


More on planning reforms: It's all about the plan, isn't it?

28 August 2024  Ben Hunt

The planning system has rarely been so high on the political agenda as at present, with most attention around its role in addressing the housing crisis.

In the August issue of Public Matters, Ilias Lul Dirie looked at some of the incoming Labour administration's proposals for planning reform, focussing on changes to the National Planning Policy Framework (NPPF) in respect of Green Belt reviews and the concept of "Grey Belt".

A lot of the media attention has also, rightly, been on housing targets. Significant changes are proposed to the "standard method" for calculating housing need, which if adopted will mean many planning authorities – including some with extensive Green Belt areas, especially in the South East of England – having to raise their horizons. There has been less attention paid in the wider media to Local Plans.

The role of Local Plans

There is a consensus that we need to provide significant additional housing (and other development), together with the essential infrastructure and services which should go with it, even if the numbers are disputed. There is also agreement that we need to put all of this in the right places, and in the right way. What there is very much less agreement about is where the right places are for this development to go.

These issues may be high on the agenda currently, but they are not new to planning professionals. Good planning is all about seeking to meet the development needs of society in ways which resolve, as far as possible, competing interests and tensions to deliver places which are of high design quality (another term about which it is difficult to achieve consensus).

Sitting behind the headline topics are development plans, whose policies and proposals are part of the basic currency of English town and country planning (this is not necessarily different for the devolved administrations, but here I am talking about England). For many years we have been told that this is a plan-led system, for instance as reflected in s38(6) of the Planning and Compulsory Purchase Act 2004:

If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

This is what should enable decisions on individual planning applications for development proposals to be made in a way which is not just short term and reactive – but instead ensures the decision is part of an agreed way forward to provide for the needs of the plan area over at least the medium and hopefully the long term.

There is an extensive framework of legal requirements, national policy and guidance to be followed before a Plan can be formally 'adopted', including:

- preparation of a mountain of robust evidence
- thorough evaluation, for instance through sustainability appraisal and environmental assessments
- rounds of public consultation and engagement with interested parties, both prior to and when publishing draft versions of the Plan
- submitting a 'sound' Plan to the Secretary of State for 'examination', carried out by a Planning Inspector
- responses and changes following the Inspector's report.

This is a difficult task for local planning authorities, who might be subject to a legal challenge at any point during the process – including up to six weeks after they publish a notice to adopt the plan. Along the way, there may need to be revisions and updates, for instance to reflect changes in national policy. In 2015 the Government of the day advised Inspectors to be pragmatic, allowing for pauses and extensions to examination timetables, so that a plan could be fixed without having to abandon it and return to the beginning of the process. But by the end of March 2024, only one third of local planning authorities had adopted a Local Plan in the previous 5 years – the implication being that very many are (at least in part) out of date.

So there are limits to how quickly good Local Plans can be created. But here is the tension and the dilemma: good Local Plans which are up to date are essential to the functioning of the planning system. Without an up to date plan – particularly in relation to provisions for housing – local planning authorities' ability to direct development to the best locations will tend to be reduced. They may be at increasing risk of what is known as 'planning by appeal' where applicants seek permission for developments which might not be allowed if the Plan had identified sufficient land in allocations.

What is the new Government doing to improve good Local Plan coverage?

Back to the housing targets (and Green Belt)

The message is clear: planning authorities are expected to draw up Local Plans which aim to meet their area's housing need, so that they play their part in delivering the Government's national ambition for 1.5 million new homes by the end of this five year parliament. Policies must be informed by the revised Standard Method; and Planning authorities who do not provide for the full figure will have to make a very strong case in order for their Local Plans to be found 'sound' following examination. This will include showing that they have rigorously reviewed their Green Belt boundaries in an attempt to accommodate new housing.

Duty to co-operate

One aspect of the proposed revisions to the NPPF which has received less attention is that of Chapter 3 on Plan-making. Whilst much of the text remains unaltered, the Government is proposing significant additions to strengthen the sections on "Maintaining effective co-operation" between planning authorities. The previous administration abolished regional planning in England, but the proposed changes to the NPPF place greater emphasis on Local Plans showing a consistent and co-ordinated approach across administrative boundaries, and with strategic infrastructure provision. The hope is that where one authority's development needs – including for housing – cannot be provided for within their own area, an adjoining authority may assist by accommodating that unmet need in their own area, on top of meeting their own need.

This may sound optimistic, and getting different authorities to work closely together can be challenging, recognising the sometimes parochial attitudes around planning issues, and the political dimension to planning decisions. But the mood music is that Inspectors and Government will not be sympathetic to local planning authorities who seek to avoid their duty to co-operate in delivering positively prepared plans which reflect the need across a wider area than their own administrative boundaries. There are some good examples out there already, and more in the pipeline.

This is supported in the Secretary of State's letter to local planning authority leaders and chief executives of 30 July 2024. This states an intention to introduce legislation to formalise strategic planning, including 'Spatial Development Strategies' across wider areas, some of which will give planning powers to Mayoral Combined Authorities.

Inspectors to crack the whip?

A letter from Matthew Pennycook (Minister of State for Housing and Planning) to the Chief Executive of the Planning Inspectorate dated 30th July indicates the Government's approach. According to the letter, the length of time for Local Plans to pass through the examination phase has increased from 65 weeks in 2016 to a whopping 134 weeks in 2022 **on average** – that is roughly 2.5 years. Given that the plan will have begun its preparation some time before submission for examination, this is problematic, and risks plans being out of date in some respects almost as soon as they are adopted – rather than being genuinely forward-looking. So the Government has made it clear that pauses to Local Plan examinations should normally be no longer than six months, and where only limited work is needed to make a plan 'sound' – not to correct fundamental issues.

Step-in powers

There are existing powers for the Secretary of State to step in where a local planning authority is not progressing (or seeks to abandon) its Local Plan preparations. Whilst there not currently any proposals to add to that legislation, the Secretary of State’s letter of 30 July 2024 does indicate a willingness to use those powers and intervene, including where cross-boundary co-operation is not happening.

Additional planning officer staff

Local Plans do not write themselves. Planning authorities have been subject to the same financial pressures as other local government functions over the years. It is widely recognised across the development sector – including house-builders and others – that one of the problems with planning is not the system itself, but the lack of officers to prepare plans and deal with applications.

The Government has stated a commitment to provide 300 new planning officer posts across the country. This is a positive step – but represents on average less than one officer per authority, and not all of these would go into Local Plan teams. It is questionable how much of a difference this will make. Additional funding would not go amiss!

The outlook

Finally, it is worth considering timescales for all of this to flow through. ‘Local Plan time’ has often not followed traditional calendars, and estimates for plan adoption dates have rarely been met. The Government is seeking to speed this up, but my suspicion is that this will take some good time (perhaps two years or more) to noticeably bear fruit in a significant number of adopted new plans which fully meet an authority’s increased housing need. But without those plans, it is doubtful that we will see the Government’s target of approximately 300,000 new homes per year met **and** those new homes being in the ‘right places’.

Key contact

Ben Hunt
Senior Associate Planner

ben.hunt@brownejacobson.com
+44 (0)330 045 2817

Related expertise

Services

Constitutional and administrative law	Environmental Planning	Public law
---------------------------------------	------------------------	------------