



CABINET – 12TH FEBRUARY 2002
PLANNING GREEN PAPER – PLANNING: DELIVERING A
FUNDAMENTAL CHANGE
REPORT OF THE ACTING DIRECTOR OF PLANNING AND
TRANSPORTATION

PART A

Purpose

1. To inform Cabinet of the proposals by the Department of Transport, Local Government and the Regions (DTLR) in its Planning Green Paper and associated documents and to seek initial endorsement for a proposed response.

Recommendations

2. It is recommended that the Cabinet endorses:
 - (a) the response set out in this report for further consideration by Scrutiny;
 - (b) the lobbying of organisations within the County; and
 - (c) communicating views to the district councils.

Reasons for Recommendations

3. To begin the process of agreeing a County Council response to the DTLR's invitation to comment on the Planning Green Paper and its associated consultation papers.

Timetable for Decisions including Scrutiny

4. The following timetable is proposed to meet the deadline for comments of 18th March 2002:
 - Planning and Environment Scrutiny Committee 21st February
 - Scrutiny Commission 27th February
 - Cabinet 12th March

Policy Framework and Previous Decisions

5. The planning system contributes to all the County Council's objectives but in particular, improving our transport system and caring for our environment.
6. No relevant previous decisions have been taken.

Resource Implications

7. None directly relating to this report, but there may be implications if the Government's proposals for the planning system are implemented.

Circulation Under Sensitive Issues Procedure

None.

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PART B

Background

8. The Department of Transport, Local Government and the Regions (DTLR) has published the Planning Green Paper - Planning: Delivering a Fundamental Change and three associated documents, listed below, for consultation:
- Compulsory Purchase and Compensation;
 - Reforming Planning Obligations;
 - New Parliamentary Procedures for Processing Major Infrastructure Projects.

Copies of the 4 documents have been placed in Group Rooms and the Cabinet Office.

9. The Planning Green Paper proposes radical and fundamental change for the delivery of the planning system. The documents complement the Government's recent policy statements set out in the White Papers 'Strong Local Leadership – Quality Public Services' (published December 2001) and the forthcoming Regional Governance White Paper (expected in March 2002).
10. The County Council is invited to make comments to the DTLR by 18th March 2002 on the Planning Green Paper and Reforming Planning Obligations, by 22nd March 2002 on New Parliamentary Procedures for Processing Major Infrastructure Projects, and by 27th March 2002 on Compulsory Purchase and Compensation.

Planning Green Paper

Proposals

11. The Government views the planning system as a complex hierarchical system of plans and proposes to simplify it by abolishing structure plans, local plans and unitary development plans. Its proposals include:
- a review of **national planning guidance** to ensure that it concentrates on key planning policies that should be determined at the national level;
 - strengthening the arrangements for **regional planning** by providing a strategic policy framework, through the preparation of Regional Spatial Strategies, within which Local Development Frameworks (LDFs) and local transport plans can be prepared;
 - allowing for **sub-regional planning** strategies to be identified within the regional planning process;
 - the removal of **Structure Plans** but with the retention of existing arrangements for the preparation of **Mineral and Waste Plans** and determining applications on these land uses;
 - the introduction of **Local Development Frameworks** (LDFs), which will be prepared alongside Community Strategies, to consist of:
 - i) A statement of core policies setting out the vision and strategy for promoting and controlling development throughout its area;

- ii) More detailed action plans for smaller local areas of change such as town centres, urban extensions and neighbourhoods undergoing renewal;
- iii) Topic plans which could cover the whole LDF area, addressing issues such as housing; and
- iv) A map showing the areas of change for which action plans are to be prepared and existing designations such as conservation areas.

Appendix 1 illustrates the Government's proposals in relation to development plans.

12. In terms of **planning applications**, the Green Paper includes proposals to speed up the decision process with the intention to ensure it is:

- responsive to the needs of all its customers and offers a new culture of customer service;
- delivers decisions quickly in a predictable and transparent way;
- produces quality development; and
- genuinely involves the public.

13. The key proposals to meet these objectives are to:

- introduce a planning checklist so that people know how to submit a good quality planning application;
- tighten targets for determining planning applications and deal with the delays caused by statutory consultees;
- encourage master planning to improve the quality of development;
- promote better community involvement by offering community groups advice on planning;
- introduce delivery contracts for the planning of major developments;
- introduce new 'business planning zones' where no planning permission is required for certain forms of development; and
- seek better and tougher enforcement against those who evade planning requirements.

Comments on the Government's Analysis of the Present System

Making the System Faster

14. One of the key issues identified by the Government is the need to speed up the system. There is no evidence, however, to suggest that the proposals for increased involvement of Government in setting plans or in key development control issues will speed up the process.

15. It is considered that:

- a main source of delay, the time taken by Government itself, has not been addressed. The publication of Regional Planning Guidance for the East Midlands (RPG8) by the Secretary of State, for example, was delayed by some 5 months. The document was due to be published in September 2001 but was not received until the end of January 2002. In addition, delay in the revision of Minerals Planning Guidance is inhibiting review of minerals local plans;
- despite the fact that there is complete national coverage of Structure Plans, and that these plans take less time to prepare than district-wide local plans, this part of the current system is proposed to be abolished.

- There are a significant number of districts that have yet to adopt their local plans, including two in Leicestershire;
- five tiers of policy remain as a result of the Government's proposals (national, regional, sub-regional, LDFs and action plans). This will not help to streamline or simplify the system. Each will require consultation, and confusion may occur especially where there is a lack of consistency between tiers;
 - decisions on planning applications are currently made in accordance with local plans once they are finalised. It is not accurate to assert that counties contribute to ponderous and uncertain decisions or that local plans and structure plans are in conflict. Local plans and structure plans can be progressed concurrently and there is a consistent two tier development plan in Leicestershire;
 - transitional arrangements are unclear.
 - it is vital that the speeding up of decisions on planning applications is not achieved at the expense of quality. The Government should look in detail at the sort of decisions it expects rather than imposing targets.

A More Accessible System

16. The Government considers that the planning system should be more accessible to members of the public. However:
- the gap between the district and regional levels is too large to span without some intermediary step. It would be impossible for the general public or local organisations to engage effectively with decision making at a regional level and influence key decisions such as housing allocations;
 - county councils have demonstrated their ability to plan strategically and deliver services locally. The preparation time of structure plans has generally been shorter than that for local plans, with the Examination in Public mechanism being more open and less adversarial than local plan inquiries. The substantial levels of public comment on Structure plans contrasts sharply with the lower level of comment on RPG; and
 - the Government has not made any specific recommendations as the most effective means of community involvement, given their other comments on reducing the time it takes to prepare plans. Real engagement is very time intensive.

A More Transparent System

17. The Government advocates a more open and transparent system but:
- transparency is promoted by democratic processes. With a democratic deficit at the regional level, key strategic planning decisions will be taken by the Secretary of State who is remote from local issues and opinion (not directly accountable to the electorate);
 - decisions taken by inspectors are not transparent or accountable and this will be exacerbated by the proposal to make the findings of Inspector's and Panel Reports binding. It is notable that proposals for binding decisions have not been extended to cover decisions made by the Secretary of State; and

- the issue of probity is not discussed. Measures to ensure probity in local authority decision making processes are not replicated in other unelected bodies that will have an increased role in decision making.

Comprehensive Change

18. Whilst there is always scope for improving the planning system it is heartening to see that the Green Paper recognises the continuing importance and necessity of planning in society. This is testament to the many positive impacts that planning has had and can have but which the Green Paper fails to adequately recognise.

Sustainability

19. The Government considers that the new system will assist in the application of the principles of sustainability. However, it is questioned whether the proposed framework will support the delivery of sustainable development as it is focussed on process and not on outcomes. In particular:

- The Green Paper is essentially economic driven to appease business interests;
- There are few references in the paper to the principle and how it might be applied. Greater emphasis needs to be given to implementing sustainable policy such as improving the quality of life in towns and cities, promoting renewable energy and recycling/waste reduction operations.
- National policy for sustainable development is required, as is guidance for the appraisal of LDFS or RSSs.

Sub Regional Boundaries Cross County Boundaries

20. The Government argues that many key strategic planning issues cut across county boundaries. This is a spurious argument as it is also demonstrably the case that many key strategic issues cut across district and regional boundaries. For example, effective consideration of issues affecting Central Leicestershire, an area which cuts across district boundaries, is best handled by the County Council which can take a strategic view. The same arguments apply regarding sub regional development control measures such as green wedges. There have also been numerous examples of studies and strategies which cut across regional boundaries including the Milton Keynes/South Midlands Quadrangle study.

Implications for Policy Application

21. The Government maintains that the proposals will not affect the application of policy but:
- Neither districts councils nor regional assemblies have adequate expertise or resources. County councils are, however, able to pool resources and employ specialist staff on a wide range of matters.
 - districts are not best placed to take strategic policy decisions due to a number of factors including:-
 - i) a "NIMBY" reaction to many developments. It is the role of county based strategic planning to co-ordinate the provision of 'unwanted' development where such a demand exists, for example housing,

- noisy sports, renewable/ non-renewable energy installations and minerals and waste proposals;
- ii) planning locations such as junction 24 and East Midlands Airport. Locations such as these have regional significance and therefore require joint working at a sub-regional level to provide a balanced way forward;
- iii) the distribution of housing is a task that must be equitable, delivered via a process that secures the involvement of all interested parties and stakeholders, is democratically accountable and yet capable of delivering relatively fast decisions.

Comments on the Government's Proposals

National Planning Guidance

22. An overhaul of national planning guidance must offer simplification and improvement. The proposals will not reduce the volume and complexity if the PPG 3 approach - splitting national policy and implementation guidance into four documents - is implemented.

Regional Planning

23. Strengthening regional planning, whilst at the same time abolishing county based strategic planning, raises a number of concerns. In particular:
- the preparation of RPG in two tier local authority areas relies heavily on input from county based staff. If county councils divert from their strategic planning work then there will be no resources to produce RPG;
 - there is reduced accountability at the regional level due to:
 - i) an unelected Regional Assembly
 - ii) the involvement of other stakeholders in decision making, such as the East Midlands Development Agency (particularly in relation to the identification of Business Planning Zones), which raises probity issues;
 - iii) a lack of local democratic and community input.
 - In the East Midlands, for example, forty district and unitary authorities will have to liaise with the regional level, for example in relation to housing allocations. The resources available to district councils suggest that they will be unable to contribute meaningfully to the process in technical or political terms.
 - The proposed Regional Spatial Strategies will be unable to provide effective guidance to such wide ranging districts in the East Midlands region spanning the three cities, north Nottinghamshire coalfields, rural shires and Lincolnshire coast.

Local Development Frameworks

24. These frameworks raise a number of concerns:
- the vast majority of district boundaries do not match real geographically based areas of importance;

- there is potential for inconsistency between frameworks of adjoining district councils;
- the Government is already concerned about the capacity of smaller district councils to deliver best value. It is questioned whether district councils have the capacity to deliver frameworks;
- the link between action plans and LDFs is not clearly stated in terms of consistency and timetabling. Community based action plans will raise expectations about what the community expects to happen within its area. It has to be clear that the action plans must accord where appropriate with the LDF and RSS, otherwise confusion and disillusionment will occur.

Planning Applications

25. The Government's aim of speeding up decision making for planning applications raises issues for county matters:

- It is not clear whether the targets proposed apply to county matters. The current targets do not and most minerals and waste applications involve EIA regulations, where a longer period for determination is allowed;
- Agreeing a timetable for delivering a decision on major applications is welcomed to help speed up decisions as long as a degree of flexibility is retained for circumstances that require the timetable to be reviewed.
- In the interest of quality decision making, it is more important that statutory consultees are required to respond with clear and helpful responses within statutory timescales than charges being made to the County Council for undertaking such consultation;
- Pre-application consultation should be encouraged and incentives introduced for applicants who do this.
- Planning fees, including that for county matters, should be increased with a view towards covering the cost of the service. Currently, a significant element of county planning work does not attract a fee. This should be rectified.

Sub-Regional Planning

26. Sub-regional planning undertaken at the county level must be recognised by the Government if an effective planning system – simpler, faster, more accessible and transparent - is to emerge, in particular, as:

- it has been demonstrated that Government decisions can already be slow. Taking on board additional responsibility at the sub-regional level and in terms of major infrastructure projects will exacerbate this problem;
- in the past the Government has promised not to take powers from local councils in favour of the region. These proposals can be interpreted as contributing to the Government's centralisation through the regional level;
- RPG cannot effectively deal with a number of key topic areas, including housing distribution, employment land allocations, retail floorspace requirements, minerals and waste and, as is the case in Leicestershire, green wedges in the detail required to ensure consistency of approach;

- Links to a range of strategies prepared by county level service providers – eg. Local Transport Plans and rural strategies - that are strategic and must be complementary and consistent with the new planning framework.
27. Despite the Government's views on the current local plan process no change is proposed in terms of counties preparing minerals and waste local plans. Although, retention of these plans at the county level is welcomed, clarification is required in terms of:
- how such plans fit into the proposed new system;
 - the relationship of waste plans to municipal waste strategies, LDFs, the regional framework, the National Waste Strategy and European directives.

Case Studies

28. The following case studies illustrate the necessity for County involvement in a sub-regional level of guidance:
- Junction 24 – The area around M1 Junction 24 and East Midlands Airport has been seen by developers and business interests as a potential growth pole for some time. It is within countryside and prospective development in the area raises many concerns about environmental sustainability, impact on important transport interchanges and impact upon inner city areas. The area is within Leicestershire but is close to Derbyshire/Derby and Nottinghamshire/Nottingham. Leicestershire County Council led a consortium of local authorities and other interests including the East Midlands Development Agency (emda) to study the issues raised by development in the area. As a result of the study a steering group was set up, chaired by emda, to consider the appropriate responses to the report. The steering group agreed a position statement to the RPG public examination that enabled East Midlands Regional Local Government Association (EMRLGA) and emda to give a joint view at the examination. The district council is implacably opposed to any further development in the area. The County Council was able to take a more strategic view that balanced all the considerations in partnership with others leading to proposals for restricted development in the immediate area with related provision within nearby urban areas. This led to a more sustainable approach by emda that may otherwise have been the case. The Green Paper proposals could result in two alternative scenarios in the future. Firstly, that the regional assembly/emda will have greater influence and be able to push through inappropriate development in the area. Secondly, that the district council will be able to block even development that would be a net benefit to the sub region.
 - Central Leicestershire Policy Area (CLPA) – This is a planning area of real activity based on a housing market and journey to work area. The CLPA has complex boundaries. It falls within the Structure Plan area but covers Leicester City and parts of five of the Leicestershire Districts. This policy tool has been developed to influence a range of strategic issues, including:

- i) achieving a sustainable pattern of development by directing development to the largest existing urban area - the Leicester and Leicestershire Urban Area (LLUA);
- ii) balancing housing and employment provision;
- iii) securing integration between land use and Local Transport Plan policies;
- iv) identifying broad locations for Green Wedges, structurally important areas of open land that influence the form and direction of urban growth;
- v) preparing the Central Leicestershire Retail Strategy to work out the need, at a sub-regional level, for out-of-town and other retailing

Without this strategic approach it is unlikely that district councils would have achieved this most sustainable option for new development in the Plan Area. Co-ordination is required at the strategic level, but it is unlikely that the regional level would be able to deal effectively in terms of detail with a large number of such areas that may present in the East Midlands.

Planning Green Paper - An Alternative Proposal for County Based Strategic Planning

29. There is scope for alternative approaches for fundamental reform. For example, a Plan led framework of three tiers – regional, sub regional and local. This could consist of:
- a strengthened regional planning role. Perhaps with the regional chamber (working in partnership with other stakeholders) having statutory duties and being better resourced;
 - strategic statements for sub-regions to be prepared by County Councils. These would be statutory statements dealing with key sub-regional matters such as housing and employment distribution, minerals and waste, retailing and green wedges and key strategic locations (such as junction 24). These would provide the sub-regional context for the preparation of LDFs;
 - a local development framework, led by district councils, to prepare action plans for key areas which would guide development control decisions. This framework would be guided by local community strategies. Waste and minerals local plans would remain, as now, at county level.
30. These changes do not alter the number of tiers but offer a simpler process for each tier and so could provide for a speedier system while retaining democratic accountability. Appendix 2 illustrates the roles and responsibilities of the tiers of government in relation to the current system, the Government's proposals and the suggested alternative approach.

Compulsory Purchase and Compensation

Key Proposals

31. The Government believes that there is a need for major changes to be made to the way that the compulsory purchase and compensation system operates. Its objective is to make the system simpler, fairer and quicker:
 - to benefit both acquiring authorities and those whose property is taken;
 - to reduce the number of objections to projects where compulsory purchase is necessary;
 - to enable local authorities and other bodies, such as transport undertakings and utility providers, to implement more quickly the regeneration and infrastructure projects that the community needs.
32. Some of the proposals for change will require primary legislation which will be introduced when Parliamentary time allows. Other changes can be implemented more quickly through revised advice and guidance, some of which has already been published.
33. The Government will also shortly be issuing a consultation draft Circular providing advice on making the current compulsory purchase process work as efficiently and effectively as possible. The Law Commission is also working on the reform of the laws and will be consulting separately on these matters in Spring 2002.

Key Issues

34. The two main concerns for the County Council are set out below. Due to the nature of the legal issues addressed in this document, further detailed comments are set out in Appendix 3.
 - The length of time it will take to introduce the proposed changes. There appears to be no guarantee or commitment to parliamentary time to deliver the legislative changes necessary.
 - Additional Government grants will be required to provide funding to meet the proposals. Furthermore, the method of funding from Government needs to be more flexible to allow funding for acquisitions prior to the start of a scheme and for Part 1 compensation after completion of a scheme, which is currently not the case.

Planning Obligations

Key Proposals

35. Government considers that the present system of planning obligations (developer contributions) is limited by focusing on the mitigation of impact of development. It wants to change to a culture of positive planning benefit. Having examined various options, it proposes that councils should set standard tariffs for different types of development through the plan-making system. Tariffs would contribute towards a range of planning objectives, including the delivery of affordable housing. They could be supported by negotiated agreements on a site-specific basis.

36. Reforms would include the following changes:
- a statutory register of all (existing and future) agreements (transparency);
 - improved monitoring and accounting procedures (probity);
 - standard terms for negotiated agreements (speed);
 - timetabled contract between developer/authority (speed);
 - dispute procedure for resolving differences in contribution levels.
37. The Government considers that a tariff-based approach will be the most effective way to deliver sustainable developments and the positive, plan-based priorities of councils. It believes that this will ensure transparency, speed and increased certainty for developers.

Key Issues

38. Criticism of the current system is based on a perception of inappropriate practice and misuse of the 'ground rules', which is certainly not the experience in Leicestershire. Clear local Supplementary Planning Guidance and policies in the development plan, such as is the case in Leicestershire, can provide the necessary certainty, openness and equity in securing developer contributions.
39. However, it has proved difficult to obtain contributions from small-scale schemes that have an incremental impact on local facilities and infrastructure. The present system provides the necessary flexibility to consider specific circumstances and economic viability of proposals. It seems contradictory to suggest that the new system should 'not impose unacceptable burdens on developers', given the emphasis on additional 'charges' for wider benefits. Any additional charges may be counter productive to securing the development of sustainable, brown field sites, unless regular exemptions are made.
40. There are a number of key issues that are likely to be of particular concern for the County Council:
- the implications of any new regime for current arrangements and practice in Leicestershire, for example:
 - i) locally set tariffs provides scope for inconsistency;
 - ii) County Council service providers must have adequate influence if priorities for the use of tariffs are set in LDFs prepared by district councils.
 - the consequences of increased emphasis of the support and delivery of affordable housing through developer contributions;
 - the need to retain a system of negotiated agreements on site-specific requirements for larger sites;
 - the level of thresholds to apply to any exemptions from tariff charges;
 - the operation and consequences of a disputes procedure;
 - whether the Government has selected the most appropriate options for reform.

Major Infrastructure Projects

Key Proposals

41. The Government proposes that there should be new procedures to enable Parliament to debate and approve a major infrastructure project in principle before detailed examination at a subsequent public inquiry – thus saving inquiry time, including in particular:
- the Secretary of State (SOS) would be given the power to decide whether to designate a project as one to which the new procedures might apply.
 - the process would allow the opportunity for objections and representations to be made to the SOS;
 - these, together with statements of national policy and Regional Planning Guidance would form part of the information laid before both Houses.

Key Issues

42. The following key issues need to be addressed:

i) *Are the current procedures too slow and costly? Will there be a saving in time and costs?*

The scarcity of Parliamentary time is a key consideration. The paper is very prescriptive about how it expects timescales and costs to be improved by others but gives little indication of how the Government and parliament will achieve their part in this aim. Up-to-date statements of Government policy is required but no information is given as to how this will be achieved and in what timescale.

ii) *Are the timescales proposed for the various stages appropriate? Will there be sufficient and proper opportunity for public etc consultation on the proposal?*

The timescales indicated in the proposed procedure need to be sufficient to prepare meaningful representations and allow local authorities to undertake any necessary background work. Greater public involvement is proposed under the new procedure and it is questioned whether and to what extent there would be any public debate on national policy.

For Parliament to be able to give proper consideration to the principle of a project with a known location without going into very detailed consideration. Projects should be subject to a sustainability appraisal in addition to an environmental assessment.

The process of lobbying MPs appears to be encouraged but there is no indication as to the probity issues which might apply.

43. It is unlikely that many projects in Leicestershire will be designated as major infrastructure projects. There may potentially be implications for:

- expansion of the East Midlands airport (unlikely given the scale of project referred to);
- the power station and its associated gas pipeline such as that proposed (but now withdrawn) at Enderby;

- Light Rapid Transit in Central Leicestershire;
- long–distance railway traffic lines such as the Central Railway scheme;
- road construction - the most recent roads constructed in the County of a distance over 30km were the A14 and the A42 and no other roads of this nature are foreseen in the future; and
- it is unlikely that there will be many major new mineral operations in the County.

Consultations

44. County Councils departments have been consulted in relation to the Planning Green Paper and its associated documents. Where appropriate comments have been incorporated into this report.

Conclusions

45. The Government’s proposals will not deliver the improvements being sought. This is largely because the Government’s analysis of the current situation is not robust nor is it backed up by supporting evidence. This flawed analysis means that the proposed changes to each tier of the planning system are unlikely to deliver a simpler, faster, more accountable and transparent system. The Government has failed to balance the need for greater community involvement with its desire to speed up the planning process. There is a degree of incompatibility between these two objectives that the paper does not resolve.
46. The Government has also failed to recognise the important role that county based strategic planning plays, and should play in statutorily delivering speedy, accountable and sustainable policy at the sub-regional level. An alternative to the Government’s proposals in this respect is suggested (see paragraph 29).

Background Papers

Planning Green Paper “Planning Delivering a Fundamental Change”.

Compulsory Purchase and Compensation: Delivering a Fundamental Change.

Reforming Planning Obligations: Delivering a Fundamental Change.

New Parliamentary Procedures for Processing Major Infrastructure Projects.