to those questions on behalf of the County Council is set out in the Appendix to this report.

Pillar One – Planning for Development

10. Pillar One sets out proposals for the reform of the strategic planning aspect of the planning system. The present system is based on Local Plans, brought forward by local planning authorities on behalf of their communities. The White Paper distinguishes between the approach taken by England compared to

other countries, such as Japan, the Netherlands and Germany. It states that those plans give greater certainty that development is permitted in principle upfront. In England, plans are policy-based with a separate process required to secure planning permission on the sites that are designated for development.

11. The government feels that reform should be based on the existing Local Plans system. National Policy is set out in the National Planning Policy Framework (the NPPF).
12. The government seeks to introduce change to shorten the time that is taken to produce Local Plans. They want 'digital' Local Plans, which can be simpler and easy to read, providing certainty about what can be developed on land, making the process for getting planning permission as simple as possible.
13. The White Paper seeks reform to the local plan process by adopting the following principles:
 - Local Plans should be based on transparent, clear requirements. for local authorities to identify appropriate levels of and locations for development that provides certainty that people can understand.
 - Local Plans should communicate key information clearly and visually so that plans are accessible and easy to understand.
 - Local Plans should be published as standardised data to enable a strategic nation map of planning to be created.
 - Plans should be developed using a clear, efficient and standard process.
 - More engagement with local communities at the plan-making stage.
 - Clear expectations on what is required on land identified for development to give confidence in future growth areas, facilitating delivery of beautiful and sustainable places.
14. The White Paper proposes that Local Plans identify three types of land: Growth areas, suitable for substantial development (such as urban extensions and new settlements); Renewal areas, suitable for development; and areas that are Protected. This contrasts with the current system where land is allocated for specific uses such as housing or employment. Under the new proposals, land that is allocated for 'Growth' would automatically be awarded outline approval for development. In Renewal areas, the reform proposes that there be a statutory presumption in favour of development being granted for the uses specified as being suitable.
15. The White Paper proposes that Development Management polices are established at a national scale. This moves away from the current system where policies are locally determined. The purpose is to have consistent standards across the country and to focus Local Plans on setting standards, such as heights and densities, in those area suitable for development.
16. The proposals aim to change the requirement for local plans having to pass a test of 'soundness' and instead introduce a single statutory 'sustainable development' test. As part of this, the White Paper proposes to abolish the Sustainability Appraisal system, which many find unhelpful and subjective, and

introduce a new simple system for assessing the environmental impact of plans.

17. A key change being proposed is the intention to abolish the 'Duty to Co-operate', which has been a key component of plan making for local authorities in recent years in preparing their plans. The White Paper acknowledges that there is a need to consider the way in which strategic cross-boundary issues, such as major infrastructure or strategic sites, can be adequately planned for.
18. The reforms propose a less prescriptive need to demonstrate that sites are deliverable. Instead, local authorities could be required to identify a stock of reserve sites which could come forward for development if needed.
19. Nationally set housing requirements for local authorities were abolished in 2010, creating a need for individual local planning authorities to join forces with other authorities in their housing market area to determine housing needs. The White Paper proposes a return to nationally set housing requirements, factoring in land constraints and opportunities to more effectively use land. The housing requirements will be based on a standard methodology. The intention of this change is to reduce the time it has taken to determine housing need, and to ensure that enough land is released for housing. Aligned with this is a proposal to abolish the need for local authorities to demonstrate that they have a five-year supply of housing land. The housing delivery test is proposed to be retained.
20. The White Paper proposes to retain Neighbourhood Plans, but changes are proposed to allow content to become focused to reflect proposals within Local Plans and introduce opportunities to use digital tools to improve accessibility for communities.
21. Finally pillar one seeks to speed up the delivery of new development. The White Paper proposes to allow a variety of development types by different builders to allow more phases to come forward together.

Pillar two – Planning for beautiful and sustainable places

22. A central theme running through the White Paper is foster high-quality development through beautiful buildings, gardens, parks and greenspaces as well as the facilities for building a sense of community. It seeks to respond to findings in the Building Better, Building Beautiful Commission report which suggests that the potential has fallen short. Government intends to respond to the Commission's report later in 2020, but the White Paper picks up on some aspects.
23. In addition to a National Design Guide, the White Paper proposes to publish a National Model Design Code, setting out detailed parameters for development in different types of location. This might include standards for arranging streets and urban blocks, positioning and hierarchy of public spaces, car parking arrangements, placement of street trees and cycle and walking provision. The intention is to provide worked examples and this work would complement a

revised Manual for Streets. The need to produce local design guides and codes would remain although the White Paper emphasises the need to prepare these documents with community input. Such guides and codes will only then carry weight if it can be demonstrated that community input has been secured.

24. The White Paper refers to there being a step-change in the design skills available to local planning authorities, as well as these issues are prioritised. Government proposes to set up a new expert body to support local authorities and to perform a monitoring and challenging role.
25. A new 'fast-track for beauty' is proposed. The idea is that those schemes that come forward in line with pre-established principles of what good design looks like, informed by community preferences, then it should be possible to expedite development through the planning process. These measures are intended to incentivise attractive and popular development.
26. The White Paper sets out measures to protect those places of environmental and cultural value. That will include those areas of national and international importance, such as National Parks and Sites of Special Scientific Interest (SSIs), but will also include those areas valued locally, such as conservation areas and local wildlife sites.
27. Measures are proposed to introduce a simpler framework for assessing environmental impacts and enhancement opportunities. The White Paper suggests this will speed up the process while protecting the most important and valuable habitats and species. The proposals also seek to increase the protection of historic buildings to ensure that their significance is conserved while allowing sympathetic changes.
28. The White Paper proposes to introduce tools to mitigate against the impact of climate change and to create a zero-carbon future. The ambition is to build homes under a new planning system that will not need retrofitting in the future.
29. Finally, under pillar two, the reforms refer to the need to channel more resources into enforcement. The measures proposed to simplify the planning system are intended to allow resources to be freed up to focus more fully on enforcement.

Pillar Three – Planning for infrastructure and connected places

30. Reform proposed within pillar three directly impacts on the services provided by the County Council. This section of the White Paper relates to the impact of development on public services and infrastructure and how these impacts are mitigated by securing contributions from developers to support existing and new communities. This area of reform is referred to as being central to the government's vision for the renewal of the planning system.
31. Under the present system, local planning authorities are able to secure contributions through planning obligations (S106 agreements) and through the Community Infrastructure Levy (CIL). S106 agreements are negotiated with

developers whereas CIL is based on a fixed charge, levied on the area of new development. CIL is not mandatory and none of the Leicestershire planning authorities have adopted it. This compares nationally with around half of local planning authorities that charge CIL.

32. The White Paper refers to the uncertainty and lack of clarity in the negotiation of planning obligations and how this means that local communities are often unaware of what level of affordable housing and infrastructure that will arise from a development. It refers to delay, cost and inconsistency in the S106 process, which is hard to dispute, particular where viability issues are raised and need resolving. CIL is mentioned as a way of addressing many of the problems encountered through negotiating S106 agreements in that it brings certainty. However, as payment is set at the point planning permission is granted and payment due once development commences, it is inflexible, and this acts as a deterrent to delivery. The CIL system has also caused problems in terms of spending as local authorities have uncertainty over funding and have to balance forward funding against other funding streams.
33. The new proposals seek to use developer contributions to capture a greater proportion of the land value uplift that occurs through the grant of planning permission and use this to enhance infrastructure delivery. The White Papers references that between 25% and 50% uplift can be secured. To achieve this, a new consolidated 'Infrastructure Levy' is proposed. It would be charged as a fixed proportion of the development value above a certain threshold, with a mandatory nationally set rate. The current system of planning obligations would be abolished.
34. The White Paper sets out how the new Infrastructure Levy might work. For instance, it is suggested that it could be levied upon occupation with prevention of occupation being a potential sanction for non-payment. It proposes a value-based minimum threshold below which the levy is not charged to prevent low viability development becoming unviable. The intention is that the new system would provide greater certainty for communities and developers about what the level of developer contributions are expected alongside new development.
35. The reforms would allow local authorities to borrow against Infrastructure Levy revenues so they could forward fund infrastructure. This, combined with being able to levy developer contributions on completion is suggested to be a way of incentivising local authorities to deliver infrastructure, helping to ensure development can be completed faster. The onus will be placed on local authorities to make sure that borrowing is affordable and suitable.
36. An alternative suggestion put forward in the White Paper is that the Infrastructure Levy be optional and would be set by individual local authorities. Government anticipates that the uptake would be higher than CIL because planning obligations would be consolidated into a single Infrastructure Levy.
37. Other proposals being put forward include the option to secure Infrastructure Levy where development is allowed under permitted development. The White Paper also sets out how the new Levy could secure either on-site affordable

housing or contributions to allow the local authority to provide affordable housing themselves.

38. The White Paper proposes that the cost of the new planning system will be principally funded by the beneficiaries of planning gain, which is landowners and developers. At present, planning application fees pay for the processing of planning applications but the cost of preparing local plans, and enforcement activities is largely funded from the local authority's own resources. The reform proposes that planning fees continue to be set on a national basis and cover at least the full cost of processing the application type. Measures are proposed to introduce greater regulation for pre-application charging to make sure it is fair and proportionate. As part of the new approach to developer contributions, it is intended that a small proportion of the income be earmarked to local planning authorities to cover their overall planning costs, including preparing and reviewing local plans, design codes and enforcement activities.
39. Other measures proposed are introducing a new performance framework to cover all planning functions; enhanced digital and geospatial capability and capacity; and enhanced enforcement powers and sanctions (including higher fines and more powers to address intentional unauthorised development).

Analysis – Corporate Perspective

40. The proposals set out in the 84-page White Paper are extensive. It seeks to radically overhaul all aspects of the current English planning system. The scope and extent of these changes has not been seen for decades, possibly since the original Town and County Planning Act in 1947, affecting all primary legislation and government policy. Change of this scale will take several years to introduce.
41. The extent to which the proposals will affect the County Council, its services, its finances and the residents it serves will become clear over time as the detail emerges.
42. An obvious omission in the White Paper relates to the County Council's statutory minerals and waste planning function. The reform proposed in relation to local plans doesn't appear to relate to the minerals and waste local plan and there is no mention to changes to the way in which minerals and waste planning applications will be dealt with, especially as changes to Environmental Impact Assessments are proposed which is a key tool for assessing the impacts of applications on the environment. It is expected that some of the proposals around the abolition of S106 agreements could be applicable, but nothing is said about non-financial planning obligations (such as HGV routing and minerals site restoration), which wouldn't appear to fall under the new Infrastructure Levy proposals. In a similar vein, little is said about renewable energy proposals other than in terms of energy efficient standards for homes. The opportunity to promote wind and solar energy schemes appears to have been missed, although those changes may emerge as part of amendments to the NPPF.

43. The new Infrastructure Levy suggests a radical change to how developer contributions will be secured. It has the potential to be a positive way of recovering additional income for County Council infrastructure. If this is set nationally, it could potentially mean an end to individual negotiations with developers and local planning authorities each time there is a challenge on viability or CIL compliance grounds. It remains unclear how this would work, and whether the option to opt out of the new Levy in the same way as authorities have opted out of CIL. It will be important to understand how the proposal will work in detail as infrastructure costs vary considerably for different schemes and a nationally set tariff might not always be sufficient to cover costs.
44. The reforms do not refer to the challenges faced by a two-tier planning system, with a County Council providing statutory duties relating to highways, flooding, education, adult social care etc. While the new Infrastructure Levy presents an opportunity to generate additional income, there is a risk that income may not be sufficient or could be prioritised towards non-county council infrastructure.
45. The proposed 'fast track' 30-month timescale for authorities to adopt new local plans appears ambitious and potentially unrealistic, especially in light of the government's intentions to front-load public engagement to this early stage of the process to by-pass the need for outline planning permission.
46. The White Paper doesn't appear to recognise the complexity and challenges around strategic planning and infrastructure planning, which needs to be fully integrated so that opportunities to secure funding are not missed.
47. The intention to abolish the statutory Duty to Co-operate as part of the Local Plan process could lead to decisions being taken that are either inconsistent, or are not aligned, with neighbouring authorities. While it is recognised that the current system doesn't place any duty to 'agree', the system does bring authorities together to discuss strategic cross-boundary issues. It is important that this collaboration does not get lost amongst a desire to simplify the process. Key to this is understanding any implications this might have on the Leicester and Leicestershire Strategic Growth Plan as partners will need to continue to engage constructively with each other if this vision is to be successful.
48. Proposed changes to design standards, environmental impacts and enforcement powers are all potentially positive. Similarly, the intention to make the legislative framework much less complex can only be a good thing.
49. The revisions proposed within the White Paper around categorising land in Local Plans represents a move towards a 'zonal' planning system, similar to the model seen in other countries. How this works in practice to make sure that there is sufficient control over matters such as design, amenity, transport and the environment will be interesting to see. The changes proposed in relation to creating a national set of Development Management policies is a positive step and will save time and avoid confusion for developers.

50. The proposed intention to allow development to get approval by default, if decisions are not made in line with targets, could cause the County Council problems if this means that Infrastructure Funding is not secured as part of this process. This would be a particular concern if the Leicestershire authorities continue operating under a two-tier arrangement as the County Council will have no control over how quick decisions are made and could therefore lose out on funding as a result of a district council's inefficient processes. In addition, residents could be concerned by this 'deemed approval' proposal as it may mean that their views are not taken into consideration.
51. Some of the changes proposed directly affect lower tier planning authorities (district, metropolitan and unitary councils) more than County Councils. However, there is the potential for the amendments to have a significantly positive impact if the County Council were to become unitary. Producing a simpler Local Plan process, based on national housing targets and removing the Duty to Co-operate and Sustainability Appraisals will save lots of time. However, there remain uncertainties about how this would work in practice as there will still be a need to plan effectively for strategic infrastructure.
52. Other positive changes include the improvements proposed for securing biodiversity enhancement and protecting the natural and historic environment. The intention to ensure the continued protection of the most important nationally and locally designated assets is also seen as positive. It will be important to ensure that the reforms do not oversimplify what can be a complex and specialist area.
53. The White Paper talks at length about 'digitising' planning, which is likely to mean much simpler and clearer forms of information for local communities. It will be important to recognise that some people will not be as digitally literate as others and therefore information will need to continue to be provided in a variety of formats.
54. Overall, many of the changes proposed are positive, with lots of good intentions, and have the potential to result in a much-enhanced planning system. The move to a more centralised way of calculating housing numbers and setting development management policies could have the unintentional impact of reducing the role of local councillors. It will be important to monitor and review how the more detailed changes will be brought forward to protect the County Council's interests, particularly around funding for infrastructure and delivering the County Council's strategic aspirations. Changes are likely to be easier to introduce under a unitary system than in the current two-tier local government model.

Analysis – LCC Developer Perspective

55. The County Council's views on the White Paper, as land-owner and developer and investor, are slightly different to the views expressed above as service provider. The comments below set out the Director of Corporate Resources' initial thoughts:

- Overall the White Paper is welcomed, by LCC as landowner, developer and investor, in its aim of creating new beautiful sustainable places.
- The move to a digital planning landscape is long overdue. The attempt to address the lack of certainty provided by the current system is received positively. A National Design Guide will help to take uncertainty out of the planning system.
- For too long the planning system has been under resourced, slow and constrained and anything that help alleviate these 3 issues are met with optimism. The suggestion that under resourcing can be 'principally funded' by developer contributions is both logical and accepted.
- The time taken to adopt a new Local Plan should be mitigated by removing local housing targets and freeing up planning officers' time to concentrate on the detail.
- Moving consultation upstream, away from individual applications to the Local Plan stage, along with the delegation of detailed planning decisions to planning officers where the principle of development has already been established, will assist. Planning officers will not have to re-consider the principle of development but instead can concentrate on the design. The new Local Plan production timetable is welcomed, but some clarity on how under-funded authorities will be penalised for allowing their timetables to slip would be helpful. Perhaps a Planning Performance Agreement, paid by developers for promoting their sites through Local Plans might assist with the resourcing issues on this too.
- How local planning authorities co-operate will become more important as the three new pillars of growth, regeneration and protection may not cleanly follow administrative borders.
- The impact of development on communities is relevant and whilst the current system of a mix of CIL and s106 isn't great, there will need to be a way of ensuring that affordable housing is delivered without it being at the expense of other elements of development. The aims of low carbon/sustainable energy, education, health/social care and the right infrastructure all have costs and the new levy system will have to address these and allow for exceptions when all the principles cannot be afforded.
- The greater use of Development Consent Orders for larger projects should also assist in bringing the timetable for development down, reduce costs and uncertainty and help the country achieve its 300,000 homes a year target.
- There is concern that these changes may be met with scepticism but overall, the certainty that they bring is positive.

Concluding thoughts

56. While the high-level aspirations of creating a simplified planning system are potentially positive, further information is required from government in order to develop its position on the proposals and this is reflected in the differing views of some of the Council's departments, as set out at the Appendix, in response to the consultation. As with any reform of this type and complexity, the detail will be important to understand and it will be important that the County Council responds to further consultations in due course, addressing matters such as:

- How the proposals will work in practice
- The implications of a digital approach to the planning process on local communities
- Funding implications for infrastructure (provision and maintenance)
- The role of statutory consultee and the potential pressure on response times
- The implication of 'deemed approval'

Resource Implications

57. There are no direct financial implications arising from this report, but the proposals have the potential to impact upon the County Council in the following ways:

- The amendments to the developer contributions process, based on land value, could be positive but there is a risk that this is too simplistic as the infrastructure costs for different schemes varies considerably. This could put severe financial pressure on local authorities, particularly where infrastructure needs to be constructed early.
- The changes appear to benefit areas with high land values, which is not proportionate to the cost of infrastructure.
- The County Council would wish to ensure protection against short-term drops in land values. Strong indexation requirements are needed if there are delays in bringing forward development.
- Positive that money is ring-fenced towards infrastructure, but there is a need for flexibility around timing of spend and what money is spent on. The timing between when a planning permission is granted (or land is allocated in a local plan) and when infrastructure is required can lead to significant change in requirements.
- Flexibility is important as some schemes will need to subsidise the cost of infrastructure on other schemes.
- Strongly oppose a minimum threshold for contributions to avoid developers making decisions to avoid paying infrastructure costs.
- Need to be stronger mechanisms to penalise developers who don't pay the levy. This might include interest on delayed payments and full recovery of costs, alongside other measures such as restricting occupancy until payments have been made.
- The proposals need to ensure that income generated increases compared to the existing system, to make sure that local or national government doesn't have to subsidise growth.
- Proposals need to make sure that the contributions secured reflect increasing costs in relation to matters such as increasing construction costs, higher build standards (such as zero carbon aspirations) and supporting those who need help, such as special education and social care requirements
- Proposals include provision to borrow to deliver infrastructure. That is no different to existing although formalising may be helpful to ensure that developers are tied into contributing to infrastructure that has already

been provided. To take this forward, important that this is underpinned by developer commitment / security and an additional uplift to reflect borrowing costs and risk.

- Prefer for affordable housing to be delivered by developers, who are more suited to delivering housing, rather than payments being made to local authorities to deliver schemes. County Council would have a role in delivering social care.

Timetable for Decisions

58. Following consideration by the Scrutiny Commission, the draft County Council response to the Government's consultation on the Planning White Paper will be presented to the Cabinet for approval at its meeting on 18 September 2020. The comments of the Commission will be reported to the Cabinet at that meeting. Consultation responses are required to be submitted by 29 October 2020.

Equalities and Human Rights Implications

59. The White Paper proposes substantial changes to the planning system. A central theme running through the reform is the government's intention to build a more inclusive system where all members of society can get involved in shaping the places where people live, work and visit. This includes improved accessibility to information using improved digital technology. The detailed measures for how this will affect County planning services will emerge in due course.
60. Changes are proposed to design quality, introducing new design codes and frameworks to help ensure that new developments take the opportunity to design out crime, secure environmental improvements and be accessible to all.

Recommendation

61. The Scrutiny Commission is asked to comment on the County Council's draft response to the Government consultation on the Planning for the Future White Paper.

Background Papers

MHCLG *Planning for the Future: White Paper (August 2020)*

Circulation under the Local Issues Alert Procedure

None

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List of Appendices

Appendix – Draft Response to White Paper Consultation

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