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FILE TITLE:	SERIES
PLANNING	LOCAL GOVERNMENT
	PART 3

PART BEGINS	PART ENDS	CAB ONE
29 MARCH 2002	30 SEPTEMBER 2002	

Labour Administration

PART CLOSED

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PART

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Series : **LOCAL GOVERNMENT**

File Title : **PLANNING**

Part : **3**

Date	From	To	Subject	Class	Secret
10/04/2002		MS/DTLR	from the National Trust:planning paper and daughter documents	C	
30/04/2002	ss/dtlr		Planning Green Paper - Planning: Delivering a Fundamental Change	U	
08/05/2002	MS/DTLR	Leader	10 Minute Rule Bill Planning (Publication and Infrastructure) - Derek	U	
27/05/2002	SS/DEFRA	SS/DTLR	Planning Green Paper and Related Consultations	U	
29/05/2002		PD(JS)	A Living and Working Green Belt: Letter from the Senior Planning Ad	U	
04/07/2002	MS/DoH	MS/DPMO	Rationalisation of Local Authority Plans	U	
12/07/2002	PUS/DPMO	DPM	Home Loss Payments: Revision of Thresholds	U	
12/07/2002	PD(ME)	PM	Planning - Policy Clearance of Reform Proposals	R	
16/07/2002	PD(ME)	HMT	Transforming planning	C	
17/07/2002	CST	DPM	EAPC Clearance of Planning Reform Statement	U	
17/07/2002	DoH	DPM	Transforming Planning	U	
17/07/2002	SS/DoT	DPM	Transforming Planning	U	
18/07/2002	SS/DCMS	ms/cabinet office	Publication of the new planning policy statement (PPS) 17	U	
22/07/2002	SS/DTI	DPM	Transforming Planning	U	
23/07/2002	SS/DoT	dpmo	Revised thresholds for Home Loss Payments	U	
23/07/2002	SS/DoT	PUS/DPMO	Publication of the new Planning Policy Statement (PPS) 17	U	
24/07/2002	DPM	pus/ODPM	Publication of the new planning policy statement	U	
25/07/2002	LP	DPM	Home Loss Payments - Revision of Thresholds	U	
31/07/2002	SS/DEFRA	DPM	Transforming Planning	U	
06/08/2002	dpmo	PD(ME)	Transforming Planning	U	
06/08/2002	dpmo	CH/EX	Review of the Planning Enforcement System in England - Draft Cons	U	
06/08/2002	MS/DPMO	CH/EX	Planning Controls - Temporary Uses	U	
07/08/2002	MS/DEFRA	CH/EX	EA(PC)'s agreement to making no change to the 'temporary use' prov	U	
16/08/2002	PD(ME)	dpmo	Transforming Planning	R	
23/08/2002	MS/DEFRA	CH/EX	Review of the Planning Enforcement System in England - Draft Cons	U	
27/08/2002	DPM	LP	Planning legislation: crown immunity	C	
16/09/2002	LP	DPM	LP Correspondence : Planning Legislation - Crown Immunity	R	
16/09/2002	EST	ms/ODPM	Review of the Planning Enforcement System in England	U	
23/09/2002	DPM	CH/EX	Planning Reform: Responding to the TLR Select Committee	R	
26/09/2002	SS/SO	DPM	Planning bill	C	

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Rt Hon John Prescott MP
First Secretary of State and Deputy Prime Minister
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26 September 2002

Dear John -

Thank you for my copy of your letter to Robin Cook of 27 August. I have also seen Robin's letter to you of 16 September. In that letter Robin expresses the view that amending the bill in the way you suggest will require a significant amount of work, including resolving a number of issues around the Queen's private estates and about the competence of the Scottish Parliament. He suggests that you may wish to take forward this work in your department to ensure that, should LP agree to these amendments at a later date, drafting could be taken forward as quickly as possible.

I am writing now to say that I am aware that the Scottish Executive is currently considering the same matter. Their choice appears to be whether to await a Scottish Planning Bill or to seek approval of the Scottish Parliament to a Sewel motion to include appropriate provisions in the Westminster Planning Bill to apply Scottish Planning legislation to the Crown. We will hear from them in due course. In the meantime, I would be grateful if your officials would keep in close touch with mine over this policy area insofar as it might relate to Scotland.

I am copying this letter to the Prime Minister, Robin Cook, members of LP Committee and to Sir Andrew Turnbull and First Parliamentary Counsel.

Yours ever

HELEN LIDDELL

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23 September 2002

PLANNING REFORM: RESPONDING TO THE TLR SELECT COMMITTEE

This paper seeks EA (PC) agreement to the attached response to the Transport, Local Government and the Regions Select Committee report into the Planning Green paper. The response reflects the policy agreement given by EA (PC) colleagues to my letter of 11 July. I was very grateful for the supportive comments I received, particularly given the tight timetable to which I asked for comments. I am confident that we are now in a position to focus debate on the content of the legislation, and the implementation and delivery plans to take forward the planning reform agenda.

In considering the Select Committee response itself colleagues will wish to note one point in particular. It reflects, at paragraph 8, the concerns colleagues expressed regarding the need to consider the proposal to introduce a statutory purpose for planning carefully, and in full consideration of the legal issues. I intend to share any draft clauses on statutory purpose with colleagues in due course.

I would be grateful for responses by Tuesday 15 October.

In relation to the wider planning reform agenda, colleagues will wish to note that Nick Raynsford has written round to Departmental colleagues with copies of the proposed Best Value consultation paper. Included in the consultation paper are a new indicator for development plan preparation and further standards on development control performance for the poorest performers. There are links between these and the new

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planning delivery grant. When the grant is in place, we will review our targets and standards to drive the performance improvement we expect.

Colleagues will also remember from past correspondence that I intend to introduce an enabling power in primary legislation to enable the setting of statutory timetables for called in and recovered planning appeal cases. I would expect to share more details of the proposed timetables with colleagues in due course.

I am copying this to the Prime Minister, members of EA(PC) Committee, and Sir Andrew Turnbull.

JOHN PRESCOTT

THE GOVERNMENT RESPONSE TO THE HOUSE OF COMMONS TRANSPORT, LOCAL GOVERNMENT AND THE REGIONS SELECT COMMITTEE REPORT

"PLANNING GREEN PAPER"

INTRODUCTION

In December 2001, we issued a Green Paper *Planning; delivering a fundamental change*. We also issued consultation documents on new procedures for Major Infrastructure Projects; reforming planning obligations; changes to the Use Classes Order; and on compulsory purchase and compensation. We received over 16,000 responses to the Green Paper.

The Government's response to the Select Committee reflects careful consideration of the thoughtful and constructive contributions received. We intend to continue this dialogue with stakeholders.

We welcome the Committee's contribution to the debate.

Since the Committee published its report we have published "Sustainable Communities: Delivering through planning" setting out the key decisions we have taken on the Green paper proposals in the light of the response to consultation. We also published two supplementary papers on regional and local planning and on compulsory purchase. Those documents addressed a number of the concerns raised by the Select Committee and they are attached. This formal response sets out each of the Committee's recommendations in turn, and gives our view.

THE GOVERNMENT'S RESPONSE TO THE COMMITTEE'S RECOMMENDATIONS

Recommendation (a) said:

The current planning system requires significantly more staff and resources than are currently available. The new system proposed by the Government will require even more staff, and any radical changes will not be possible until they are in post.
(Paragraph 8 of the Committee's report).

We agree with the Committee that the success of the package of reforms in delivering a step change in the operation of the planning system is dependent on proper resourcing. The Government has therefore provided a significant injection of £350 million additional resources over three years for local authority planning services was announced in the Spending Review.

Recommendation (b) said:

The inclusion of a statutory objective for the planning system would be helpful if one could be agreed. This will not be easy. Any objective would need to command wide acceptance and should not be a potential source of dispute at each stage of the planning system.
(Paragraph 12 of the Committee's report).

We propose to include a statutory purpose for planning in any legislation that is brought forward, subject to ensuring that this is done in a way that does not create additional complications for the way that the system operates.

Recommendation (c) said:

The Government should evaluate the desirability of establishing a National Spatial Strategy.
(Paragraph 16 of the Committee's report).

We are not convinced of the need to prepare a comprehensive spatial strategy at the national level. We prefer an alternative approach: to make improvements to national planning policy (PPGs); to make clear statements of national policy and priorities in relation to national infrastructure provision; and to strengthen planning at the regional level, including proper consultation with adjoining regions. Revised guidance will give even more emphasis to considering inter-regional issues. We consider that trying to bring all these elements together into a single national spatial strategy would in the English context be an unnecessarily complicated and time consuming task and not enjoy the flexibility of our proposed approach. It would add a tier to the planning system and create delays. The Committee is unclear about the level that they envisage that this would operate at. Planning is a devolved responsibility in Scotland and Northern Ireland, and substantially, in Wales.

Recommendation (d) said:

PPGs play an essential role in defining national policy. The Committee welcomes any review which strengthens their role and makes them more user-friendly. The pursuit of brevity must not lead to the omission of essential policy. Distinguishing policy from guidance on its application is helpful provided the policy is not dependent on best practice guidance for its interpretation. PPG3 is an acceptable model. Good practice guidance should have the same weight as a PPG.
(Paragraph 21 of the Committee's report).

We welcome the Committee's support for the review of PPGs. We will, over time, review and replace the existing Planning Policy Guidance notes (PPGs) with national planning policy statements (PPSs). We will seek to reduce the volume of guidance and increase its clarity. We intend to review existing policy guidance over the course of the next three years.

Recommendation (e) said:

Decisions about regional planning should be taken by groups of democratically-elected members of local authorities. Wider interests should be consulted but not make the decisions. We support the proposal in the White Paper, Your Region, Your Choice: Revitalising the English Regions, that where elected regional assemblies are set up, they should take over regional planning functions. Where elected assemblies are not set up, the present system should remain.
(Paragraph 26 of the Committee's report).

We welcome the Committee's support for the proposal that in those regions where elected assemblies are established the assemblies should take over responsibility for regional planning. We disagree with the Committee that where elected assemblies are not set up decisions about regional planning should be taken solely by groups of local authorities. In five of the eight regions draft regional planning guidance is now the responsibility of the more inclusive regional chambers. We consider that such inclusive bodies, provided they meet criteria to be specified in regulations, should have responsibility for producing the new draft regional spatial strategies. There must be safeguards against commercial self-interest dictating policy. Our advice, as set out in PPG11 on *Regional planning,* is that members must declare any commercial interest and that where these are affected by the draft RPG, the relevant member should be excluded from the decision process.

Recommendation (f) said:

The Regional Spatial Strategies should take precedence over and guide the land-use aspect of all other regional strategies drawn up by other regional agencies including the Regional Development Agencies' regional economic strategies.
(Paragraph 27 of the Committee's report).

We agree with the Committee that the Regional Spatial Strategy should provide the long-term spatial planning context for other regional strategies, including the Regional Development Agencies' strategies. . In doing so it will be important that the RSS is better integrated with other regional strategies. We drew attention in the White Paper, *Your Region, Your Choice: Revitalising the English Regions,* to the role of the regional chambers in facilitating such integration.

Recommendation (g) said:

There is a need for an effective sub-regional planning system between the regional planning level and local plans. In addition, planning for waste, transport and minerals, which would continue to be carried out by county councils or their successors, should be effectively integrated into comprehensive sub-regional plans.
(Paragraph 35 of the Committee's report).

We agree with the Committee on the need for effective sub-regional planning. However rather than perpetuate a separate tier of sub-regional planning outside the metropolitan areas, we consider that sub-regional issues should be fully integrated into the regional strategy making process with the county councils playing a key role in this, including as agents of the regional planning bodies. It makes sense for county councils to continue with their roles in relation to planning for minerals and waste as they are the development control authorities for these matters, and in relation to Local Transport Plans, counties are the transport authorities.

Recommendation (h) said:

Some county boundaries are still relevant but others no longer reflect the way people live or work. Councils should be allowed to agree amongst themselves the appropriate strategic planning arrangements, which could include retaining county structure plans in some areas.
(Paragraph 36 of the Committee's report).

We intend to proceed with the Green Paper proposal to abolish county structure plans. Two levels of plans in areas where there are counties and districts leads to complexity, overlap, duplication and delay. It can take 10 years or more to get policy in place if each plan is reviewed sequentially and, as the Committee acknowledge, strategic planning issues can cut across local authority boundaries. Furthermore, much of the content of a structure plan is a mixture of repeated national and regional policies and of detail that should be left to the local level. We consider that authorities should be free to agree amongst themselves what Local Development Framework documents to produce and whether any of these should be on a joint basis, including with a county council. These may cover the area of more than one local planning authority. However, we do not agree for the reasons just stated that this should extend to keeping a two-tier system by retaining structure plans.

Recommendation (i) said:

The proposals for Local Development Frameworks have many failings and lack many of the advantages of Unitary Development Plans and Local Plans. The new Local Development Frameworks may be quicker to draw up but they are unlikely to be as clear.

They would be more complex than the simplicity offered by Unitary Development Plans and Local Plans and would provide less certainty;
A complex array of plans at a local level would be created which would be fragmented and difficult to understand and coordinate;
The frequent review of frameworks is also unlikely to provide the clarity and certainty sought by the Government and all parties;
The Local Development Frameworks could cause considerable confusion because of the reliance on vague criteria;
A plan-led system without a comprehensive land-use map would give rise to a great deal of uncertainty, delay in determining planning applications and a significant increase in planning appeals;
The proposed Local Development Frameworks may not gain the confidence of local people. The new forms of community consultation for Local Development Frameworks are welcome as is the linking of the frameworks to Community Strategies, but they will not be an adequate replacement for the rights to appear at a public inquiry which are required for Unitary Development Plans and Local Plans.
(Paragraph 60 of the Committee's report).

We are committed to the main principles set out in the Planning Green Paper for reform of the plan making system at the local level. However, we have given careful consideration to the many comments made in response to our specific proposals including those made by the Committee, and revised our proposals accordingly. In response to the particular points made by the Committee:

the Local Development Framework will bring together all the local planning authority's planning policy documents for its area including the equivalent of any supplementary planning guidance. The core elements of the LDF: area wide policies, statement of community involvement and proposals (see below), will be mandatory for all authorities. However, they will have flexibility to add to that area action plans setting out detailed proposals for change where that is needed. Some authorities may decide to produce just one comprehensive document. The new local planning system should not be any more complex than the present one and will be much more flexible and responsive;
rather than providing for any fixed review cycle we have taken account of the Committee's concerns and reviews will be undertaken by authorities as frequently as is necessary. Our proposals will allow for quicker and more effective reviews;
in response to the concerns expressed by the Committee and others we now propose that the general policies in the core strategy should be supported by site specific

policies and proposals where appropriate, not just in action plans, and that there should be a proposals map; and
we have also taken on board the Committee's concerns about the right to be heard and propose to retain it at the independent examination.

Recommendation (j) said:

Retaining and improving Unitary Development Plans and Local Plans would be a better option than introducing Local Development Frameworks, since there would be certainty and continuity as well as the retention of public confidence in the system. The process of drawing up and adopting Unitary Development Plans and Local Plans has been slow, but it is now almost complete. Considerable progress has been made in solving the problems and further improvements could be made if:
the plans were approved by inspectors after a public inquiry;
rigorous preparation timetables were laid down and enforced with appropriate penalties; and
repetition of policies in structure plans and regional planning guidance was removed.
(Paragraph 61 of the Committee's report).

We agree with all three of the Committee's recommended improvements and they are reflected in our proposed new arrangements. However, unless we also introduce more flexibility into the development plan system and the examination process these reforms will not be sufficient. Under our proposals we will require the local planning authority to prepare a three year project plan, or Local Development Framework Scheme, setting out the documents they propose to prepare for the LDF and the timetable for preparing each one. Adherence to the scheme will form part of the Best Value assessment indicators against which the performance of the local planning authority will be measured. We propose to substantially improve the process whereby plans are tested and adopted. Better engagement at earlier stages in the process will help reduce objections at later stages. But we also intend to: abolish the "two-stage" deposit process; promote mediation over objections to plans; require time-tabling of the inquiry process and give Inspectors more control over the procedures to be used subject to the right to be heard. This will include through consideration of written representations, an examination conducted on a round table basis, a hearing or a formal local inquiry if necessary. We propose to make the Inspector's recommendations binding on the authority subject to a power of direction by the SofS.

Recommendation (k) said:

The revision of plans should not cease because of the proposals for reform, as Lord Falconer stated.
(Paragraph 62 of the Committee's report).

We strongly agree with the Committee. We continue to expect local planning authorities to progress their reviews of development plans under the existing arrangements as quickly as they can. We will be introducing a new Best Value

indicator in 2003/04 to measure this. . We will consider transitional arrangements so that work done under the present system can be on account of the proposed new system. We will also be publishing joint guidance with the Planning Officers Society, the Local Government Association and RTPI on how authorities can move forward with plan reviews in the interim period before any new planning Act. Further guidance on the transitional arrangements for any new Act will be published in due course.

Recommendation (l) said:

The Committee welcomes some of the adjustments to the present development control system. We strongly support the proposal that re-applications should not be automatically accepted. None of these proposals requires primary legislation, and they illustrate the kind of evolutionary approach to improving the planning system which will bring general benefit.
(Paragraph 64 of the Committee's report).

We welcome the Committee's support for the changes to the development control system. Some of the proposals mentioned by the Committee will require changes to primary legislation and we shall seek an early opportunity to introduce these as well as pressing ahead with those that do not require such legislative changes.

Recommendation (m) said:

Targets for reaching decisions are useful to provide guidance for local authorities on operating an efficient development control system, but considerable flexibility is required to allow for complex applications which cannot be considered within the timescales. It should be remembered that delays can be due to the developer as well as the local authority.
(Paragraph 69 of the Committee's report).

We welcome the Committee's support for targets for reaching decisions. For 2002/03 we improved the targets we set local authorities for handling planning applications. The targets are now focussed on the different types of applications that authorities handle and reflect the different expectations of the speed with which cases can be decided. Each target is set to take account of the fact that not all applications can be determined within the target timescales. We will keep the targets under review and will strengthen them if necessary.

Recommendation (n) said:

The Committee supports the proposals to reduce planning permissions to three years. However it is important that a 'standard' time limit is not applied in cases where a longer implementation period is justified by the applicant. There should be an opportunity for local variation where appropriate.
(Paragraph 72 of the Committee's report).

We welcome the Committee's support for the reduction in the period of validity of a planning permission to 3 years and recognise the Committee's concerns about flexibility. We will implement this change with the caveat that local authorities should have the discretion to agree longer permissions where this would be appropriate.

Recommendation (o) said:

The 90 per cent target is arbitrary, and no justification was given for it. If the Government decides to go forward with the target that 90 per cent of planning applications should be delegated to officers, it should advise Local Planning Authorities on the types of application which might be suitable for delegation to officers (eg householder applications) and the circumstances in which officers could decide applications without infringing democratic accountability (eg where there are no local objections and the Chief Planning Officer would recommend approval). All local authorities should be required to monitor delegated decisions. The Government should reiterate the seriousness with which it would view attempts to influence officer decisions by inducements.
(Paragraph 74 of the Committee's report).

We strongly disagree with the Committee on this point. We consider that delegating decisions to officers can help to simplify planning procedures, speed up the process, minimise costs and leave Committee members with more time to concentrate on major or controversial cases. We should stress that the 90% figure is a target, rather than a mandatory figure. Local authorities who receive a disproportionate number of controversial applications which cannot be dealt with by officers, can always justify performance below 90% on these grounds. However, a fifth of district councils are already achieving 90% with a further 10% achieving 80% or more so there is clearly much scope for other authorities to significantly increase the number of delegated decisions without harming local democracy. We would view any attempt to influence decisions by officers most seriously.

Recommendation (p) said:

Statutory consultees have an important role in contributing specialist advice to local authorities on planning applications. The proposal to reduce the number of statutory consultees would not in itself reduce the time taken for consultees to respond, since it takes only one key consultee to cause a delay. Furthermore, authorities are not obliged to wait anyway.
(Paragraph 82 of the Committee's report).

We are happy to join with the Committee in recognising the important role that statutory consultees have in providing specialist advice. However the Planning Green Paper identified statutory consultees as a major potential source of delay in processing planning applications. The responses to the consultation did nothing to change our

view on this. We intend therefore that the number of statutory consultees and the types of development for which they should be consulted should be reviewed but we agree with the Committee that there should be no presumption that the list should be reduced.

Recommendation (q) said:

Last year the Government published a report which sought to improve the current arrangements by ensuring that:
local authorities facilitate pre-application discussions with statutory consultees;
consultees are required to allocate sufficient resources and put in place systems to respond promptly to planning applications.
We recommend that in place of its proposals to reduce the number of consultees, the Government introduce these recommendations.
(Paragraph 84 of the Committee's report).

As we have set out above in response to recommendation p (at paragraph 36 above), we will review the list of statutory consultees with no presumption that the list should be reduced. We continue to support the recommendations for speeding up the consultation process set out in our document "*Statutory and Non-Statutory Consultation report*" and encourage all consultees and local planning authorities to adopt its examples of good practice.

Recommendation (r) said:

Witnesses recognised that there was a need for better consultation. We support the proposal that all local authorities should be required to publish their consultation arrangements. The Department should issue clear guidance and examples of best practice.
(Paragraph 85 of the Committee's report).

We welcome the Committee's support for this proposal. Local Planning Authorities will be required to include a Statement of Community Involvement as part of their Local Development Framework. This will set out benchmarks for community participation in the preparation of LDF documents and significant planning applications. Consultants are carrying out research to determine the precise manner in which these matters should be expressed, and this will include guidance and examples of best practice which we shall publish.

Recommendation (s) said:

The Green Paper does not adequately consider the need for third party rights of appeal. Greater community participation at the pre-application stage is not a substitute for the legal right to appeal against a decision. External scrutiny is required to avoid the potential conflicts of interest between the local authority as planning authority and the local authority as property owner or developer with a pecuniary interest in the

result of a planning application. The National Assembly for Wales' approach to reviewing planning decisions made by councils concerning land that they own should be monitored with a view to its possible adoption in England.
(Paragraph 90 of the Committee's report).

We disagree with the Committee. The Green Paper set out clearly our reasons for not supporting a right of appeal for third parties, even one limited in scope. A right of appeal for third parties would slow down the system and would not be consistent with our democratically accountable system of planning. Elected councillors represent their communities - they must take account of the views of local people on planning matters before decisions are made and justify their decisions subsequently to their electorate.

In relation to the situation outlined by the Committee, local authorities are often required to take decisions on issues in which they have dual interests - there are around 5,000 cases a year in which local authorities have an interest in land to which they grant planning permission. Sometimes these are town centre sites; often they involve regeneration. Local authorities operate under strict rules to deal with possible conflicts of interest and avoid any impropriety.

Local authority development proposals, like those of other persons applying for planning permission, must be decided in accordance with the development plan unless material considerations indicate otherwise. Proposals which do not accord with the local plan must be notified to the Secretary of State so that he can consider whether to call in the application for his own determination. Local authorities are obliged to act fairly in relation to persons affected by planning decisions. Their decisions are subject to control by means of judicial review in the Courts. This ensures that decisions are taken in accordance with the law and within the authority's powers, and that they do not act for any illegitimate purpose or extraneous motive, for example bias or vested interest.
There are in addition numerous other general safeguards to ensure propriety in all decision making by local authorities.

Recommendation (t) said:

The existing right of third parties to object to draft policies in Local Plans and Unitary Development Plans, and to pursue these to inquiry in front of an independent Inspector if unresolved by the local authority, is a vital third party right. We recommend that it should not be watered down. Third parties should have the right of appeal where there has been a significant departure from to the Local Plan or Unitary Development Plan.
(Paragraph 91 of the Committee's report).

We recognise the Committee's concerns about limiting the right to be heard. We have therefore decided not to remove the right to be heard for objectors to draft Local

Development Framework documents (see paragraph 22 above). We note the Committee's view that third parties should have a right of appeal in the case of against departures against development plans. But we take the same view as on the general issue of third party rights of appeal as set out in paragraph 42 above.

Recommendation (u) said:

The proposal for Business Planning Zones appears to be based on the misconceived idea that the planning system is stopping desirable development rather than helping to enable it. There is no evidence of this. The zones are unlikely to encourage significant amounts of development, but there is a serious danger that the development which they will attract, will be car-based and of a lower standard than if they had been subject to normal planning controls. The best means of promoting sites for high technology development is using the existing planning system.
(Paragraph 97 of the Committee's report).

We intend to proceed with the proposals in the Planning Green Paper for Business Planning Zones (BPZs). Some high tech companies working on the leading edge of technologies operate in an environment that is extremely fast moving and where businesses start up and either expand or fail quickly. We want to enable such companies to operate in an equally flexible planning regime. Similarly, we want areas of low growth or high unemployment to be able to stimulate new jobs with improved planning for business. BPZs will need to be planned in the regional strategic interest but will be designated by individual local authorities. Development within Business Planning Zones will be of high quality and of low environmental impact, and we will set the parameters of development tightly to ensure that good quality environments are created. An environmental impact assessment will be required before a BPZ can be designated. We would not intend them to include activities that are major employment generators or that have high infrastructure requirements, or that require special environmental requirements, such as generating noxious substances. We will be issuing guidelines on how the new Zones will work.

Recommendation (v) said:

There is a 'business' agenda running through much of the Green Paper. It largely ignores the environment while supporting business development. The planning system is the key bulwark in preventing urban sprawl and restraining unsustainable development and should not be subservient to the requirements of business. The reforms should stress the need for the planning system:
to protect the countryside and improve the quality of the built environment;
to minimise the use of natural resources; and
to reduce the need to travel.
(Paragraph 103 of the Committee's report).

We reject the Committee's suggestion that the Green paper outlines a 'business agenda'. The planning system should not be subservient to the interests of <u>any</u> single

interest group. Our proposals will build on the fundamentals of the planning system which have been built up over many years: the philosophy of the 'plan led' system; applying the principles of good regulation – consistency, proportionality, targeting, transparency and accountability; and promoting and facilitating effective public participation. As we made clear in the recent Planning Policy Paper *'Sustainable Development: Delivering through Planning'* we believe that the planning system should deliver in a sustainable way key Government objectives such as housing, economic development, transport infrastructure and rural regeneration whilst protecting the environment. Planning should: create and sustain mixed and inclusive communities; enable local communities to be involved much more positively than before; and deliver a high quality and respected public service.

Recommendation (w) said:

The Government's proposals for tariffs would replace one form of complexity with another. Instead of site by site negotiated solutions after the submission of planning applications, enormous effort would be required to establish the basis for tariffs around the country, authority by authority, at the forward planning stage.
(Paragraph 124 of the Committee's report).

Recommendation (x) said:

There is a danger that the change to the tariff system will affect the Government's grant to local authorities.
(Paragraph 125 of the Committee's report).

Recommendation (y) said:

However, the Government's other proposals (see points above) for improving the practical operation of the planning obligation system would tackle many of these objectives without the need for changing the whole basis of the system. We recommend that the Government introduces those procedural changes first as outlined above, and only revisits more radical options for reforming the planning obligations system to improve its speed and transparency if significant problems remain in five years' time.
(Paragraph 126 of the Committee's report).

Recommendation (z) said:

The Government needs to undertake substantially more work to demonstrate that funding affordable housing by tariff rather than by the current system of negotiation will clearly produce significantly more affordable housing.
(Paragraph 131 of the Committee's report).

Recommendation (aa) said:

We were heartened that Lord Falconer wishes to consult on the details of the emerging scheme and on the Government's advice to local authorities, but, nevertheless, feel that the proposal to introduce a tariff requires considerable further development before the Committee can take a view on whether it is workable.
(Paragraph 133 of the Committee's report).

We consider that many of our objectives can be delivered without legislative change. We will revise our policy guidance and work with all the relevant stakeholders to create a more streamlined system that will enable the community to share in the benefits arising from development. We will also carry forward the measures in the consultation paper for making the present system more transparent and predictable. For example, we have already required planning obligations to be entered on the planning register to ensure that they are open to public inspection.

Recommendation (bb) said:

We strongly support the proposal to introduce National Policy Statements. They should be the subject of public consultation after which they should be debated by Parliament on an amendable, substantive motion. If they are prepared well in advance of projects coming forward, they will be a major step forward. The policy statements could take a variety of forms:
in some situations they would indicate a need to make provision within a region, leaving the regional guidance to indicate a suitable site for the particular facility;
in others, they would need to indicate a range of options or a precise location or route corridor.
The policy statements should relate to the National Spatial Strategy.
(Paragraph 141 of the Committee's report).

We welcome the Committee's support for the proposal to introduce National Policy Statements.

Recommendation (cc) said:

We recommend that the Secretary of State have the power to designate projects as Major Infrastructure Projects by the new Parliamentary process, but emphasise that he should only select Major Infrastructure Projects of truly national significance for authorisation. We are concerned that both the list of potential Major Infrastructure Projects in Annex C of the Government's paper, and the list contained in the Town and Country Planning (Major Infrastructure Inquiries Procedure) (England) Rules 2002 are far too broad.
(Paragraph 144 of the Committee's report).

Recommendation (dd) said:

Based on the evidence received, there is unlikely to be any time saving by adopting the proposed parliamentary process. The Government has continued to stress the

length of time taken by the public inquiry to consider Heathrow Terminal 5; this was wholly exceptional.
(Paragraph 161 of the Committee's report).

We consider that many of our objectives can be delivered without legislative change. We will revise our policy guidance and work with all the relevant stakeholders to create a more streamlined system that will enable the community to share in the benefits arising from development. We will also carry forward the measures in the consultation paper for making the present system more transparent and predictable. For example, we have already required planning obligations to be entered on the planning register to ensure that they are open to public inspection.

Recommendation (ee) said:

If the Government were to go ahead with its Parliamentary proposals, the public would also lose confidence in the inquiry system since long established rights of hearing would be restricted. It will be very difficult for Parliament to give a fair consideration to Major Infrastructure Projects as required by the Human Rights Act. Even if there is no formal whipping of MPs by party managers, the influence of party discipline would be extremely difficult to avoid.
(Paragraph 162 of the Committee's report).

Recommendation (ff) said:

Giving Parliament the power to decide on the principle, need for and location of a Major Infrastructure Project would lead to unavoidable duplication later at a public inquiry and the increased likelihood of legal challenge.
(Paragraph 163 of the Committee's report).

Recommendation (gg) said:

It is not appropriate for MPs to be asked to consider the issues raised in Major Infrastructure Projects given the likely length of hearings and the probable need to sit part of the time away from the House. If implemented the proposal would constitute a retrograde step and would be counter to the report of the Joint Committee on Private Bills of Session 1987-8, which was approved and implemented by both Houses. Worse, the partial consideration suggested would add a further highly undesirable complication that would almost certainly increase the likelihood of delay, thus defeating the main object of the proposal.
(Paragraph 164 of the Committee's report).

Recommendation (hh) said:

When it 'approves' Major Infrastructure Projects, Parliament should do no more than it currently does under section 9 of the Transport and Works Act for schemes of national significance. We therefore recommend that the scope of the Transport &

Works Act be extended so that certain Major Infrastructure Projects may be selected by the Secretary of State to fall within an appropriately amended section 9 of the Act. (Paragraph 165 of the Committee's report).

Recommendation (ii) said:

Under our proposal, as with other Transport and Works projects, after completion of the Parliamentary stage the project would be scrutinised at public inquiry. At the inquiry the Inspector would be guided by a National Policy Statement and the approvals of both Houses of Parliament. These would be weighty material considerations for the Inspector to take into account. There would also be further guidance from the Secretary of State who will have issued a statement of the matters which should be considered at the inquiry. Nevertheless, the public inquiry would be the forum to consider all aspects of the proposed development.
(Paragraph 166 of the Committee's report).

We recognise the Committee's reservations about whether a Parliamentary procedure would lead to a speeding up of the process of planning major infrastructure projects. We do not intend therefore to pursue the Parliamentary element of the package. We shall instead be introducing proposals when the legislative programme permits to enable public inquiries to be conducted more efficiently.

Recommendation (jj) said:

We welcome the Government's proposals for making public inquiries more efficient, and emphasise the need to keep the Major Infrastructure Projects inquiry rules under review and update them when necessary.
(Paragraph 169 of the Committee's report).

We welcome the Committee's support for the need to make public inquiries more efficient and have recently published new Procedure Rules for conducting inquiries into major infrastructure projects. One way that this might be achieved is by allowing the consideration of issues concurrently rather than sequentially. Initial findings suggest that this could save inquiry time of up to a third. This means that the inquiry would not have to wait for each issue to be dealt with in turn, when two or more issues can be dealt with quite adequately at the same time, thereby saving time.

Recommendation (kk) said:

We welcome the formation of the DTLR's Planning Central Casework Division to handle the Secretary of State's called-in and recovered appeals, and Lord Falconer's statement that he envisages that within two years the Division will halve the time it takes for decisions to be announced. In the past the announcement of decisions has on occasion been delayed for political convenience. In this context we note that both the new MIP and the 2000 inquiry rules require the Secretary of State to notify his decision "as soon as practicable" after taking it. We recommend that this rule be

amended so that the Secretary of State is required also to take the decision itself as soon as practicable to ensure that decisions are made when required for the efficient operation of the planning system.
(Paragraph 170 of the Committee's report).

We welcome the Committee's support for the establishment of the Central Casework Division. The Government needs to improve its performance in handling 'called in' cases and recovered planning appeals. We have already set ourselves the challenging target of cutting in half by March 2004 the average time taken from the close of a public inquiry into a called in planning application or a recovered appeal. The benchmark for improvement is performance at October 2001, when 80% of cases were decided in 32 weeks from close of inquiry to decision. Our target is, by March 2004, for at least 80% of cases to be decided within 16 weeks from close of inquiry to decision. We believe that setting statutory timetables would help to underpin our work to deliver performance improvements. We will therefore seek an enabling power in primary legislation for the Secretary of State to prescribe a timetable for called in and recovered planning appeal decisions and any such changes will be reflected in all the relevant Inquiries Procedure Rules as necessary.

Recommendation (ll) said:

By comparison with some of the relatively small savings that can be obtained by improvements to the current inquiry process, it is clear from the example given that very considerable time savings can be made by improvements elsewhere. We recommend that the Government conducts a thorough formal review, and reports upon both the pre application and post regulatory approval stages of all aspects of Major Infrastructure Projects.
(Paragraph 171 of the Committee's report).

We agree with the Committee that we will need to continue to keep the situation under review.

Recommendation (mm) said:

In combination the recommendations which we have made relating to national policy statements, Parliamentary procedures, public inquiries and the decision taking stage, will bring about the required improvement in procedures while at the same time providing a fair hearing for affected parties and retaining public confidence in the inquiry system. Of no less importance is the need for Ministers not to postpone taking decisions for political reasons after an Inspector's report has been received.
(Paragraph 172 of the Committee's report).

We are committed to speeding up the processes for dealing with major infrastructure projects. We believe we can achieve this by pressing ahead with the proposals to issue clear statements of national policy, and to make public enquiries more efficient

and we shall be introducing statutory timetables for determining called in and recovered planning appeals (see paragraph 69 above).

Recommendation (nn) said:

The Government's theory that the planning system inhibits economic growth appears to be based on anecdote and prejudice. Well-planned land uses create a favourable climate for investment as many successful local authorities have shown. Attractive and well planned cities are often the most prosperous. With improvement, the existing forward planning system will continue to achieve this.
(Paragraph 185 of the Committee's report).

We agree that good planning not only contributes to quality of life but also enhances economic performance. We find it surprising that the Committee should dispute that poor performance should have an inhibiting effect. The facts speak for themselves as over 90% of councils fail to meet the target that 80% of planning applications should, on average, be decided within 8 weeks. 63% of local authorities plans are out of date, 13% are not yet in place. While we have a lot to thank the planning system for, we need greater efficiency which will help both the economy and ensure high quality development.

Recommendation (oo) said:

It could well take more than five years before the changes proposed in the Green Paper are fully operational and even longer. The development plan system introduced in 1991 has taken up to ten years to bring full benefits for its users, notably local authorities, developers and local communities. These should not be lost by adopting the Planning Green Paper proposals. With modification to existing Unitary Development Plans and Local Plans, the same objectives could be achieved without the delay which would be caused by the Government's proposals. Many of the other incremental reforms, which have been proposed in this report, could start immediately and not cause the hiatus which the fundamental proposals inevitably will cause.
(Paragraph 190 of the Committee's report).

The example the Committee uses provides clear evidence of the need for reform. Under the reforms introduced in 1991 all authorities were supposed to have a plan in place by 1996. As at December 2001, 45 local authorities (13%) have still to adopt their first plan and 214 current plans are becoming out of date with few signs of early review. Cascading a policy change down through reviews of Regional Planning Guidance, Structure Plans and Local Plans cannot be achieved in less than about 12 years (based on average times). After the last round of RPG reviews it took 21 counties more than 5 years to adopt a revised plan. Even if all the timetables were halved it would still not amount to an effective development plans system. We recognise that there is a need to maintain certainty and confidence in the plan led system prior to, and from, the introduction of the proposed reforms. Our current proposals are closer to the current development plans system than the Green Paper

model and thus would cause less difficulty for Local Planning Authorities in taking on board more of the Local Development Framework principles prior to commencement of the Act. We will be issuing best practice guidance as soon as possible on how Local Planning Authorities can approach plan preparation in the period up to commencement of the Act.

Recommendation (pp) said:

Local Authority Planning Departments are short of staff. The Green Paper does not give sufficient weight to the need for councils to retain their planning staff or for the profession to attract new graduates so as to make the current system work effectively. The Government needs to be working more closely with local authorities to improve staff retention, and with schools, universities and the professional bodies to make planning a more popular career. The Government's reforms are unlikely to change the image of the planning profession and raise the status of planners.
(Paragraph 202 of the Committee's report).

We strongly agree with the Committee that there is a need to increase staffing levels in local authorities. The Spending Review settlement (see paragraphs 6 and 83) will enable this to happen. However, improved staffing levels will not, of itself, deliver the changes we seek. There needs to be a wider "culture change" in the way planning is delivered. . Central to our reforms is the need to re-establish the profile of planning by underlining the positive role it has to play in delivering economic and social change and shaping the future of our communities. The Royal Town Planning Institute is taking a lead in considering the ways in which planners are trained and educated, developing new ideas for life long learning from the initial education of undergraduates through to continued professional development. The RTPI Education Commission's findings and recommendations are due to be published in the Autumn. More generally, ODPM is to engage in a process of discussions with a wide range of stakeholders on "culture change" issues - how to promote positive planning, improving education and skills, raise the profile of planning and improve customer service.

Recommendation (qq) said:

An incremental approach to reforming the planning system would allow the reforms to be introduced as the skills become available.
(Paragraph 203 of the Committee's report).

We disagree with Committee. The planning system needs a step change in performance. Past attempts at incremental change have failed. The Modernising Planning Statement (January 1998) set out our original agenda for change. It encouraged "shorter, clearer, plans" and a timetabled approach. This was followed by a revised PPG12 Development Plans at the end of 1999 and new regulations introducing the "two-stage deposit" process to encourage negotiation with objectors to shorten inquiries. This has produced very few obvious signs of change. Deposited

plans are still far too detailed, and practitioners are sceptical as to whether the changes to the regulations have helped. Despite some improvements by those targeted under Best Value, the average position has stayed the same. Incremental change has had little effect. Our reforms build on the fundamentals of the planning system, improve where there are good foundations and provide for comprehensive change where it is needed.

Recommendation (rr) said:

Additional funds can be secured by raising application fees but they will not in themselves be sufficient. Local authorities must recognise the important strategic role performed by their planning departments and to allocate a higher proportion of their budgets to them.
(Paragraph 204 of the Committee's report).

We agree with the Committee that raising application fees is only part of the answer to the underfunding of planning departments. We raised fees by 14% from 1 April 2002 because we found that they had fallen behind the cost of processing applications since the increase in 1997. Our own research indicates that the level of resources which local authorities have put into planning had declined significantly in real terms since 1996, over and above any fee income shortfall. The Spending Review settlement is intended to rectify this. It will be distributed through a new planning delivery grant which will start in 2003/04. More money must mean a better standard of service, so the extra resources will only go to those authorities that demonstrate their commitment to high quality planning service. Authorities will be awarded grant when their planning performance improves against Best Value Performance Indicators. The money will not be ring fenced, so authorities will be able to spend it as they like. But they will only get it when their planning performance improves and so authorities are now on notice that they will have to sharpen up their performance. In the interests of transparency, we will require authorities to prepare separate accounts for their planning services.

HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

The Rt Hon Lord Rooker
Minister of State
Office of the Deputy Prime Minister
Dover House
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LONDON SW1A 2AU

16 **September 2002**

Dear Jeff

REVIEW OF THE PLANNING ENFORCEMENT SYSTEM IN ENGLAND

I have seen your letter of 6 August 2002 to the Chancellor requesting EA(PC) clearance of a consultation paper which reviews the existing planning enforcement system. In the Chief Secretary's absence I have been asked to reply.

Our officials have been in discussion over the draft which you circulated and have agreed some changes, which will help to emphasise the Government's objectives of reforming the planning system to make it simpler, faster and more transparent. These objectives apply as much to enforcement procedures as to other parts of the planning system and it is important that we present this message consistently across all of our consultation documents to ensure that our determination to achieve reform cannot be doubted. With the changes which our officials have agreed, I am content for the consultation document to be issued.

I note that the consultation document also opens the review of Planning Policy Guidance Note 18 (PPG18) on enforcement. Paul Boateng's letter of 22 July on revisions to another PPG (PPG17) indicated his concern that it did not adequately reflect the pledge in the Planning Green Paper that PPGs should become shorter and more trenchant statements of Government policy. I hope therefore that we can ensure from the outset that the new PPG18 on enforcement observes the principles outlined in Paul's earlier letter.

I am copying this letter to the Prime Minister, Chief Secretary, members of EA(PC) and Sir Andrew Turnbull.

With good wishes.

Yours ever

JOHN HEALEY MP

RESTRICTED - LEGISLATION

RT HON ROBIN COOK MP
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LONDON SWIY 5AA
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16 SEP 2002

ME
AM
JEC NA
CS

Dear John,

LP CORRESPONDENCE: PLANNING LEGISLATION – CROWN IMMUNITY

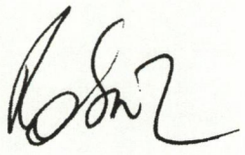
Thank you for your letter of 27th August requesting clearance to engage Parliamentary Counsel in drafting amendments to the Planning Bill to remove Crown immunity from planning control and use them in response to any opposition amendments on this issue. You recognise that a decision had been taken to defer such provisions to a second Planning Bill in a later session, but you present a number of strong reasons why we should reconsider that decision.

I appreciate your desire to ensure that the Planning Bill is available for introduction early next session. As you know, the pressures on next session's programme are such that we can ill afford any delay to this Bill. I was therefore pleased to note that you are not seeking to add the Crown immunity provisions before the Bill is introduced. If, as you anticipate, there is pressure during the Bill's passage for amendments on Crown immunity then I agree that LP should reconsider whether we should bring forward Government amendments. We would need to consider the implications on bill handling, drafting resources and whether or not the amendments were in scope. However, I am reluctant to commit Counsel resources to preparing the amendments before then. Counsel is fully stretched at present and any diversion would jeopardise the preparation of next session's Bills. Further, introducing the Planning Bill in the knowledge that we subsequently intend to bring forward Government amendments runs counter to our policy that Bills should be complete on introduction. That policy greatly aided our handling of the programme this session and it is important that we continue to apply it rigorously if we are to deliver next session's programme successfully.

I understand that amending the bill in the way you suggest will require a significant amount of work on the part of Counsel and your department, including resolving a number of issues around the Queen's private estates and about the competence of the Scottish Parliament. You may wish to take forward this work in your department to ensure that, should LP agree to these amendments at a later date, drafting could be taken forward as quickly as possible.

I am copying this letter to the Prime Minister, members of LP Committee, Sir Andrew Turnbull and First Parliamentary Counsel.

Yours sincerely



ROBIN COOK

Rt. Hon John Prescott MP
First Secretary of State and Deputy Prime Minister

(F)

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AMC

C. NA.

RESTRICTED: POLICY

The Rt Hon Robin Cook MP
President of the Council and Leader of the House
Privy Council Office
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London
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27 August 2002

Dear Robin

PLANNING LEGISLATION: CROWN IMMUNITY

As you know from the memorandum discussed at LP Committee on 23 July, we are making good progress with preparation of the Planning Reform and Compulsory Purchase Bill, with the aim of introduction early next session. However, there is one residual matter on which I should like to seek the Committee's views.

The original bid for the Bill included provisions for removing Crown immunity from planning control. It was subsequently decided to focus in this Bill on measures essential to speeding up the planning process and to defer the Crown immunity provisions to a second Planning Bill in a later session. However, I think we may need to reconsider this. Recent high profile cases concerned with asylum detention centres and residential centres have re-awakened public concern that developments are being implemented without the safeguards of the statutory planning procedures. It has been the policy of all Governments since 1994 to legislate to make development by the Crown subject to normal planning control as soon as a suitable legislative opportunity arises. It is also the position that we remain vulnerable to infraction proceedings from the EC over our failure to implement the European directive on environmental impact assessment in these cases because they are outside the statutory control process.

Against this background I think we will be strongly criticised if we introduce a planning Bill which does not contain the provisions which would implement our commitment. There is a strong likelihood of opposition amendments on the subject as the Bill goes through Parliament, particularly in the Lords. Such amendments are likely to be difficult to resist. It is important that we retain control over any Crown immunity provisions because they will need to include special arrangements for security and defence developments and for action in emergency situations.

My officials are already working closely with officials in the relevant departments to produce instructions to Counsel on Crown Immunity. Policy agreement on the proposal to legislate has already been given, subject to the resolution of detailed matters, mainly related to the defence and security issues. I hope that these matters can be resolved over the next month so that final instructions can be prepared. However, I know that you are keen that if the Planning Reform and Compulsory Purchase Bill is included in the Queen's Speech it should be available for introduction at an early stage. Bearing this in mind I do not seek to amend the contents of the Bill as it is proposed to be introduced, but rather seek your agreement to engage Parliamentary Counsel in drafting provisions which can be introduced in response to amendments put down during the passage of the Bill. I consider that being able to promise Government amendments on this subject will significantly ease the passage of the Bill in both Houses.

I should perhaps say that we have previously examined whether it would be possible to achieve our objective other than through primary legislation. The conclusion was that there is no alternative route. In particular there would appear to be no scope for achieving the removal of Crown immunity by means of a Regulatory Reform Order in that these changes will place new obligations on developing Government Departments and on the Royal Household.

I should be grateful for an early response to my proposal. Copies of this letter go to the Prime Minister, members of LP Committee and to David Blunkett, Geoff Hoon and to Sir Andrew Turnbull.

JOHN PRESCOTT

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HE
cc: AMc
NA

From the Minister for Rural Affairs
Rt Hon Alun Michael MP

The Rt Hon Gordon Brown MP
Chancellor of the Exchequer
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

23rd August 2002

Dear Gordon,

REVIEW OF THE PLANNING ENFORCEMENT SYSTEM IN ENGLAND – DRAFT CONSULTATION PAPER

Jeff Rooker's letter of 6 August sought EA(PC) agreement to publish a consultation paper which reviews the existing planning enforcement system. I am responding on Margaret Beckett's behalf.

I am content for the paper to be published and DEFRA will contribute more substantively on the issues in due course. This Department has a wide-ranging interest in planning and I hope that ODPM will involve DEFRA fully in considering possible options for change once responses to the consultation have been analysed.

I am copying this letter to the Prime Minister, Jeff Rooker, members of EAPC and Sir Richard Wilson.

Yours sincerely

Alun

 file (matrix)

10 DOWNING STREET
LONDON SW1A 2AA

From the Senior Policy Adviser

16 August 2002

Dear Robert

Transforming Planning

Thank you for your letter of 6 August.

I have not yet had chance to discuss this with the Prime Minister. However his agreement, despite strong competing pressures from elsewhere, to provide significant additional resources for planning in SR2002 was based on two assumptions.

First, that the current delays in reaching planning decisions, particularly in major commercial and housing development cases, would be significantly reduced in future. Second, the extra money would be accompanied by a significant reform element - ie strong action to intervene in poor Councils and new incentives for the best performers.

Against this background I am concerned that the Prime Minister will see the proposed targets and intervention regime as insufficiently ambitious. I would therefore be grateful if ODPM could consider whether more ambitious targets could be set for 2003/4 or later years, backed up by stronger reform and for further advice on what would be necessary to make this happen.

It would be helpful to have the opportunity to take the Prime Minister's views in the light of the Deputy Prime Minister's proposals on these issues before the BVPI consultation document for 2003/4 is released. This need not delay the publication of the consultation paper unduly.

I am on leave from tomorrow but Alasdair McGowan will be around during the remainder of August.

Yours sincerely

Mike Emmerich

MIKE EMMERICH

Robert Cayzer
PS/DPM

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RL
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JC NA
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MH

From the Minister for Rural Affairs
Rt Hon Alun Michael MP

The Rt Hon Gordon Brown MP
Chancellor of the Exchequer
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Parliament Street
London SW1P 3AG

7th August 2002

Dear Gordon.

Jeff Rooker wrote on 6th August seeking EA(PC)'s agreement to making no change to the 'temporary use' provisions following consideration of the responses to the public consultation on this area of possible planning reform. I agree with his conclusion.

DEFRA has been working closely with ODPM on this and other planning issues in recent months. In the light of concern from some quarters about the impacts of some of the activities that can take place under these provisions without the need for specific planning permission, it was right to air the possibility of additional controls. It is clear from the consultation responses that the balance of opinion is firmly against changing the provisions. They are valued highly by rural communities and businesses for allowing, subject to appropriate limits, a wide range of activites, many of which have been well supported over many years by visitors to rural areas as well as rural communities themselves. There is little evidence that the relatively few problems that do occur cannot be dealt with effectively under existing legislation.

Michael Meacher and I discussed this and other aspects of planning with Jeff on 16 July. I said then that it would be useful if Jeff and I were to make the outcome of the consultations on these provisions known jointly, not least because of the representations that had been made to me directly about the implications for rural interests. To this end we intend to write jointly to all MPs in England and members of the House of Lords when the announcement is made.

I am copying this letter to the Prime Minister, members of EA(PC), Jeff Rooker and Sir Richard Wilson.

pp T. Huggins

ALUN MICHAEL

(Approved by the Minister and signed in his absence).

Jeff Rooker
Minister of State For Housing, Planning and Regeneration

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MG
CINA
AMcG

The Rt Hon Gordon Brown MP
Chancellor of the Exchequer
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Parliament Street
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Dear Gordon.

- 6 AUG 2002

PLANNING CONTROLS – TEMPORARY USES

This letter seeks EA(PC) agreement to the proposal for taking forward the response to the consultation paper on changes to the temporary uses provisions (clay pigeon shooting, motorsports, car boot sales, farmers' markets). We intend to make no changes to the existing provisions.

I would be grateful for responses by 14 August.

Class B of Part 4 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) grants a general planning permission for the temporary use of land for a number of activities for up to 28 days in any calendar year, subject to a number of restrictions and conditions. (Motorcar and motorcycle racing and temporary markets are restricted to no more than 14 days under the GPDO). Development in excess of the limits set out in the GPDO will require an application for planning permission.

The temporary use provisions are intended to be a deregulatory mechanism that is beneficial to the community, by providing for infrequent recreational and fund-raising events to be held by such bodies as community groups and charitable organisations. There are clear benefits to planning authorities from avoiding the need for a very wide-ranging but generally harmless group of activities to be subject to planning procedures. However, in recent years there have been some concerns about the amount of activity which this provision allows, and the ability of local planning authorities to enforce the provisions, in particular in relation to car boot sales (and to a lesser extent about motorsports and clay pigeon shooting).

We issued a consultation paper on possible changes to the Use Classes Order and temporary use provisions on 24 January 2002. In respect of the temporary use provisions, the paper put forward six options for possible change. These ranged from retaining the current temporary use provisions to removing all permitted development rights. The paper did not state a preferred option and sought views from all interested parties.

The consultation period expired on 24 April 2002. We are dealing with the temporary uses aspects of the consultation paper independently from the Use Classes Order aspects as the provisions are entirely separate.

We had a significant response to the temporary use aspects of the consultation paper (approximately 2400 responses). In addition, we received petitions about temporary uses totalling approximately 6000 signatures. The overwhelming consensus in response to the consultation paper was to retain the existing provisions because:

- The evidence of a widespread problem in relation to temporary uses is generally very limited.
- There are existing controls that can deal with problems in relation to specific cases.
- The temporary uses provisions are of significant value to rural communities and in particular to farmers. Any changes would run counter to Government's commitments to farm diversification.
- Imposing greater restrictions would be a significant burden on business, organisations local planning authorities, and members of the public.

Whilst certain types of temporary use activities, such as car boot sales do generate some amenity issues, such as noise disturbance and traffic and parking problems tightening of the provisions would be a disproportionate response to the issues. We are therefore proposing that no changes are made to the existing temporary use provisions.

I intend to make this announcement by press notice. I also intend to write to all MPs in England and all Members of the House of Lords informing them of the decision.

I am copying this letter to the Prime Minister, members of EA(PC) and Sir Richard Wilson.

pp J Rooker

JEFF ROOKER

APPROVED BY THE
MINISTER AND SIGNED
IN HIS ABSENCE

1. Paper rec Local Gov.
2. File.

Jeff Rooker
Minister of State For Housing, Planning and Regeneration

MG
cc. AMcG
NA

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The Rt Hon Gordon Brown MP
Chancellor of the Exchequer
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

- 6 AUG 2002

Dear Gordon.

REVIEW OF THE PLANNING ENFORCEMENT SYSTEM IN ENGLAND – DRAFT CONSULTATION PAPER

This letter seeks EA(PC) agreement to publish a consultation paper which reviews the existing planning enforcement system. The consultation is essentially scoping in nature; it does not contain any specific proposals for change. Rather it is an exercise to gather information and to seek views on a range of suggestions which might improve the current system.

I would be grateful for responses by 19 August.

The Planning Green Paper announced our intention to review the current arrangements for enforcing planning control. The Green Paper stressed the need to engender public trust in the development control system – without effective enforcement confidence in the system is undermined.

The initial step in taking forward the review was to call a meeting of many of the stakeholders in planning enforcement, including representatives from local authorities, CPRE, Planning Officers Society, the Law Society, RTPI, English Heritage and PINS. This concluded that the current enforcement regime was working reasonably well and that wholesale reform was unnecessary. However, it did highlight a range of potential improvements. The conclusions of this stakeholder group, together with comments received in response to the Green Paper, have informed the drafting of the consultation paper.

The consultation paper is essentially scoping in nature. The objectives of the consultation are two-fold –

- Firstly, information gathering. We want to gain a better appreciation of what people really think about planning enforcement, the principles which underpin it, in particular its

discretionary nature, and the framework of powers and procedures which govern its operation. We want to know whether planning enforcement is as effective as it could be, and if not why not? Are there problems with the system itself or with the way that local authorities operate it? Is the enforcement function hampered by a lack of resources, both in terms of money and the availability of suitably trained staff, or by a fear of the consequences of failure?

- Secondly, we are seeking views on a range of possible changes to the current system which might improve its speed and effectiveness, and help to engender greater confidence in enforcement as a key development control tool. These are suggestions only – many flow from ideas put forward by the stakeholder group. The consultation paper does not contain any specific proposals for change. Whilst some of the suggestions if pursued would require legislation, others could be delivered through administrative action and therefore much more quickly.

The consultation paper examines the three fundamental principles which underpin the planning enforcement system – that the use of enforcement powers is discretionary, that developing without planning consent is not a criminal offence, and that planning permission may be sought retrospectively. It also looks at the range of powers available to local authorities and the rights of appeal.

Amongst the range of possible changes to the detailed powers and procedures are suggestions for a power to require the submission of a retrospective planning application; to require a fee to be paid if permission is not sought for unauthorised development; giving local authorities the right to decline to consider planning applications where an enforcement notice has already been issued in respect of the same development; and requiring developers to self-certify that an approved development accords with the permission granted. The consultation paper also raises the possibility of abolishing in part the rule under which unauthorised development acquires lawfulness through the passage of time and thereby becomes immune from enforcement action.

The paper suggests a number of possible good practice changes which might improve the speed and effectiveness of enforcement. These include the timing of issuing enforcement notices where retrospective permission has been refused, skill sharing and joint working between local authorities, sharing legal representation and grouping cases together to take to Court.

Our intention to review planning enforcement has been widely welcomed. The Planning reform paper published on 18 July. In order to maintain momentum we wish to issue the consultation paper as soon as possible.

There is no reason why the paper should not emerge during the Parliamentary recess. I intend that it should be publicised by means of a press notice.

I am copying this letter to the Prime Minister, members of EA(PC) and Sir Richard Wilson.

JEFF ROOKER

REVIEW OF THE PLANNING ENFORCEMENT SYSTEM IN ENGLAND

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REVIEW OF THE PLANNING ENFORCEMENT SYSTEM IN ENGLAND

CHAPTER 1

INTRODUCTION

1. The Planning Green Paper, 'Planning – delivering a fundamental change', announced that the current enforcement arrangements would be reviewed. Paragraphs 5.67 - 5.70 of the Planning Green Paper are at Annex 1.

2. The Green Paper set the ambitious task of delivering a fundamental change in the planning system. For development control generally, the measures proposed are not for the most part fundamental in a structural sense. They are essentially about making the system we have work better. Not just faster but more responsively and more transparently so that people are treated better, understand what is happening and are involved more in planning decisions which affect them and the areas in which they live. For that we need improved procedures, better management, more resources – and not least a change of attitude to develop a more customer-oriented approach. The outcome of the consultation was announced on 18 July 2002. 'Sustainable Communities: delivering through planning' sets out a comprehensive package of reforms to deliver a step-change in the operation of the planning system to make if faster, fairer and more predictable.

3. The Green Paper recognises that effective enforcement is central to ensuring that public confidence in the planning system is not undermined. This view was echoed by people responding to the Green Paper. It is all very well trying to speed up handling of planning applications but if people carry out development without bothering to apply for planning permission at all that brings the system as a whole into disrepute. Abusing the system is not just unfair. More than that, unauthorised development can in some cases be dangerous or damaging to the environment.

4. Planning Policy Guidance Note 18 on enforcing planning control says, "the integrity of the development control process depends on the local planning authority's readiness to take effective enforcement action when it is essential. Public acceptance of the development control process is quickly undermined if unauthorised development, which is unacceptable on planning merits, is allowed to proceed without any apparent attempt by the local planning authority to intervene before serious harm to amenity results from it." The full text of PPG 18 is at Annex 2.

5. The Green Paper said that the current system was too complex and cumbersome and difficult and expensive for local planning authorities to operate. It said that the system would be reviewed to try to make it simpler. Particular issues mentioned were: looking again at the case for making breaches a criminal offence; increasing penalties so that they were more of a deterrent, and reviewing the arrangements whereby people can effectively buy extra time to enjoy the benefit of unauthorised development by appealing against an enforcement notice to the Secretary of State - a system in which the developer has little incentive to co-operate.

6. The planning enforcement arrangements were last comprehensively reviewed by Robert Carnwath QC over 10 years ago. His recommendations provided the basis of new and improved enforcement powers for local authorities in the Planning and Compensation Act 1991. More recently, in 1995, Arup Economics and Planning reviewed how these new powers were being operated and concluded that they were working well.

7. Seven years on we need to revisit that conclusion in the light of the concerns raised by the Green Paper. We need to look again at the enforcement system and ask what is wrong with it and what can be done to make it work better? Our impression is that it is it basically sound but do we need to tear it up and start again? Do you agree that problems are more to do with the way authorities do or do not use the powers they have at their disposal? Do local planning authorities have the right priorities and resources to enforce effectively where necessary? The purpose of this consultation paper is to examine these issues, make suggestions for possible improvements, and to invite views.

8. As part of this, we need to reconsider whether enforcement action should remain at the discretion of the local authority or whether some form of duty should be imposed on them, whether (as raised in the Green Paper) undertaking unauthorised development should be a criminal offence in some circumstances, and whether the enforcement appeal arrangements might be scrapped in their present form.

9. A Working Group with members from a variety of expert groups met in January to start the review of the planning enforcement system. A list of organisations represented on the Working Group is at Annex 4. Their conclusions, together with comments received in response to the Planning Green Paper, helped to inform preparation of this consultation paper.

10. The current arrangements are embedded in primary legislation, and any changes would require a suitable legislative vehicle. But we must also consider how much could be done to improve things through secondary legislation or by administrative action, such as guidance of one form or another, and through better resourcing of enforcement by local authorities.

11. In the meantime, we are improving the arrangements for handling enforcement appeals. New rules, building on the experience of changes made to the rules for planning appeals introduced in August 2000, are due to be put in place shortly. And, for the first time, we have introduced for 2002/03 Ministerial targets for the handling of enforcement appeals by the Planning Inspectorate.

CHAPTER 2

RESPONDING TO THIS CONSULTATION PAPER

2.1 We look forward to receiving your comments on the questions asked and solutions proposed in this consultation paper. Please send 2 copies of your response to John Colaclides at the address below no later than **xx November 2002.**

Development Control Policy Division
Office of the Deputy Prime Minister
Zone 4/J3
Eland House
Bressenden Place
London
SW1E 5DU

Or e-mailed to planning.enforcement@odpm.gsi.gov.uk
Tel: 020 7944 3961
Fax: 020 7944 5004

2.2 Further copies of the consultation paper are available from:
Free Literature
PO Box 236
Wetherby
West Yorkshire
LS23 7NB

Tel: 0870 122 6236
Fax: 0870 122 6237

or on the Internet at http://www.planning.odpm.gov.uk/

2.3 We may wish to make responses to this consultation paper available to Parliament and for public inspection in the Department's library. Unless you specifically state that your response, or any part of it, is confidential, we shall assume that you have no objection to this arrangement. We shall count all confidential responses in any numerical analysis.

2.4 If you have any comments or complaints about the consultation process itself (rather than the content of the consultation paper) these should be directed to ODPM's Consultation Co-ordinator:

Michael Prior
ODPM
Corporate Business Division
6/J10 Eland House
Bressenden Place
London SW1E 5DU

Or e-mailed to Michael.Prior@odpm.gsi.gov.uk

2.5 The Cabinet Code of Practice on Consultation sets out criteria with which Government consultations must comply. The criteria are at Annex 3. This consultation meets those criteria.

CHAPTER 3

THE PLANNING ENFORCEMENT SYSTEM

Background

1. Enforcement is a fundamental part of the development control framework. The effective use of enforcement powers is central to ensuring a fair and transparent development control system. Disregard of the rules by a minority must not be allowed to bring the whole planning system into disrepute. We need to ensure that the enforcement system is effective, as simple and quick as it can be, adequately resourced, and attains a profile and priority which is fully in keeping with its central role. Where there are problems or weaknesses we need to see whether these can be addressed, and if so how.

The enforcement framework

2. The concept of planning enforcement in circumstances where it appears to the local planning authority that there has been a breach of planning control dates back to the establishment of the modern planning system in 1947. A breach of planning control is not criminal in itself; enforcement is a matter for the discretion of the local planning authority and is founded on the principle of expediency. The decision to enforce must be made on planning grounds. The key factor is whether the breach of control unacceptably affects public amenity or the existing use of land or buildings meriting protection in the public interest. The action taken should be proportionate to the breach. This means that if, in the local authority's judgement, enforcement action would serve no useful purpose, they can decide not to take any action at all. In such circumstances the local authority should be prepared to explain its decision to parties who consider that a breach of planning control damages their interests or amenity.

3. The current enforcement regime provides a mix of powers with which to deal with breaches in a controlled but flexible manner. Many minor breaches of planning control can be resolved through negotiation and persuasion without the need for recourse to formal enforcement action – and it is quite right that minor breaches should be remedied in this way. In less straightforward cases, and particularly in cases where there is deliberate abuse of the system, formal enforcement action may be necessary. Enforcement powers exist to provide a flexible toolkit with which to tackle a range of breaches of planning control. However, experience suggests that these powers are not being used as effectively as they could be. As a result they are not achieving the objective of a fair and efficient land use planning system. The complex legal framework within which enforcement powers must be exercised often frustrates communities and local authorities. Enforcement can be a long, drawn-out process with the use continuing unabated until the process is exhausted. Often it fails to deliver; and where it does the sanctions and penalties are not seen to justify the effort or to act as a deterrent to others.

Enforcement powers

4. The discretionary powers available to local planning authorities to deal with breaches of planning control are based on recommendations made following a review of enforcement provisions by Robert Carnwath QC. They are set out in the Planning and Compensation Act 1991, which amended the Town and Country Planning Act 1990. The powers include:

- The power to serve a planning contravention notice. This may be used where it appears that there may have been a breach of planning control and the local planning authority require information about the activities on the land or to find out more about the nature of the recipient's interest in the land.

- The power to issue an enforcement notice, requiring steps to be taken to remedy the breach within a given period. There is a right of appeal to the Secretary of State against an enforcement notice. If the notice is upheld, failure to comply is an offence with a maximum penalty on conviction of £20,000*.

- The power to serve a stop notice. This has the effect of immediately stopping any activity which contravenes planning control. If contravened the resulting offence can be prosecuted in the Magistrates' Court with a maximum penalty on conviction of £20,000*.

- The power to serve a breach of condition notice where there is a failure to comply with any condition or limitation imposed on a grant of planning permission. This procedure provides a fast track enforcement option to secure compliance, with no statutory right of appeal to the Secretary of State.

- The ability to seek an injunction in the High Court or County Court to restrain any actual or expected breach of planning control.

Use of powers

5. The enforcement powers available to local authorities are extensive; but it is the manner of their use which will determine the perceived and actual effectiveness of enforcement as a tool to guide development in the right place and remedy unacceptable breaches of planning control.

Enforcement Policy and Good Practice Guidance

6. Planning Policy Guidance Note 18 and Circular 10/97 set out national policy guidance and procedural guidance on enforcement. The 1997 publication Enforcing Planning Control: Good Practice Guide for Local Planning Authorities complements these[1]. Local planning authorities have a duty to consider taking enforcement action where they believe there to have been a breach of planning control.

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* £20,000is the maximum fine in the Magistrates' Court. If the case goes to the Crown Court the fine is unlimited.

[1] Copies of the Good Practice Guide and Circular 10/97 are obtainable from the Stationery Office. Planning Policy Guidance Note 18 is reproduced in full at Annex 2 to this consultation paper.

Is enforcement working?

7. In considering any review of the planning enforcement system we need first to ask the fundamental question: 'is enforcement working?'. Through this consultation exercise we hope to be able to gain a better appreciation of what people really think about the way that planning enforcement is currently undertaken, to provide real evidence for the answer to the question **'is enforcement working?' We would welcome your views.**

8. We believe that the existing system is basically sound, and does not need to be re-invented. But that is not to say that there is not scope for improvements to make planning enforcement more effective and better able to play its part in ensuring that people have confidence in the planning system as a whole. These improvements may be achieved through making better use of the existing system, or they may require changes to the system.

9. There are a number of other basic questions which need to be answered -

- **Can the process of enforcing planning control be simplified?**
- **How might local planning authorities be encouraged to make greater use of the powers already available to them?**
- **Can the system be speeded up to prevent abuses continuing?**
- **Is there a need for a more consistent approach amongst local planning authorities?**
- **Is there a case for raising the level of fines which Courts may impose?**

We would be grateful for your views and suggestions on these questions and on those set out in Chapters 4, 5 and 6.

CHAPTER 4

BETTER ENFORCEMENT – FUNDAMENTAL PRINCIPLES OF PLANNING ENFORCEMENT

The enforcement of planning control rests on three fundamental principles – that the use of enforcement powers is discretionary; that developing without planning consent or in breach of a consent which has been granted is not an offence; and that planning permission may be sought retrospectively. This Chapter examines these principles.

Local planning authorities' discretionary duty

1. Local planning authorities' enforcement powers are discretionary. This provides flexibility to tailor their approach to each case to fit the nature and circumstances of the breach or alleged breach. Minor breaches can often be resolved informally through negotiation and persuasion; more complex cases, or where there is clear and deliberate abuse of the system, may require formal enforcement action. If enforcement became a duty this flexibility would be lost and difficulties would be created. But some argue that this discretion leads to inconsistencies of approach both within and between authorities. It removes certainty and undermines public confidence in local authorities, in the enforcement system, and in the planning system as a whole.

2. Parliament has given to local authorities the primary responsibility for taking whatever action may be necessary, in the public interest. Local planning authorities have a duty to consider taking enforcement action. PPG18 advocates this, and also adopting a proactive approach. There is a risk that the enforcement system would fall into disrepute if all breaches of planning control were enforced against no matter how trivial. And this would place an intolerable burden on local authorities, and could impact similarly on the Planning Inspectorate and the Courts. There are always cases where development is ultimately in the public interest even if it is unlawful. Other authorities, such as the police, have discretion whether to prosecute. Why should democratically elected local authorities not similarly be able to exercise their own judgement as to whether and, if so, how best to tackle breaches of planning control?

3. **We feel that it is important that the decision whether or not to take enforcement action remains at the discretion of the local planning authority. But there are arguments for and against, and we would welcome views on this issue.**

Resources and proactive approach by local planning authorities

4. Interested parties do not always understand why local planning authorities do not always take prompt enforcement action. If problems are tackled at the start they might be resolved by negotiation without the need to resort to formal, and costly, enforcement procedures at a later stage. But even an informal approach requires resources. It is often argued that local planning authorities simply do not have the resources to monitor and investigate breaches of planning control. Their ability to act swiftly to remedy breaches is often hampered by lack of resources and by

other priorities within the planning/development control department and the wider authority. Although recent research[2] showed that authorities had provided a modest increase in resources for planning enforcement during a period when spending on the planning function generally had fallen, enforcement is rarely, if ever, seen as a priority function.

5. The enforcement function is undoubtedly resource hungry, and our research showed that district and unitary authorities were devoting 12% of their resources to this activity. But, unlike applications for planning permission, planning enforcement does not benefit from a distinct income stream. So there has to be a cross subsidy from increased planning application fees or an increase in the contribution from council tax and revenue support grant to provide additional resources for enforcement. Fees were increased by 14% for 2002/03 and the Planning Green Paper promised a fundamental review of the operation, scope and coverage of the fee regime. As we announced on 18 July, this is now underway. This research will consider the extent to which the existing fee regime adequately funds the wider development control function, including enforcement and the monitoring of compliance with conditions. We also announced on 18 July that a new planning delivery grant would be in place from 2003/04 to improve the performance of local authority planning services. We will consider how enforcement might benefit from the new grant.

6. Enforcement by local planning authorities is largely a reactive process. Whilst some local authorities do take a more proactive approach, actively monitoring the implementation of planning permissions and seeking out breaches of planning control, others tend to react only when they receive a complaint about alleged unauthorised works, use or breach of condition. Larger unitary authorities usually have a dedicated enforcement team; district councils on the other hand tend not to have one. Where local planning authorities are proactive, enforcement works better. With more resources local planning authorities would be able to take a more proactive role in enforcement matters.

7. The resources question is not simply a matter of finance and priorities – there are also questions about the availability of suitably trained and experienced staff. This is part of a much bigger picture identified in the Planning Green Paper. The Government intends to work with local authorities, professional institutions, educational institutions and other stakeholders to improve recruitment into the planning profession and to ensure they have the necessary skills through proper training and education.

8. **We would be grateful for views, from local authorities in particular, on resourcing planning enforcement and whether this presents a barrier to its effectiveness. Is identifying and retaining suitable staff to undertake enforcement work a problem? Is there a need to raise the profile of planning enforcement and for local authorities to accord it a higher priority?**

Criminalisation

[2] Resourcing of Local Planning Authorities, DTLR, February 2002.

9. The Planning Green Paper raised the question of whether there was a case for reviewing existing law under which developing without planning consent or in breach of a consent which has been granted is not an offence. The proposition is that unauthorised development should be an immediate offence and that the offence should be punishable regardless of whether permission is subsequently granted or of the steps taken to remedy it. Any extension of the criminal law needs to be very clearly justified. Criminalisation was last considered, and comprehensively rejected, in the Parliamentary discussions of what became the Planning and Compensation Act 1991.

10. In favour of such an approach is that it would clarify the uncertainty about the current status of unauthorised development. This would have very real presentational advantages, sending a clear signal that development without permission will not be tolerated. And it would provide a means to tackle short-lived breaches effectively, and provide a stronger deterrent.

11. Against such an approach is first that the margins between lawful and unlawful development are not clear-cut. There is 'greying' at the edges – the system provides for permitted development rights, the accrual of lawfulness over time, questions as to when a change of use is material, the nature of ancillary uses, and so on. The provision of flexibilities and freedoms, which help to ensure that the planning system as a whole is not burdened with unnecessary regulation, inevitably introduces elements of uncertainty. Under the present arrangements, the onus is on an appellant/offender to prove, on the balance of probability, that there has been no breach because what he is alleged to have done has either not taken place or is lawful. Criminalisation would shift the burden of proof from the appellant/offender to the local planning authority, who, as in any other criminal proceedings, would need to prove 'beyond reasonable doubt' that a breach had occurred. Given the complex nature of the planning system and the reliance which may need to be placed on the precise nature of the planning history of a particular site, satisfying the criminal burden of proof may prove extremely difficult and therefore make enforcement less rather than more effective. Fewer convictions would serve only to further undermine confidence in the system.

12. Secondly, criminalisation would encompass all breaches of planning control, no matter how trivial. Whilst it might be argued that it would be possible to distinguish certain breaches as being more significant than others, for example by reference to terms such as 'persistent', 'flagrant' or 'serious', to do so would present very real difficulties and introduce further uncertainty. Without such caveats even someone who unwittingly committed a very minor breach of planning control would find that they had a criminal record.

13. And, thirdly, the Government does not believe that Magistrates Courts are a suitable forum within which to argue the fine technicalities of planning legislation; the additional caseload would overburden the Magistrates Courts. Jurisdiction on appeals was removed from Magistrates over 40 years ago because the subject matter was seen as being too specialised for a general Court to deal with. Magistrates are not equipped to deal with matters of planning judgement. There would be a risk to the clarity and fairness of the system. The Planning

Inspectorate on the other hand has a pool of knowledge, experience and expertise on which to draw.

14. **The Government therefore believes that criminalisation would be an inappropriate and disproportionate response. Criminalisation seems too draconian a penalty given the minor and often unwitting nature of the vast majority of breaches of planning control. We would welcome views on the issue.**

Retrospective planning permission

15. The opportunity to apply for planning permission retrospectively is seen by some to be unfair. It is argued that there should be a presumption against granting planning permission if work has already started or has been completed before the application for planning permission has been considered and permission granted. And it has been suggested that there should be a requirement in all cases to submit a retrospective application for planning permission if requested to do so by the local planning authority.

16. Developers who start development without planning permission are seen to be jumping the queue. There is a perception that planning permission is more likely to be granted if a building has already been built. Statistical evidence does not support this perception. The 'success' rate for retrospective planning applications is in fact lower than that for applications which are made prior to development taking place – this applies across all sizes and types of development. Local authorities must consider a retrospective application on the same basis as they would do if the development had not already taken place. When a retrospective application is made, third parties have a chance to object before permission is granted. And conditions can be imposed on the grant of permission. But, regardless of the fact that planning permission would have been given if it had been applied for in advance, public perception is that when a retrospective application is made, there is no opportunity to object or to attach conditions.

17. The advice in PPG18 is that while it is unsatisfactory for anyone to carry out development without first obtaining planning permission, enforcement action should not be taken solely to "regularise" development which is acceptable on its planning merits. Of course it can be difficult for local planning authorities to justify an "acceptable breach" and without a deterrent, developers will continue to flout the law. But a balance must be struck between development which though unauthorised is not causing particular harm and that where enforcement action is essential to remedy a breach of planning control. Local planning authorities' scarce resources should be focused on significant breaches, not on retrospective development which would be given planning permission.

18. Local planning authorities are best placed to decide whether development is unauthorised. They are also best able to decide whether anyone who undertakes development which is unauthorised should be invited to seek planning permission retrospectively. In cases where there are disputes enforcement notices can be served. If no application is submitted within a specified period, or if an appeal against refusal is not made, this should not constitute a prosecutable offence. If an

application is made retrospectively and permission is refused it is right that there should be a right of appeal just as there is if planning permission is sought prior to development taking place. If planning permission is refused on appeal, the local planning authority may then take enforcement action to remedy the breach – this might include requiring the demolition of the building.

19. Large developments are rarely constructed without planning permission. So the issue of retrospective applications is limited to smaller scale developments and uses. Development which causes environmental or amenity damage to the locality is in general easily detected. PPG18 advises that enforcement action should be taken in such circumstances. Problems often occur with detecting change of use or intensification of use cases. For example, a small, low key use commences without planning consent, becomes established and then gets larger; this intensification brings it to the attention of the local planning authority. But by the time the local planning authority reacts it is too late to take enforcement action because the use has become lawful. See also Chapter 5 paragraphs 29 to 32. **We believe that retrospective applications continue to have a role to play in legitimising unauthorised development against which enforcement action is inappropriate. But we would welcome views.**

Possible approaches to dealing with retrospective planning applications

20. In cases where a retrospective planning application is not forthcoming, and the nature of the development is not so damaging to amenity as to warrant enforcement action, the developer benefits from not having paid a planning fee. It has therefore been suggested that in circumstances where the local planning authority invites the developer to submit an application for development which needs planning permission and the developer refuses, the legislation should be amended to empower the local planning authority to serve a Certificate on the developer or owner requiring them to pay a fee equivalent to the planning application fee. Failure to make this payment would be an offence. The fee would be waived if, alternatively, the developer applied for and obtained a lawful development certificate. **We would welcome your views on the suggestion that where a retrospective application is not submitted, the local planning authority should be able to require a fee to be paid with non-payment being an offence.** We discuss below the issue of the level of fees and retrospective applications.

21. Other possible approaches to the issue of retrospective applications are set out in Chapter 5. These include the use of stop notices (see paragraph 5.10 – 5.14) and extending the scope of the planning contravention notice provisions (see paragraph 5.22-5.28).

Retrospective planning permission and higher fees

22. Some have suggested that there should be higher fees for retrospective applications. The higher fee would not be a penalty, rather a way to help recover the local authority's costs of considering enforcement action. It is argued that the higher fee for retrospective applications would act as an incentive for applying for planning permission before works commence.

23. We believe however that higher fees for retrospective planning applications would be counterproductive, acting as a further disincentive to applying. The ability to apply retrospectively does not in itself encourage unauthorised development. We would however be grateful for views on this.

CHAPTER 5

BETTER ENFORCEMENT – ENFORCEMENT POWERS

In this Chapter we consider the detailed powers and procedures which apply to enforcing planning control and how these might be improved.

1. Local planning authorities currently have a range of enforcement powers at their disposal. These are designed to enable action to be taken which is appropriate to the particular breach. Enforcement Notices require action to be taken to remedy a breach of planning control. Where the breach concerns the failure to comply with a condition imposed on a planning consent, a breach of condition notice may be served. Planning contravention notices provide a mechanism to require information in order to establish whether a breach of planning control has taken place. Stop notices, used in conjunction with an enforcement notice, prohibit any use or activity and can be used where necessary to tackle the most serious breaches. Injunctions can be used specifically to restrain an actual or threatened breach of planning control. Although, for example, there is a clear overlap between breach of condition notices and enforcement notices, each has particular characteristics which may serve to make it more or less suitable in any given circumstance. In complex cases, both, or an enforcement notice alone, could be used. In simpler cases, the breach of condition notice should be used alone.

2. **We believe that the range of enforcement powers currently available gives local authorities the right tools to be able to effectively enforce planning control. However we would welcome views on whether all the powers available are necessary, or indeed whether more are needed.**

3. It has been suggested that local planning authorities do not use the enforcement powers available to them because action is not always successful. Where enforcement action 'fails', this might have the effect of undermining the confidence and resolve of the authority to act in future cases. **We do not believe that local planning authorities are reluctant to take enforcement action because of the risks of failure, but we would welcome authorities' views on this.**

Enforcement Notices

4. Enforcement Notices are the most widely used power. In 2000/2001 local authorities reported issuing nearly four and a half thousand. During the same period over three thousand enforcement appeals were received. But the number of enforcement notices issued is in decline. The use of other formal enforcement procedures (Stop Notices and Breach of Condition Notices) similarly shows a downward trend. The underlying reason may be that the number of breaches of planning control which necessitate formal enforcement action is also in decline, with more matters able to be dealt with through negotiation. Or it may reflect an unwillingness or inability on the part of local authorities to use the powers available to them. This may be for a variety of reasons including:

- a lack of experienced staff;

- unfamiliarity with the powers;
- unsatisfactory outcomes acting as a disincentive to use the powers available;
- the priority given to enforcement in relation to other development control or wider local authority functions;
- a lack of resources to effectively pursue alleged breaches of planning control.

5. We are concerned that the decline in the use of enforcement powers does not undermine public confidence in the ability of the planning system to ensure fairness by effective policing of breaches of control. **We would welcome views on why the use of formal enforcement powers is declining and whether steps need to be taken to regain public confidence in the system.**

Handling of Enforcement Appeals

6. Criticism is often expressed that enforcement appeals take too long to determine. Because an enforcement notice has no effect pending the determination of the appeal, the alleged breach of control often continues if no stop notice has been served. Enforcement appeals necessarily take longer to determine than ordinary planning appeals because of their complex nature, and therefore require more specialised handling. But the Government recognises the need to simplify enforcement appeal procedures and improve their speed, effectiveness and efficiency in the interests of all concerned in the process. We are introducing new procedures and guidance which will include tighter timescales for submission of evidence, and bring enforcement appeals more into line with planning appeal procedures.

7. Unlike the Ministerial timeliness targets for deciding Section 78 planning appeals, targets for enforcement appeals have until recently been shown only in the Planning Inspectorate's business and corporate plan. This year, for the first time, the Government has set and published targets for the handling of enforcement appeals. These reflect the higher profile given to enforcement in the Planning Green Paper. Improved handling of enforcement appeals will support delivery of the objective of raising public confidence in the planning system.

8. For 2002/03 the target is to determine 80 per cent of all enforcement appeals decided by written representation within 32 weeks, by hearing within 33 weeks, and by inquiry within 43 weeks. These targets will become progressively tighter for the following 3 years.

Technicalities

9. Local authorities are sometimes critical of Planning Inspectors for quashing enforcement notices on what they see as 'technical' points. It should be noted however that more than 70% of appeals are unsuccessful, the enforcement notice being either upheld as served or subject to variation. So authorities have a good track record of success. But to maintain or improve upon it they need to ensure that they take great care in drafting notices and establishing the planning history of the site. Failing on a technical or legal point at appeal can act as a real disincentive to taking enforcement action in the future. We would again remind local authorities to ensure that they follow the Department's good practice

guidance on enforcement. By doing so, the chances of an enforcement notice being quashed on technical/legal grounds will be much reduced. We shall consider the need to strengthen the advice set out in the Good Practice Guide to Enforcing Planning Control and remind local authorities to follow the guidance. **We would welcome views on the usefulness of the existing Good Practice Guide and any suggestions for amendments or additions.**

Stop notices

10. Some local planning authorities are reluctant to use stop notices, even where they consider it justified, because of the right to compensation if an appeal against the related enforcement notice is allowed on 'legal grounds'. There is also the disincentive of the length of time it takes to gather evidence. There are too few examples where stop notices have been successfully employed.

11. It is argued that the threat of claims for compensation where a stop notice is served presents a real deterrent to local authorities. Removing the liability to compensation would encourage greater use of the power and enhance its effectiveness. The counter argument is that the existence of a compensation provision acts as a check on local authorities to ensure that they only act where the breach is clear and unarguable. **We would welcome views on whether the risk of compensation liability acts as a deterrent to the use of stop notices.**

12. At present a stop notice and an enforcement notice can be served together, but before an enforcement notice is issued the local planning authority will usually wait to see whether the unauthorised development is likely to cause any harm. At the start of the development this is not always apparent, and it might not be for some considerable time. In order for remedial action to be taken an enforcement notice has to be issued. The terms of the stop notice must derive from the associated enforcement notice. If a stop notice could be served and take effect before building work commences we would not get to the stage where a building is built without planning permission and the developer then argues that it should be allowed to remain. What is needed is the ability to be able to serve a stop notice as soon as a breach of planning control is identified, and without the need to have firstly or concurrently served an enforcement notice. The stop notice would take effect immediately. As now, it would be an immediate offence for the stop notice not to be complied with once it took effect.

13. A possible scenario would be that as soon as building starts or any unauthorised use begins, a stop notice could be served which would immediately stop development without any potential claim for compensation. All the action would be for the local planning authority to take, not the developer. The developer would have the right to 'challenge' the stop notice by making an application for a lawful development certificate or by submitting a planning application. Only if the lawful development certificate was granted would there be any right to compensation for any financial loss the recipient may have incurred as a consequence of the stop notice. The stop notice would have a similar effect to an injunction. An enforcement notice could be served later with the onus on the developer to prove that the development was not in breach of planning control. Alternatively a planning application could be submitted. The stop notice would

prevent any further works or use taking place until planning permission was granted either by the local planning authority or by the Secretary of State on appeal. If the application was refused, or any resulting appeal was also unsuccessful, enforcement action could then be taken to remove any unauthorised works. This approach would apply only to work in progress; if the development is complete then an enforcement notice should be served.

14. **Should provision be made in legislation to enable a stop notice to be served at the start of unauthorised development and before an enforcement notice is served? We welcome views on this proposal.**

Conditions and Breach of Condition Notice

15. In instances where conditions applied to a planning permission have not been complied with a breach of condition notice is the appropriate means of control. When a breach of condition notice is served there is no statutory right of appeal to the Secretary of State. Some see this as an injustice. However, there is the right of appeal against the imposition of a condition when planning permission is granted and an application can be made at any time to have a condition lifted or varied. **In the circumstances we do not see any need to introduce a right of appeal against a breach of condition notice, but would welcome views on the issue.**

Monitoring the implementation of a planning permission and compliance with Conditions

16. Many Local planning authorities do not routinely monitor whether works are being or have been carried out in accordance with the planning permission granted and any conditions attached. It is not possible to monitor all the conditions given the large number of planning permissions granted each year. Over half a million planning applications are determined each year; more than 85% result in planning permission being granted. Most permissions will have some conditions attached. Councils not surprisingly therefore tend to concentrate their efforts on 'key' conditions. Local planning authorities have a positive duty to enforce conditions but they are often unable to do so effectively. Some conditions, for example operating hours, are extremely difficult and labour intensive to monitor. A further difficulty is the often long delay between permission being granted and the commencement of works to implement the permission. Local authorities need to be alerted to the fact that development has commenced. Whilst in the case of some larger developments local authorities sometimes impose conditions requiring notification of commencement of works on a particular phase, generally only if local authority staff see work on the site, or the rating department spot a change of use, or it is brought to their attention by a member of the public, would the planning department know that work had started.

17. When the local planning authority receives a complaint about an alleged breach of planning control, the complainant may not always be in possession of all the facts. Instead he or she may simply feel that the development is not as approved. It may be appropriate for the person who complains to be given details of any planning permission granted for the development including any conditions that have been

attached to the permission. The complainant would then be better placed to judge whether the complaint was genuine.

18. It might be argued that conditions that are difficult to monitor ought not to be attached to planning permissions because they serve little practical purpose. But this is not a valid reason for not attaching a condition. Conditions are imposed to make development acceptable in planning terms and so enable planning permission to be given. All planning conditions must meet the tests of being necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. If it is hard to monitor compliance, the enforceability of the condition might be called into question. But the difficulty of monitoring compliance should not be used as an excuse either not to impose a condition or to refuse permission if that condition would make the development acceptable. What is needed is a procedure to enable better monitoring of conditions. Two possible approaches are the use of site notices and a system of self-certificates.

Notices on site

19. The local community and near neighbours in particular can have an important part to play in monitoring whether conditions have been breached. They are well placed to spot possible breaches of planning control. However, often they do not have the benefit of knowing exactly what development has or has not been permitted. We are keen to build on the role individuals can play in support of local authorities in drawing to the authorities' attention any suspected breaches of planning control. In order to enhance the role they can play, it has been suggested that a notice could be posted on the site giving details of the planning permission granted and any conditions attached to it, as is done for example for an entertainment licence. It could be displayed for a set period before the work started, for as long as the work was carried out, and afterwards for a specified time.

20. **Views are sought on the practicalities of introducing and operating a requirement to have a notice on the site indicating when the work commenced. Should there be a sanction for failing to display such a notice? A possible alternative would be a requirement for the developer to notify the planning department when works are about to commence. We would also welcome views on this possible approach.**

Self certificates

21. It has been suggested that there should be a duty to self-certify that an approved development accords with the permission granted, with it being a criminal offence to issue a false certificate. However some conditions, for example those which relate to the way a property is used, continue to apply long after the development has been completed. A certificate could only certify that at the particular time the development fully met the terms of the planning permission. Additionally, if it applied to householder development (for example house extensions), they would have little knowledge of planning law and would be liable for any failures of their

builders. **Views are invited on whether a self-certification process to confirm that a development accords with the planning permission would be workable.**

Planning contravention notices and retrospective planning permission

22. The planning contravention notice is a diagnostic tool. It is used where it appears that there may have been a breach of planning control and the local planning authority requires information about activities on the land, or the nature of the recipient's interest in the land.

23. As discussed in Chapter 4, paragraph 18, where a development that is acceptable in planning terms has been carried out without planning permission but no application for planning permission has been submitted, local planning authorities would not take enforcement action merely to regularise the situation. In order to deal with this problem of the perception of getting away with not applying for planning permission, it has been suggested that one solution might be to extend the provisions of the planning contravention notice to provide for a power to require the submission of a planning application.

24. Where a breach of planning control appears to have occurred there are five possible scenarios:

- development is unauthorised;
- development has not taken place;
- development is lawful;
- development does not constitute a breach of planning control;
- development has planning permission.

25. The planning contravention notice provisions might be amended to require the recipient to carry out one of the following alternative actions:

- submit a planning application;
- show that the development has not taken place;
- produce evidence to demonstrate that the development is lawful;
- demonstrate that the development does not constitute a breach of planning control;
- provide evidence to show that planning permission has been granted for the development;
- remedy the breach of planning control (in the case of an unauthorised use, cease the use; where the breach involves physical works remove any operational development and/or equipment as appropriate).

26. Local planning authorities would be able to use their discretion in cases where the time limit for compliance has expired but the recipient is genuinely attempting to comply and has encountered unavoidable delay in collecting evidence of lawfulness or in exploring alternative sites for development.

27. Under the terms of the existing planning contravention notice it is an offence to fail "without reasonable excuse" to comply with the requirements of the planning contravention notice within 21 days. The maximum penalty on conviction is £1,000. Continuing failure is a further offence. False information carries a

maximum £5,000 fine on conviction. This would apply to the new planning contravention notice.

28. We would welcome your views on this suggestion to extend the provisions of the planning contravention notice to provide for a power to require the submission of a planning application.

Time limits and Lawful Development Certificates

29. The four-year and ten-year time limits for taking enforcement action were introduced in 1991 following recommendations in the Carnwath Report. These time limits are important cut off points for taking enforcement action. After expiry of the relevant periods – 4 years in the case of operational development and breaches relating to use as a single dwelling house and 10 years for any other breach of planning control - the breach of development control becomes immune from enforcement action and thereby lawful. If a breach has gone undetected for so long it can be argued that it has not had a detrimental impact. There is little purpose in enforcing for enforcement's sake. However, this does not remove the perception that someone has 'got away with it', or the possibility that, once lawful through the passage of time, a use might intensify to a point where it did cause harm but nonetheless remained lawful. If the concept of acquired lawfulness for planning purposes through the passage of time were to be abolished it could prove unduly burdensome for businesses to have to obtain a lawful development certificate. That said, where a use is long established, obtaining a lawful development certificate is unlikely to present a problem. Even if one were not sought, given the discretionary nature of enforcement powers, it is unlikely that authorities would seek to enforce in such circumstances. Government policy is against placing unnecessary regulatory burdens on businesses.

30. However, the main problem caused by these time limits is that they favour the unscrupulous developer and simply encourage concealment. Where use has intensified over time, by the time this intensification is noticed the ten years have passed and enforcement action cannot be taken. We therefore suggest that the ten-year limit might be scrapped so that there is no immunity from enforcement in respect of breaches where the ten-year rule currently applies. There would be a period of grace to enable a lawful development certificate to be obtained.

31. The position in relation to dwelling houses is different however, and we therefore consider that the four-year limit for dwelling houses should be retained. However, to discourage concealment, a suggested means of proving that a building had been in use as a dwelling house for the past 4 years would be to prove that council tax had been met for the full period. The four-year limit would also be retained for operational development – concealing such development is generally more difficult and has not proved to be a problem in enforcement terms. On this basis, lawful development certificates would remain but the only time limit after which enforcement action would not be pursuable would be the four-year limit for peoples' homes and for operational development.

32. We invite views on the abolition of the 10 year rule and on whether there should be a transitional period, of say 3 years, before abolition of the ten year

limit to give time for obtaining lawful development certificates for all existing development which did not have planning permission.

Tackling Delays

33. We have already considered the effects of a shortage of resources for enforcement activity. One effect is that when action is taken progress can be slow. Delays also occur as a consequence of how and when local authorities exercise the powers at their disposal, and as a result of the way in which the enforcement system operates.

34. When an appeal against the refusal of a retrospective planning permission is dismissed this does not mean that there is automatically a breach of planning control. As a matter of good practice, when local planning authorities refuse to grant planning permission for a retrospective application, they should consider whether to issue an enforcement notice immediately. In such circumstances, if serving an enforcement notice is delayed there is a risk that any appeal against the refusal of the retrospective planning application will proceed to decision. The appeal against the later enforcement notice will be heard separately, introducing further delay. If however an enforcement notice is served immediately it would be possible for the two appeals to be considered together and so speed up the enforcement process. The Planning Inspectorate cannot accept enforcement appeals which are submitted after the statutory appeal period has expired. **We invite views as to the practicalities of issuing enforcement notices soon after retrospective planning permission is refused.**

35. Applicants frequently employ tactics which, though perfectly legal, delay the effect of enforcement action. For example, applications for lawful development certificates are used to discourage the prosecution of offences arising from failure to comply with enforcement notices. It is argued that enforcement could be speeded up if the only means to delay the effect of an enforcement notice was by submitting an appeal against the enforcement notice. A right for local authorities to decline to determine an application for a lawful development certificate or for planning permission when an enforcement notice has been issued would be required. Section 70A of the Town and Country Planning Act, gives local planning authorities the right to decline to determine repeated applications for planning permission. This might provide a suitable model for a similar provision in relation to lawful development certificates. **Views are invited on whether local authorities should have the right to decline to determine applications for lawful development certificates or planning permission once an enforcement notice has been issued which relates to that development.**

Enforcement Appeals

36. It is sometimes suggested that the right to appeal against an enforcement notice should be scrapped in order to speed up the enforcement process. However, this would have important implications both in relation to human rights and natural justice. The right to appeal against an enforcement notice is a fundamental one which provides an important fairness safeguard. If this right were to be denied, the only remedy would be by seeking a judicial review - this would lead to a

plethora of Court cases, and is likely to have the effect of slowing the process rather than speeding it up. The alternative, to bring down a guillotine on any thing which had not been permitted, would be too draconian and would bring the system into disrepute. We have outlined earlier in this Chapter (paragraphs 6 and 7) our proposals to speed up the handling of enforcement appeals through revised procedural rules and tighter performance targets for the Planning Inspectorate. **We consider that the right to appeal against an enforcement notice should remain in its current form. Views are invited on this issue.**

Grounds of appeal

37. When appealing against an enforcement notice, there are a number of statutory grounds on which the appeal may be based. Ground (a) provides that planning permission ought to be granted for the development which is the subject of the enforcement notice. It is an appeal solely on planning merits. It has been suggested that were this ground to be removed, this would have the effect of forcing the developer/user to seek planning permission. However, ground (a) is useful because the deemed application and the enforcement appeal can be considered together. As a fee is payable for the ground (a) appeal there is no financial advantage in seeking planning permission via an enforcement appeal. Ground (a) provides a quicker route to conclude the matter.

38. Grounds (b), (c), (d) and (e) are known as the 'legal' grounds of appeal. They are concerned with mixed issues of fact and planning law, and rely on the planning history of the site. These grounds are that the matters stated in the enforcement notice have not in fact occurred, that there has not been a breach of planning control, that the enforcement action was out of time, and that the enforcement notice was not properly served. Grounds (f) and (g) deal with the reasonableness of the requirements of the enforcement notice – whether the steps required are excessive for their purpose and whether the compliance period is unreasonably short.

39. We believe that specifying grounds on which an appeal can be made is helpful to appellants, local authorities and decision takers. It helps to structure an appeal, facilitating a clearer and more focussed presentation of the basis for appeal. Without specific grounds on which to base an appeal, the arguments are likely to become less clear and the process is likely to take longer to conclude. **We therefore believe that all the grounds of appeal should remain in their current form. (If the ten-year rule were to be abolished (para. 32) ground (d) would require amendment). We would however welcome views on this issue.**

The Double Deemed Fee

40. Ground (a) states that planning permission ought to be granted or the condition or limitation specified in the enforcement notice ought to be discharged. In order for a ground (a) appeal to proceed in most cases an administrative fee is payable (in accordance with the tariff in the Planning Application Fees Regulations). This is not a fee for the appeal, but a contribution to the expenses of the Secretary of State and the local planning authority in dealing with the deemed planning application. The fee payable is double that which would be charged for a normal planning

application – hence the 'double deemed fee'. The fee for the deemed planning application is effectively held as a deposit which is refundable if the appeal succeeds on the 'legal' grounds. Under the present system, half of the fee goes to the Planning Inspectorate and the other half to the local planning authority. It takes time and effort for the Inspectorate to administer this system which yields only some £50,000 per year. For accounting purposes this revenue is treated as a receipt and is paid over to the Treasury.

41. **Views are invited on whether the whole of the fee should instead go to the local planning authority to help to pay towards the cost of enforcement. Local authorities would be expected to take on the responsibility for administering the administrative fee system, including the initial calculation of the deemed application fee.**

The role of the Magistrates' Court

42. A criminal offence occurs where the requirements of an effective enforcement notice are contravened after the date on which the compliance period stated in the notice expires. Once the compliance period has expired and there is evidence to show 'beyond reasonable doubt' that any requirement in the notice has been or is being contravened, the local planning authority may initiate a prosecution of the offence. Cases are usually heard by Magistrates.

Training and experience

43. Planning is a technical and complex subject. It follows therefore that enforcement, which carries with it significant consequences, is also inevitably technical and complex in nature. Magistrates are understandably not well equipped to deal with planning enforcement cases. Many have little or no expertise in dealing with enforcement cases because so few go to Court. They need more experience of enforcement cases in order to enable them to understand better the issues and arguments in play. This will only happen if local planning authorities take more cases to Court.

44. Another way of enabling Magistrates to increase their familiarity with planning enforcement cases would be by grouping cases together for hearing at a single sitting. An individual authority is unlikely to have several cases running to the same timetable. **By joining forces with a neighbouring authority it may be possible to identify cases which have reached a similar stage and which can be brought to Court together. We invite views on the practicalities of such an approach.**

45. We would also suggest that given the particular skills and expertise necessary to bring enforcement cases to Court, local authorities might be encouraged to work together to present cases better. This might overcome any skills shortages and allow for a more effective deployment of resources. Similarly, authorities might also consider sharing legal representation in Court. **We invite views on the merits and practicalities of skills sharing and joint working between local authorities on enforcement cases, and on sharing legal representation.**

46. Magistrates might also benefit from additional guidance on dealing with enforcement cases. One suggestion is that there should be a general version of written guidance for Magistrates specifically dealing with planning enforcement. **Views are invited on whether there is a need for more or better guidance for Magistrates.**

Penalties - the level of Fines

47. It has been suggested that the fines imposed by the Courts are too low and are not a sufficient deterrent either to the defendant or to others who may similarly breach planning controls. There is a perception that the level of penalties imposed by the Courts does not adequately reflect either the effort involved in pursuing a successful conviction or the financial benefit which has accrued as a result of the breach. In the case of a successful prosecution for breach of an enforcement notice, the Courts are required to have regard to the financial benefit which has accrued in determining the amount of any fine. But the judiciary exercises its judgement independently and it is not for Government to attempt to influence them.

48. The Town and Country Planning Act 1990 makes it clear that there should be no profit from an illegal activity, yet this is happening regularly because the fines do not reflect the profit made from illegal development. However, it is difficult to determine actual profits; defendants always play down the amount of benefit they have obtained from an unauthorised activity or how much profit has been made, and there is no effective means by which to investigate and establish the facts. But, if more enforcement cases went to Court, it seems likely that with growing familiarity the level of fines imposed would increase.

49. Whilst the maximum fine in Magistrates' Courts is £20,000 it is unlimited in Crown Courts. Where an offence is triable in either the Magistrates' Courts or the Crown Court, a Magistrate may pass on a case to the Crown Court on finding of guilt or at the outset. **Views are invited on whether the level of fines which Magistrates are able to impose is adequate. We would also be grateful for views on whether local authorities should more frequently invite Magistrates to decline jurisdiction in cases where the fine is likely to be more than £20,000 so that these cases would instead be heard in the Crown Courts where a higher fine can be imposed.**

Deferment and delay

50. It has been suggested that currently Courts appear to be all too ready to defer hearing a case if the defendant asks them to do so. The implication of this is that enforcement action is further delayed, and until the case concludes the breach continues. Concern has also been expressed about repeated deferments which further aggravate the situation. It has therefore been suggested that a deferment should only be allowed once. We have already suggested (paragraph 45) that authorities might liaise to bring a number of cases before the Court at the same sitting. By bundling together for hearing at the same sitting a number of different enforcement cases, the case for deferment on any individual case is likely to be more difficult to argue. **We invite views on whether deferment is a real**

problem and whether bundling cases together for hearing might reduce the scope for deferment.

Injunctions

51. **Views are invited on the suggestion that when local planning authorities are seeking an injunction in order to establish "harm" the judge should be invited to visit the appeal site to see first hand the exact nature and effects of the breach of planning control.** Whilst this may have the effect of slowing the process down, first-hand experience of the breach may result in more injunctions being granted.

Mediation

52. Some local planning authorities are used to carrying out informal mediation before taking enforcement action but this tends not to include third parties. In order for third parties' concerns to be addressed their views need to be heard. Neighbours and interested parties should be notified through the procedure for dealing with enforcement appeals in the same way as they are notified about planning appeals. The Department has been researching the use of mediation in the planning system generally, particularly in relation to planning applications and planning appeals. Its wider application will depend on follow up work to the research.

53. **We are not aware of any particular enthusiasm for a formal mediation process for enforcement, but would welcome views on whether such a process would result in quicker and more effective resolution of breaches of planning control.**

CHAPTER 6

REVIEW OF PLANNING POLICY GUIDANCE NOTE 18 - ENFORCING PLANNING CONTROL

1. In the Planning Green Paper (paragraphs 4.54 - 4.63) the Government set out its proposals to review the whole body of national planning guidance and particularly the series of Planning Policy Guidance notes so that they concentrate on the key planning policies that should be determined at the national level.

2. This consultation paper starts the review of PPG 18 Enforcing Planning Control. The text of PPG18 is reproduced in Annex 2. PPG18 was published in December 1991 when the new enforcement powers in the Planning and Compensation Act 1991 were given to local planning authorities. Those powers remain unchanged, but adoption of any of the suggestions in this consultation paper, or any alternatives which are received in response to the consultation, will need revised guidance, either to reflect changes to powers or to procedures.

3. It has been suggested that the advice set out in the current PPG18 might not be carried through into the new series of Planning Policy Statements, but might instead be issued as technical guidance or in some other alternative format.

4. **We would welcome suggestions for any changes or additions to the existing guidance, and any views you may have on the extent to which the advice in PPG18 remains valid.**

CHAPTER 7

SUMMARY OF QUESTIONS/ISSUES ON WHICH VIEWS ARE INVITED

Is enforcement working?

- Can the process of enforcing planning control be simplified?
- How might local planning authorities be encouraged to make greater use of the powers already available to them?
- Can the system be speeded up to prevent abuses continuing?
- Is there a need for a more consistent approach amongst local planning authorities?
- Is there a case for raising the level of fines which Courts may impose?

1. We feel that it is important that the decision whether or not to take enforcement action remains at the discretion of the local planning authority. But there are arguments for and against, and we would welcome views on this issue.

2. We would be grateful for views, from local authorities in particular, on resourcing planning enforcement and whether this presents a barrier to its effectiveness. Is identifying and retaining suitable staff to undertake enforcement work a problem? Is there a need to raise the profile of planning enforcement and for local authorities to accord it a higher priority?

3. The Government believes that criminalisation would be an inappropriate and disproportionate response. Criminalisation seems too draconian a penalty given the minor and often unwitting nature of the vast majority of breaches of planning control. We would welcome views on the issue.

4. We believe that retrospective applications continue to have a role to play in legitimising unauthorised development against which enforcement action is inappropriate. But we would welcome views.

5. We would welcome your views on the suggestion that where a retrospective application is not submitted, the local planning authority should be able to require a fee to be paid with non-payment being an offence.

6. We believe that higher fees for retrospective planning applications would be counterproductive, acting as a further disincentive to applying. The ability to apply retrospectively does not in itself encourage unauthorised development. We would however be grateful for views on this.

7. We believe that the range of enforcement powers currently available gives local authorities the right tools to be able to effectively enforce planning control. However we would welcome views on whether all the powers available are necessary, or indeed whether more are needed.

8. We do not believe that local planning authorities are reluctant to take enforcement action because of the risks of failure, but we would welcome authorities' views on this.

9. We would welcome views on why the use of formal enforcement powers is declining and whether steps need to be taken to regain public confidence in the system.

10. We would welcome views on the usefulness of the existing Good Practice Guide and any suggestions for amendments or additions.

11. We would welcome views on whether the risk of compensation liability acts as a deterrent to the use of stop notices.

12. Should provision be made in legislation to enable a stop notice to be issued at the start of unauthorised development and before an enforcement notice is served?

13. We do not see any need to introduce a right of appeal against a breach of condition notice, but would welcome views on the issue.

14. Views are sought on the practicalities of introducing and operating a requirement to have a notice on the site indicating when the work commenced. Should there be a sanction for failing to display such a notice? A possible alternative would be a requirement for the developer to notify the planning department when works are about to commence. We would also welcome views on this possible approach.

15. Views are invited on whether a self-certification process to confirm that a development accords with the planning permission would be workable.

16. We would welcome your views on extending the provisions of the planning contravention notice to provide for a power to require the submission of a planning application.

17. We invite views on the abolition of the 10 year rule and on whether there should be a transitional period, of say 3 years, before abolition of the ten year limit to give time for obtaining lawful development certificates for all existing development which did not have planning permission.

18. We invite views on the practicalities of serving enforcement notices soon after retrospective planning permission is refused.

19. Views are invited on whether local authorities should have the right to decline to determine applications for lawful development certificates or planning permission once an enforcement notice has been served which relates to that development.

20. We consider that the right to appeal against an enforcement notice should remain in its current form. Views are invited on this proposal.

21. We believe that all the grounds of appeal should remain in their current form. (If the ten-year rule was to be abolished (para. 17 above) an amendment to ground (d) would be required). We would however welcome views on this issue.

22. Views are invited on whether the whole of the 'double deemed fee' should go to the local planning authority to help to pay towards the cost of enforcement. Local authorities would be expected to take on the responsibility for administering the administrative fee system, including initial calculation of the deemed application fee.

23. We invite views on the practicalities of authorities joining forces to identify cases which have reached a similar stage and which can be brought to Court together.

24. We invite views on the merits and practicalities of skills sharing and joint working between local authorities on enforcement cases, and on sharing legal representation.

25. Views are invited on whether there is a need for more or better guidance for Magistrates.

26. Views are invited on whether the level of fines which Magistrates are able to impose is adequate. We would also be grateful for views on whether local authorities should more frequently invite Magistrates to decline jurisdiction in cases where the fine is likely to be more than £20,000 so that these cases would instead be heard in the Crown Courts where a higher fine can be imposed.

27. We invite views on whether deferment is a real problem and whether bundling cases together for hearing might reduce the scope for deferment.

28. Views are invited on the suggestion that when local planning authorities are seeking an injunction in order to establish "harm" the judge should be invited to visit the appeal site to see first hand the exact nature and effects of the breach of planning control.

29. We are not aware of any particular enthusiasm for a formal mediation process for enforcement, but would welcome views on whether such a process would result in quicker and more effective resolution of breaches of planning control.

CHAPTER 8

PARTIAL REGULATORY IMPACT ASSESSMENT (RIA)

REVIEW OF THE PLANNING ENFORCEMENT SYSTEM IN ENGLAND

Background

Enforcement is a fundamental part of the development control framework. The effective use of enforcement powers is central to ensuring a fair and transparent development control system. Disregard of the rules by a minority must not be allowed to bring the whole planning system into disrepute.

The enforcement system needs to be effective, simple and quick as it can be. It must be adequately resourced and properly prioritised. Where there are problems or weaknesses we need to see whether these can be addressed, and if so how.

New and improved planning enforcement powers were introduced in 1991 – their operation was last reviewed in 1995. The Planning Green Paper promised a review of planning enforcement to see whether there was scope for making it simpler and quicker. In particular we would look again at the case for making breaches of planning control a criminal offence, the scope for increasing penalties so that they provided more of a deterrent, and reducing opportunities to exploit the current system.

The consultation paper seeks views on what, if anything, is wrong with the current enforcement system and what might be done to improve it and make it work better. The consultation is a scoping one – it does not contain any firm proposals for change. Rather it puts forward a range of issues, highlights some possible solutions to make enforcement work better, and invites views on these. And it seeks additional information, in particular from local authorities, to provide answers to questions which will help better inform the extent to which current powers need to be amended and whether, and if so what additional resources might be required. Some of the ideas set out in the consultation paper would, if implemented, require primary legislation. Others might require secondary legislation or changes to current working practices.

Risk assessment

The planning system exists to control the development and use of land in the public interest. Ignoring planning controls is unfair, and undermines public confidence in the system as a whole. In some cases unauthorised development can be dangerous or damaging to the environment.

Better, faster and more effective enforcement will help to engender confidence and trust in the planning system. Where unauthorised development is causing real harm to amenity, prompt and effective enforcement action by local authorities will enable that harm to be remedied in the interests of the community. It will help to improve

neighbourhoods and the wider environment. And it will act as a disincentive to those who might seek to deliberately ignore planning controls and give local authorities the confidence to take appropriate action.

Enforcement is a matter for the discretion of the local planning authority and is founded on the principle of expediency. The key factor is whether the breach of control unacceptably affects public amenity of the existing use of land or buildings meriting protection in the public interest. This means that in the case of minor breaches of control, authorities may decide not to take any action.

Options

1. REMOVAL OF LOCAL PLANNING AUTHORITIES' DISCRETIONARY DUTY

Local planning authorities' enforcement powers are discretionary. Parliament has given to local authorities the primary responsibility for taking whatever action may be necessary, in the public interest. Local planning authorities have a duty to consider taking enforcement action. PPG18 advocates this, and also adopting a proactive approach.

2. HIGHER PLANNING APPLICATION FEES

The enforcement function is resource hungry. But it does not benefit from a distinct income stream. Instead it must be funded from council tax and revenue support grant and 'subsidised' from planning application fee income. A lack of resources may be a barrier to effective enforcement by local authorities. Higher planning application fees could be one way to provide additional resources for enforcement activity.

3. CRIMINALISING BREACHES OF PLANNING CONTROL

Developing without planning consent, where consent is required, or in breach of a consent which has been granted is not, and never has been an offence. The reasons for this are that the margins between lawful and unlawful development are not always clear-cut, that anyone committing even trivial and unwitting breaches would find that they had a criminal record, and that Magistrates are not equipped to deal with a technically specialised area such as planning.

4. RETROSPECTIVE PLANNING APPLICATIONS

If development which requires planning permission is undertaken without first having obtained such permission, permission can be sought retrospectively. Is there a continuing role for this ability to legitimise unauthorised development against which enforcement action is inappropriate?

5. FEES IN THE ABSENCE OF A RETROSPECTIVE PLANNING APPLICATION

It has been suggested that in cases where a retrospective planning application is invited but the developer declines to submit one, the local planning authority should be able to require a fee to be paid with non-payment constituting an offence.

6. HIGHER FEES FOR RETROSPECTIVE APPLICATIONS

It has been suggested that retrospective planning applications should incur a higher fee than applications submitted prior to development taking place.

7. STOP NOTICES AND COMPENSATION LIABILITY

The power to serve a stop notice, which has the effect of immediately stopping any activity which contravenes planning control, is little used. This could be because there is a right to compensation, payable by the local planing authority, if an appeal against the related enforcement notice is subsequently allowed on legal grounds.

8. TIMING OF STOP NOTICES

The terms of a stop notice must derive from the associated enforcement notice. Consequently a stop notice cannot be served until an enforcement notice relating to the alleged unauthorised development has been formulated. More effective control of development might be achieved if local authorities were empowered to serve a stop notice as soon as unauthorised development is suspected.

9. RIGHT OF APPEAL AGAINST A BREACH OF CONDITION NOTICE

There is no statutory right of appeal against a breach of condition notice. This is seen by some to be an injustice. There is however a right of appeal against the imposition of a condition when planning permission is granted and an application can be made at any time to have a condition lifted or varied.

10. SITE NOTICES/NOTIFICATION OF COMMENCEMENT OF WORKS

Many local planning authorities do not routinely monitor whether works are being or have been carried out in accordance with the planning permission granted and any conditions attached. Often there is a long delay between the granting of permission and commencement of works. Local authorities need to be alerted to the fact that development has commenced.

The local community and near neighbours in particular can have an important part to play in monitoring whether conditions have been breached. They are well placed to spot possible breaches of planning control. However, often they do not have the benefit of knowing exactly what development has or has not been permitted.

Two possible approaches are to require developers to display on site a notice giving details of the permission granted or a requirement to alert the planning department to the commencement of works.

11. SELF-CERTIFYING THAT DEVELOPMENT ACCORDS WITH THE PERMISSION GRANTED

A third approach would be to introduce a self-certification process whereby the developer would be under a duty to certify that an approved development accords with the permission granted, with it being an offence to issue a false certificate.

12. EXTENDING THE SCOPE OF PLANNING CONTRAVENTION NOTICES

The planning contravention notice is a diagnostic tool. It is used where it appears that there may have been a breach of planning control and the local planning authority requires information about activities on the land, or the nature of the recipient's interest in the land. The scope of the provisions of the contravention notice might be extended to provide for a power to require the submission of a planning application.

13. TIME LIMITS FOR TAKING ENFORCEMENT ACTION – THE 4 AND 10 YEAR RULES

The four-year and ten-year time limits for taking enforcement action were introduced in 1991. These time limits are important cut off points for taking enforcement action. After expiry of the relevant periods – 4 years in the case of operational development and breaches relating to use as a single dwellinghouse, and 10 years for any other breach of planning control - the breach of development control becomes immune from enforcement action and thereby lawful.

14. TIMING OF ENFORCEMENT NOTICES

When local planning authorities refuse to grant planning permission for a retrospective application, they should consider whether to issue an enforcement notice immediately. Any delay in serving an enforcement notice may mean that if the notice is subsequently appealed it will not be heard with the appeal against the refusal of planning permission.

15. POWERS TO DECLINE TO DETERMINE APPLICATIONS WHERE THE DEVELOPMENT IS SUBJECT TO AN ENFORCEMENT NOTICE

There is presently no power for local authorities to decline to determine an application for planning permission or for a lawful development certificate which relates to development which is subject to an enforcement notice. As a result, the submission of applications provides a further means to delay the effect of enforcement action. A power to decline to determine applications in such circumstances would mean that an appeal against the enforcement notice would be the only route through which to challenge the notice and delay it taking effect.

16. RIGHT TO APPEAL AGAINST AN ENFORCEMENT NOTICE

It has been suggested that the right to appeal against an enforcement notice should be scrapped in order to speed up the enforcement process.

17. GROUNDS OF APPEAL AGAINST AN ENFORCEMENT NOTICE

When appealing against an enforcement notice, there are a number of statutory grounds on which the appeal may be based. These are designed to help structure an appeal, facilitating a clearer and more focussed presentation of the basis for appeal.

18. DOUBLE DEEMED FEE FOR GROUND (a) APPEALS

Ground (a) states that planning permission ought to be granted or the condition or limitation specified in the enforcement notice ought to be discharged. In order for a ground (a) appeal to proceed in most cases an administrative fee is payable. The fee payable is double that which would be charged for a normal planning application. The fee is shared evenly between the Planning Inspectorate, who administer the system, and the local authority. It has been suggested that the whole of the fee might go to the local planing authority (together with responsibility for administering the system).

19. GROUPING OF CASES IN THE MAGISTRATES' COURT

Grouping cases together to take before Magistrates would enable Magistrates to become more familiar with planning enforcement issues. Joint working and skills sharing between different authorities, and sharing legal representation might help to address any skills and resources shortages in local authorities.

20. PENALTIES/FINE LEVELS

The levels of fines which the Courts may impose for different offences relating to planning enforcement are set out in the Planning and Compensation Act 1991. Some refer to 'standard scale' fines – these scales are reviewed periodically. Others set a monetary maximum – these amounts have remained fixed since 1991. There is a question as to whether the fine levels properly reflect the benefit that can accrue from a breach of planning control.

21. SCOPE FOR DEFERRING COURT CASES

Deferring a case results in a delay in the decision. In the meantime an alleged breach of control continues. It is not clear whether deferment is a real problem.

22. MEDIATION

Some authorities already use informal mediation in an attempt to tackle breaches of planning control without recourse to formal enforcement powers. The Department has been researching the use of mediation in the planning system generally, particularly in relation to planning applications and planning appeals. A formal mediation process for enforcement problems may have a role to play in delivering quicker and more effective outcomes.

Benefits and Costs

Option 1:
Removing local planning authorities' discretionary duty would lead to the removal of inconsistencies of approach both within and between authorities. It would ensure

certainty and strengthen public confidence in local authorities, in the enforcement system, and in the planning system as a whole.

If enforcement became a duty the flexibility of the current system would be lost and difficulties would be created. There is a risk that the enforcement system would fall into disrepute if all breaches of planning control were prosecuted no matter how trivial. This would impact on large numbers of householders and small businesses. And it would place an intolerable burden on local authorities, the Planning Inspectorate and the Courts.

Option 2:
Where local planning authorities are proactive, enforcement works better. With more resources local planning authorities would be able to take a more proactive role in enforcement matters. Higher fees for planning applications might provide additional resources for the enforcement function.

Only those people following the proper planning procedures or those who seek planning permission retrospectively pay planning fees. The burden of part-resourcing enforcement through fee income would not fall on those who seek to abuse the system but on those who follow the rules.

Option 3:
Criminalising breaches of planning control would clarify the uncertainty about the current status of unauthorised development. It would send a clear signal that development without permission will not be tolerated, and provide a stronger deterrent.

Criminalisation would place a significant burden on Magistrates Courts and on local authorities prosecuting offences. It seems too draconian a penalty given the minor and unwitting nature of the vast majority of breaches of planning control. Anyone who breached planning controls would find that they had a criminal record regardless of the severity of the breach.

Option 4:
The ability to apply for planning permission retrospectively provides a means through which to legitimise unauthorised development against which enforcement action is inappropriate. Although there is a perception that it is easier to obtain planning permission retrospectively than it is to do so before development takes place this is not the case. No advantage is gained by developing first and applying for permission later. Removing the opportunity to seek planning permission retrospectively would leave development which is acceptable on its planning merits without a means to obtain permission.

By being able to apply retrospectively, it is argued that this acts as a disincentive to follow proper planning procedures and encourages unauthorised development.

Option 5:
The suggestion that a fee should be payable where a retrospective application is invited but the developer declines to submit one would ensure that the developer does not benefit financially by not having paid a planning fee. It would act as a

disincentive to anyone contemplating ignoring planning controls, and give communities greater confidence in the fairness and equity of the planning process.

Given that local authorities will have already investigated the breach of planning control, the additional step of serving a certificate requiring payment of a fee would be marginal in cost terms, and more than offset by the additional fee income.

Option 6:
Introducing higher fees for retrospective planning applications would help local authorities to recover the costs of considering enforcement action, and might act as an incentive to obtain planning permission before works commence.

Higher fees may equally act as a further disincentive to making a retrospective application and therefore prove counterproductive.

Option 7:
The existence of a compensation provision in relation to stop notices where the associated enforcement notice is quashed on legal grounds provides a check on local authorities to ensure that they only act where the breach is clear and unarguable. Removal of the compensation provision would encourage greater use of the power.

The liability to pay compensation may deter local authorities from acting in the public interest. But in the absence of such a liability, if a local authority acted inappropriately in taking such action the developer/user would suffer financial loss without any recourse to compensation under the Planning Acts.

Option 8:
Enabling the service of a stop notice before building works commence in order to prevent an anticipated breach of planning control would help to ensure that breaches did not take place rather than having to seek to remedial measures after the event. For the developer it would mean that he would have to make a planning application or seek a lawful development certificate before works could continue.

In either case this would not result in any additional costs over those which should be incurred in the normal course of events i.e. obtaining the necessary consents prior to the commencement of works. There may be savings for the developer because remedial measures, which might include alterations to or removal of works already undertaken, would not be necessary.

Option 9:
Introducing a right of appeal against a breach of condition notice would address a perceived injustice.

A mechanism already exists for varying or lifting a planning condition – introducing a right of appeal against a breach of condition notice would give another route to secure the same objective, thereby duplicating regulation.

Option 10:
Requiring a developer to post a sign on his site giving details of the planning permission obtained, or notifying the local authority that works were about to

commence, would ensure that the local community were better informed and better able to assist local authorities in monitoring suspected breaches of planning control.

Either requirement would have cost implications for developers. However, these would be minimal – the cost of a letter.

Option 11:
A requirement to self-certify that a development accords with the permission granted, underpinned by the creation of an offence for false certification would assist local authorities in monitoring the proper implementation of planning consents. It would have the potential to save local authority resources.

In many cases it would only provide a snapshot – conditions might subsequently be breached. The creation of a new offence for false certification would have potential implications for some half million or so planning approvals granted each year.

Option 12:
Extending the current scope of planning contravention notices to require the submission of a planning application would help to overcome the perception that, where planning control has been breached, but the breach is not sufficiently serious to merit enforcement action, the perpetrator of the breach has 'got away with it'. This is seen as unfair on those who have followed the correct procedures to obtain planning permission, and have paid the required fee. Additional revenue for local authorities would be generated through planning application fees payable by anyone who has sought to gain advantage by breaching planning controls.

It is an offence to fail without reasonable excuse to comply with the requirements of a planning contravention notice within 21 days. The maximum penalty on conviction is £1000.

Option 13:
The existence of statutory time limits after which any undetected breach of planning control becomes immune from enforcement action encourages concealment. In cases where a use intensifies over time, the 'opportunity' to enforce is lost unless the breach is detected before expiry of the time limit. If the 10-year rule were abolished so that there was no longer immunity from enforcement in respect of breaches where the10-year rule currently applies, some long-established businesses would need to obtain a lawful development certificate in respect of an existing use. However, given the discretionary nature of enforcement powers, in the absence of a lawful development certificate it is unlikely that enforcement action would be taken in most cases.

Lawful development certificate applications attract a fee. Processing applications would place an additional administrative burden on local authorities. A transitional period before abolition would provide an opportunity to spread the effect of any additional burden on local authorities, and allow time for affected businesses to assess their particular circumstances. This would reduce the impact of abolition.

Option 14:
The suggestion that enforcement notices are issued soon after a retrospective planning application is refused would not require any regulatory change. By taking prompt

enforcement action the appeal against the refusal of planning permission and against the enforcement notice could be considered together and so speed up the enforcement notice.

Option 15:
Introducing a power to provide for local authorities to decline to determine planning or lawful development certificate applications in respect of development which is already subject to an enforcement notice would limit the scope for prolonging a breach of planning control, and enable quicker remedial action. Applicants would save the costs of making an application.

Anyone breaching planning control the subject of an enforcement notice would lose any benefit which might currently accrue from prolonging a breach by submitting an application for planning permission or a lawful development certificate.

Option 16:
If there were no right of appeal against an enforcement notice there would be significant resource savings for local authorities and the Planning Inspectorate.

The right to appeal is however a fundamental one – it provides an important fairness safeguard. Removal of the right would have human rights and natural justice implications. The only challenge to an enforcement notice would be by judicial review. This would result in a plethora of Court cases, and is likely to slow down rather than speed up enforcement - breaches would continue until the case was determined.

Option 17:
Statutory grounds on which an appeal may be based help to structure an appeal, facilitate a clearer and more focussed presentation of the issues, and therefore help to streamline the process, resulting in quicker decisions.

If there were no statutory grounds on which to base an appeal, appeal decisions may cost more and take longer. Removal of ground (a) would mean that planning permission would need to be sought separately from the enforcement appeal. Ground (a) allows the deemed planning application and appeal to be considered together.

Option 18:
Under the present system the fee income from a 'ground (a)' appeal is shared between the local authority and the Planning Inspectorate. The Planning Inspectorate administers the system. If the whole of the fee could be retained by the local planning authority this could provide an additional, albeit small, income stream for local authorities. Any such change would have no impact on the appellant – the fee payable would be unchanged.

As a quid pro quo authorities would have to take on the administration of the system, and any current economies of scale from centralised processing might be lost.

Option 19:
Grouping cases together for hearing at a single sitting, more co-operative working between local authorities and sharing legal representation would have costs benefits

for local authorities and save Court time. It would also increase Magistrates' familiarity with planning enforcement cases, which may in turn lead to better outcomes i.e. more successful prosecutions.

Grouping of cases may not be practicable if cases are brought infrequently. It may result in the enforcement process taking longer to resolve if cases are held back to allow them to be grouped.

Option 20:
The ability to impose higher fines would send out a clear message that serious breaches of planning control are unacceptable. No one should be able to benefit from such breaches. In the absence of higher fines, there is a risk that breaching planning control might increasingly be seen as a legitimate business cost. This might reduce a local authority's propensity to take enforcement action.

Higher fines would be an additional burden on business and developers. But these would bite where clear breaches of planning control had been identified.

Option 21:
Reducing the scope to successfully seek deferment would lead to quicker rectification of the breach. Where cases are deferred the effect is that the breach in question continues. Deferment is however a matter for the Court.

As explained above, one means to reduce a Court's propensity to defer cases by grouping of cases may not be practicable if cases are brought infrequently. It may result in the enforcement process taking longer to resolve if cases are held back to allow them to be grouped.

Option 22:
The use of formal mediation may lead to quicker resolution of breaches of control. Depending on the particular circumstances of the case and the number of parties involved, mediation may offer a more cost-effective means to resolve enforcement problems than appeals and the involvement of the Courts.

The Department has been researching the use of mediation in the planning system generally, particularly in relation to planning applications and planning appeals. Its wider application will depend on follow up work to the research.

Securing Compliance

Any changes introduced will be designed specifically to improve compliance with arrangements for controlling development. Some of the suggestions in the consultation paper would require legislation if pursued. Others might be deliverable through improved working practices and updated guidance.

Impact on small businesses

More effective enforcement will have an adverse impact on any small businesses which fail to comply with planning controls. It is quite right that no-one should be able to gain commercial advantage through disregard of regulations and process. One

objective of improving the way enforcement powers are exercised is to provide for greater consistency of approach by local authorities.

Competition Assessment

The suggestions for better planning enforcement set out in the consultation paper are intended to ensure that there is a level playing field. They should assist businesses to compete on equal terms by making it more difficult for breaches of planning control to continue.

Results of consultation

The Department invites views on the Regulatory Impact Assessment. We will further consider and revise the Assessment in the light of the responses received to the consultation paper.

CHAPTER 9

ENVIRONMENTAL APPRAISAL

1. Departmental guidelines require that consideration be given to the need for an 'Environmental Appraisal' in relation to any proposal which may have a 'significant' effect on the environment. Significant effect is defined as when something has more than a negligible effect on any of the following:

> *"impacts on the visual environment; the demand for natural resources; increased travel; green field sites; requirements for new infrastructure; waste and pollution; climate change."*

2. No environmental appraisal is considered necessary in relation to this consultation paper given the absence of any proposal which might affect the above considerations.

Annex 1

ENFORCEMENT EXTRACT FROM THE PLANNING GREEN PAPER 2001 "DELIVERING A FUNDAMENTAL CHANGE"

Better enforcement

5.67 We are creating a simpler faster development control system. We must also ensure that it is a system which people trust. Deliberate evasion or abuse of the planning system is unfair to others and brings the system into disrepute. We need more effective sanctions against those trying to cheat the system.

5.68 The current enforcement system is unduly complex and cumbersome. Whilst minor breaches of planning regulations can often be resolved through negotiation and persuasion without the need for formal enforcement action, it can be difficult and expensive for local authorities to take effective action against those deliberately evading the system.

5.69 There are several issues:

- developing without planning consent or in breach of that consent is not an offence. There is a case for reviewing the law;
- existing sanctions do not act as a deterrent and they may be insignificant in proportion to the value of the unauthorised development or the income derived from it; and
- those seeking to evade the planning system may appeal to the Secretary of State against enforcement notices in order to delay action being taken against unauthorised development.

5.70 Planning enforcement is a complex subject that raises difficult issues. We intend to review current arrangements with the intention of introducing simpler procedures. As part of this process we will look again at whether there should be punitive charges for retrospective applications and whether a deliberate breach of planning regulation should constitute an offence immediately pursuable through the Courts.

Department of the Environment PPG18{PRIVATE }
Welsh Office December 1991

PLANNING POLICY GUIDANCE:

ENFORCING PLANNING CONTROL

1. New and substantially improved powers to enforce planning control are given to local planning authorities (LPAs) by the Planning and Compensation Act 1991. The enforcement provisions of the Act are based on the main recommendations of the report by Robert Carnwath QC, entitled "Enforcing Planning Control" (HMSO, February 1989). The report also recommended (Recommendation No. 14) that current Ministerial policy guidance about enforcement, in DOE/WO Circulars, should be revised, taking account of the concern expressed about certain aspects of the current guidance. This Note gives revised guidance.

The new enforcement régime

2. The new and improved enforcement powers provided by the 1991 Act are:-

(1) the power to serve a "planning contravention notice" where it appears that there may have been a breach of planning control and the LPA require information about activities on the land, or the nature of the recipient's interest in the land (new section 171C of the Town and Country Planning Act 1990);

(2) the power to serve a "breach of condition notice" where there is failure to comply with any condition or limitation imposed on a grant of planning permission (new section 187A of the 1990 Act);

(3) the ability to seek an injunction, in the High Court, or County Court, to restrain any actual or expected breach of planning control (new section 187B of the 1990 Act);

(4) the power to serve a stop notice to prohibit the use of land as the site for a caravan occupied as a person's only or main residence, and to make a stop notice immediately effective where special reasons justify it (amended sections 183 and 184 of the 1990 Act); and

(5) improved powers of entry on to land for the LPA's authorised officer to obtain information required for enforcement purposes (new sections 196A, 196B and 196C of the 1990 Act).

3. The penalty provisions for enforcement offences have also been revised. The maximum summary penalty on conviction of the offence of contravening the requirements of an effective enforcement notice, or the prohibition in a stop notice, is increased from £2,000 to £20,000. And, when sentencing a convicted person for an enforcement notice or stop notice offence, the Court is to have regard to any financial

benefit which has accrued, or appears likely to accrue, to him in consequence of the offence. These exceptional summary maxima are intended to signal clearly how seriously Parliament regards this type of offence. The increased penalties are consistent with Government policy stated in the White Paper entitled "Crime, Justice and Protecting the Public" (Cm 965), published in February 1990. Chapter 5 of the White Paper acknowledges that there is increasing public concern about activities which damage the quality of people's lives (paragraph 5.8). It states -

"If people ignore or flout laws and regulations designed to protect the public from serious harm, they should be properly punished, and the punishment should take account of the resulting profits or savings..."

4. During consideration of the Bill in Parliament, amendments to impose a general duty on LPAs to ensure compliance with planning control were proposed. Although these amendments were not accepted (because the Government considers that enforcement action should remain within the LPA's discretion), the Government's view is that the integrity of the development control process depends on the LPA's readiness to take effective enforcement action when it is essential. Public acceptance of the development control process is quickly undermined if unauthorised development, which is unacceptable on planning merits, is allowed to proceed without any apparent attempt by the LPA to intervene before serious harm to amenity results from it. Enactment of the new and improved powers summarised in paragraph 2 gives LPAs a wider choice of available enforcement options. Authorities will therefore need to assess, in each case, which power (or mix of powers) is best suited to dealing with any particular expected, or actual, breach of control, to achieve a satisfactory, lasting and cost-effective remedy. Rapid initiation of enforcement action is usually vital to prevent a breach of control from becoming well established and more difficult to remedy.

The general approach to enforcement

5. Nothing in this Note should be taken as condoning a wilful breach of planning law. LPAs have a general discretion to take enforcement action, when they regard it as expedient. They should be guided by the following considerations:-

(1) Parliament has given LPAs the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative area (the private citizen cannot initiate planning enforcement action);

(2) the Commissioner for Local Administration (the local ombudsman) has held, in a number of investigated cases, that there is "maladministration" if the authority fail to take effective enforcement action which was plainly necessary and has occasionally recommended a compensatory payment to the complainant for the consequent injustice;

(3) in considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest;

(4) enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site); and

(5) where the LPA's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop (LPAs should bear in mind the statutory time limits for taking enforcement action).

Where development is carried out without permission

6. In assessing the need for enforcement action, LPAs should bear in mind that it is not an offence to carry out development without first obtaining any planning permission required for it. New section 73A of the 1990 Act specifically provides that a grant of planning permission may relate to development carried out before the date of the application. Accordingly, where the LPA's assessment indicates it is likely that unconditional planning permission would be granted for development which has already taken place, the correct approach is to suggest to the person responsible for the development that he should at once submit a retrospective planning application (together with the appropriate application fee). It may also be appropriate to consider whether any other public authority (eg the highway or environmental health authority) is better able to take remedial action.

7. While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought. In such circumstances, LPAs should consider using the new "planning contravention notice" to establish what has taken place on the land and persuade the owner or occupier to seek permission for it, if permission is required. The owner or occupier of the land can be told that, without a specific planning permission, he may be at a disadvantage if he subsequently wishes to dispose of his interest in the land and has no evidence of any permission having been granted for development comprising an important part of the valuation. As paragraph 14 of DOE Circular 2/87 (WO 5/87) points out, it will generally be regarded as "unreasonable" for the LPA to issue an enforcement notice, solely to remedy the absence of a valid planning permission, if it is concluded, on an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of control alleged in the enforcement notice. Accordingly, LPAs who issue a notice in these circumstances will remain at risk of an award against them of the appellant's costs in the enforcement appeal.

Where unauthorised development can be made acceptable by the imposition of conditions

8. A LPA may consider that development has been carried out without the requisite planning permission, but the development could be made acceptable by the

imposition of planning conditions (for example, to control the hours, or mode, of operation; or to carry out a landscaping scheme). If so, the authority may invite the owner or occupier of the land to submit an application, and pay the appropriate application fee, voluntarily. It can be pointed out to the person concerned that the authority do not wish the business, or other activity, to cease; but they have a public duty to safeguard amenity by ensuring that development is carried out, or continued, within acceptable limits, having regard to local circumstances and the relevant planning policies. LPAs should bear in mind the need to consult on such applications in the normal way and the possible effect of such development on the functions of statutory undertakers.

9. If, after a formal invitation to do so, the owner or occupier of the land refuses to submit a planning application in these circumstances, the LPA should consider whether to issue an enforcement notice. Section 173(4)(b) of the 1990 Act (as amended by the 1991 Act) provides that one of the purposes for which the LPA may, in an enforcement notice, require remedial steps to be taken is for "removing or alleviating any injury to amenity which has been caused by the breach". For that purpose, section 173(5) of the 1990 Act provides that an enforcement notice may require, among other things, "the carrying out of any building or other operations" (paragraph (b)); or "any activity on the land not to be carried on except to the extent specified in the notice;" (paragraph (c)). Accordingly, where an owner or occupier of land refuses to submit a planning application which would enable the LPA to grant conditional planning permission, the authority would be justified in issuing an enforcement notice if, in their view, the unauthorised development has resulted in any injury to amenity, or damage to a statutorily designated site, which can only be satisfactorily removed or alleviated by imposing conditions on a grant of planning permission for the development. If an enforcement notice is issued to enable the LPA to grant conditional planning permission, they should explain clearly (in their statement of reasons for issuing the notice) what injury to amenity, or damage to the site, has been caused by the unauthorised development and how their conditional grant of permission will effectively remedy it. The owner or occupier will then have no doubt about the purpose of the enforcement action, or what he is required to do in order to remove or alleviate the perceived injury to amenity.

Where the unauthorised development is unacceptable on the site but relocation is feasible

10. It is not the LPA's responsibility to seek out and suggest to the owner or occupier of land on which unauthorised development has taken place an alternative site, to which the activity might be satisfactorily relocated. But if, as part of their economic development functions, the authority are aware of a suitable alternative site, it will usually be helpful to suggest it, and to encourage removal of the unauthorised development to it.

11. If an alternative site has been suggested, the LPA should make it clear to the owner or occupier of the site where unauthorised development has taken place that he is expected to relocate to the alternative site (or some other site he may prefer). The LPA should set a reasonable time-limit within which relocation should be completed. What is reasonable will depend on the particular circumstances, including the nature and extent of the unauthorised development; the time needed to negotiate for, and

secure an interest in, the alternative site; and the need to avoid unacceptable disruption during the relocation process. If a timetable for relocation is ignored, it will usually be expedient for the LPA to issue an enforcement notice. In that event, the compliance period in the notice should specify what the LPA regard as a reasonable period to complete the relocation.

Where the unauthorised development is unacceptable and relocation is not feasible

12. Where, in the LPA's view, unacceptable unauthorised development has been carried out, and there is no realistic prospect of its being relocated to a more suitable site, the owner or occupier of the land should be informed that the authority are not prepared to allow the operation or activity to continue at its present level of activity, or (if this is the case) at all. If the development nevertheless provides valued local employment, the owner or occupier should be advised how long the LPA are prepared to allow before the operation or activity must stop, or be reduced to an acceptable level of intensity. If agreement can be reached between the operator and the LPA about the period to be allowed for the operation or activity to cease, or be reduced to an acceptable level, and the person concerned honours the agreement, formal enforcement action may be avoided. But LPAs should be aware of the possibility of intensification of the development after expiry of the statutory period for enforcement action. If no agreement can be reached, the issue of an enforcement notice will usually be justified, allowing a realistic compliance period for the unauthorised operation or activity to cease, or its scale to be acceptably reduced. Any difficulty with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable unauthorised development.

Where the unauthorised development is unacceptable and immediate remedial action is required

13. Where, in the LPA's view, unauthorised development has been carried out and the LPA consider that -

(1) the breach of control took place in full knowledge that planning permission was needed (whether or not advice to this effect was given by the LPA to the person responsible);

(2) the person responsible for the breach will not submit a planning application for it (despite being advised to do so); and

(3) the breach is causing serious harm to public amenity in the neighbourhood of the site,

the LPA should normally take vigorous enforcement action (including, if appropriate, the service of a stop notice) to remedy the breach urgently, or prevent further serious harm to public amenity.

Unauthorised development by small businesses or self-employed people

14. Although some breaches of control are clearly deliberate, the LPA may find that an owner or operator of a small business, or a self-employed person, has carried out unauthorised development in good faith, believing that no planning permission is needed for it. The cost of responding to enforcement action may represent a substantial financial burden on such a small business, or self-employed person. LPAs should consider this in deciding how to handle a particular case.

15. The initial aim should be to explore - in discussion with the owner or operator - whether the business can be allowed to continue operating acceptably on the site at its current level of activity, or perhaps less intensively. The LPA should carefully explain the planning objections to the current operation of the business and, if it is practicable, suggest ways to overcome them. This may result in the grant of a mutually acceptable conditional planning permission, enabling the owner or operator to continue in business at the site without harm to local amenity. If the site's owner or occupier is at first reluctant to negotiate with the LPA, the service of a "planning contravention notice" may help to convey the LPA's determination not to allow the development to go ahead by default.

16. If a mutually satisfactory compromise cannot be reached, and formal enforcement action is essential, the LPA should make their intentions clear, at the outset, to the owner or operator of a small business or a self-employed person. Unless it is urgently needed, formal enforcement action should not come as a "bolt from the blue" to a small business or self-employed person. It should be preceded by informal discussion about possible means of minimising harm to local amenity caused by the business activity; and, if formal action will clearly be needed, by discussion of the possible relocation of the business to another site. As explained in paragraph 10, it is not the LPA's responsibility to take the initiative in finding or providing a suitable alternative site. If formal enforcement action is likely to compel a small business or self-employed person to relocate their trading activities, the LPA should aim to agree on a timetable for relocation which will minimise disruption to the business and, if possible, avoid any permanent loss of employment as a result of the relocation. Once an enforcement notice has taken effect, LPAs should bear in mind that, where the circumstances justify it, new section 173A of the 1990 Act enables them to withdraw the notice; or to waive or relax any requirement in it, including the compliance period. A reasonable compliance period, or an extension of the initial period, may make the difference between enabling a small business or self-employed person to continue operating, or compelling them to cease trading.

17. The Government remains committed to fostering business enterprise, provided that the necessary development can take place without unacceptable harm to local amenity. LPAs should bear this in mind when considering how best to deal with unauthorised development by small businesses. Nevertheless, effective enforcement action is likely to be the only appropriate remedy if the business activity is causing irreparable harm.

Unauthorised development by private householders

18. When they are considering the possibility of enforcement action involving unauthorised development by a private householder, LPAs should bear in mind that independent professional advice about whether planning permission was needed for

the development may sometimes not have been readily available, or affordable. This is particularly true where the householder may have relied on "permitted development" rights in the General Development Order (the GDO) as authorisation for the development, but a specified limitation has been exceeded in carrying it out. In these circumstances it is inappropriate to initiate a prosecution of a householder, under new section 187A(9) of the 1990 Act (prosecution for the offence of failure to secure compliance with the limitation imposed on a grant of planning permission by virtue of the GDO), unless the breach of condition notice served on the householder includes a full explanation of the allegedly unauthorised development and he has failed to take satisfactory steps to regularise it, despite being allowed adequate time to do so. In considering whether it is expedient to take enforcement action against development carried out in excess of the permission granted by the GDO, the LPA should have full regard to what would have been permitted if the development had been carried out in strict accordance with the relevant provisions. LPAs should not normally take enforcement action in order to remedy only a slight variation in excess of what would have been permitted by virtue of the GDO provisions.

Enforcement of planning control over mineral working

19. Minerals planning control is well established as part of the general planning system and there are no separate enforcement powers for unauthorised minerals working. The general policies and principles applicable to enforcement apply equally to minerals cases. Nevertheless, unauthorised minerals working sometimes poses particular enforcement problems, both in terms of the occasionally irremediable nature of the working and the speed at which damage can be caused. Certain of the new powers in the 1991 Act should therefore be helpful to mineral planning authorities (MPAs), to prevent damage which would otherwise be virtually or totally irremediable, either to the site itself or to its surroundings.

20. It is clearly preferable for effective liaison and contacts between MPAs and minerals operators to be sufficiently good for contraventions of planning conditions to be avoided, and for any problems to be resolved through discussion and co-operation. In cases where formal enforcement proceedings are necessary, it is important to ensure that action is taken quickly. MPAs need to be able to stop an unauthorised activity as soon as it is detected. Examples are where a mineral operator is moving soil materials in contravention of clear planning conditions, so as to jeopardise the restoration and aftercare of the site; or where unauthorised excavation outside the permitted boundary causes irremediable damage, or endangers the safety and stability of the surrounding land. Section 183 of the 1990 Act (as amended by section 9 of the 1991 Act) enables a stop notice to be served at the same time as the copy of an enforcement notice; and section 184(3) (as amended) now enables a stop notice to take effect before the expiry of 3 days, or immediately, where special reasons justify it - for example to prevent irremediable damage. The planning injunction provisions of section 187B are also available in respect of unauthorised minerals development.

21. Further guidance on any more detailed aspects of enforcement of planning control over mineral working will be included, where necessary, in revisions to the relevant Minerals Planning Guidance Notes (MPGs).

The organisation of their enforcement functions by LPAs

22. How LPAs organise the administrative function of enforcing planning control is for each authority to decide. The organisation should correspond to the volume and complexity of enforcement casework in each LPA's area and be sufficiently flexible to adapt to short-term increases in the demand for enforcement. All authorities should ensure that there is a close and co-operative working relationship between the Planning Department and the Solicitor's (or Secretary's or Chief Executive's) Department. Without such an effective working relationship, formal enforcement action (which depends for its success upon speed of assessment and process) may be hampered by poor communications and misunderstandings. Public criticism is then likely, especially if statutory time-limits for taking enforcement action are allowed to expire because of administrative delay. Unless they have done so recently, all LPAs are recommended to carry out a thorough review of the effectiveness of their procedural arrangements for planning enforcement; and, where necessary, to introduce revised arrangements.

23. When complaints about alleged breaches of planning control are received from parish or community councils, or members of the public, they should always be properly recorded and investigated. If the LPA decide to exercise their discretion not to take formal enforcement action, following a complaint, they should be prepared to explain their reasons to any organisation or person who has asked for an alleged breach of control to be investigated.

Cancellation of advice

24. The following PPGs are cancelled:-
PPG 1 (January 1988) - paragraphs 30 and 31;
PPG 4 (January 1988) - paragraph 19.

Paragraphs 15 and 16 of, and Annex B to, DOE Circular 22/80 (WO 40/80) are also cancelled.

Annex 3

The Cabinet Office Code of Practice on Consultation

The Cabinet Office Code of Practice on Consultation sets out criteria with which Government consultations must comply:

- the timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage;
- it should be clear who is being consulted, about what questions, in what timescale and for what purpose;
- a consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain;
- documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals;
- sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation;
- responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken;
- Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure the lessons are disseminated.

This consultation meets these criteria.

Annex 4

ORGANISATIONS WITH MEMBERS ON PLANNING ENFORCEMENT WORKING GROUP

1. Office of the Deputy Prime Minister (ODPM)
2. Planning Inspectorate (PINS)
3. Local Government Association (LGA)
4. Planning Officers Society (POS)
5. Town and Country Planning Association (TCPA)
6. Royal Town Planning Institute (RTPI)
7. Council for the Protection of Rural England (CPRE)
8. Planning and Environmental Bar Association (PEBA)
9. Royal Society for the Protection of Birds (RSPB)
10. National Council for Housing and Planning (ROOM)
11. Confederation of British Industry (CBI)
12. The Law Society
13. London Borough of Westminster
14. Lord Chancellor's Department (LCD)
15. Home Office (HO)
16. Department for Culture, Media and Sport (DCMS)
17. English Heritage

Annex 5

ENFORCEMENT SOURCE DOCUMENTS

The Town and Country Planning Act 1990, Part VII Enforcement as amended by

The Planning and Compensation Act 1991

The 2001 Planning Green Paper - Better Enforcement Paragraphs 5.67 - 5.70

Planning Policy Guidance Note 18 (PPG18) Enforcing Planning Control 1991

Circular 10/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements

Enforcing Planning Control: Good Practice Guide for Local Planning Authorities

Enforcing Planning Control - Report by Robert Carnwath QC 1989

Evaluation of Planning Enforcement Provisions - Report by Arup Economics and Planning 1995

DEPUTY PRIME MINISTER

From the Private Secretary

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Tel: **020 7276 0400**
Fax: **020 7276 0196**

cc: AMcG
NA
JMT

Mike Emmerich Esq
Senior Policy Adviser
10 Downing Street
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SW1A 2AA

6 August 2002

Dear Mike

TRANSFORMING PLANNING

When you wrote to Mark Bowman on 16 July conveying the Prime Minister's views on the Deputy Prime Minister's proposals for the planning system you made some points about the Best Value regime for planning.

The Deputy Prime Minister will be replying to the Prime Minister formally on this and the other points made by colleagues. However, Nick Raynsford is about to write round to GL Committee with the broad proposals for the Best Value regime for 2003/04. This is as a prelude to a public consultation on the indicators and standards that should be used in that year. So I thought you would find it useful if I set out in more detail what is envisaged for planning.

The Deputy Prime Minister believes that we need an approach that is robust both in terms of the targets and standards to be set, and also in terms of deliverability. Currently 78 authorities are caught by existing standards. This is at the limit of what the Department can handle in terms of effective follow up through to intervention. The Deputy Prime Minister thinks that the worst message would be ratchet up the standards and then find that we could not follow through effectively because the numbers were overwhelming.

We revised the development control targets for 2002/03 so that authorities could not prioritise simple householder applications at the expense of the more important commercial ones that are essential to deliver economic and social objectives. At this

stage, the Deputy Prime Minister thinks that it would be premature to commit to specific new targets until we have seen the impact of the present targets and the new planing delivery grant that will inject more resources into the planning system. But he is sure that it is right that we send strong messages that the targets will be raised in due course. So for next year, we intend to broaden the indicators to include one that looks at authorities' development plan preparation and to apply more stretching standards to the poorest performing authorities.

The plan indicator – trailed in the Deputy Prime Minister's 18 July policy statement – will give us a handle on performance for the new planning delivery grant. It looks at how old the plan is and, if it is outdated, whether a thorough, time-limited review is underway. In due course, when the new local development framework regime is in place, we plan to adjust the indicator to measure the new continuous process that that involves.

We are also reviving the three-yearly survey of customer satisfaction this year and including in it a question about users' perception of the quality of the outcomes the local planning service produces. The planning indicators have long been criticised as being too process orientated. We are working on a full quality indicator for 2004/05 and are using the survey in the meantime to gauge how outcomes are seen.

Our performance standards have already been effective in driving development control improvements in the poorest performers. Those caught so far have been propelled up the performance league table and the average level of achievement has started to rise. But there is quite a lot of turbulence and we are still finding authorities slipping back into poor performance, particularly on the commercial applications. While this has a lot to do with the adequacy of the resourcing (something our new planning delivery grant will address), we will not let things drift.

So we are increasing the thresholds for qualification on the commercial applications, and increasing the standards that have to be met where this is appropriate. This will catch 90 authorities in 2003/04, that is 12 more than are subject to standards this year, and they will generally be set tougher challenges in improving their performance. Any failure to make the necessary shift in performance will mean that intervention will be on the cards. The table summarises what we are doing.

Planning performance standards	2002/03		2003/04	
	Threshold	Standard	Threshold	Standard
Major commercial (13 wks)	25%	45%	28%	45%
Minor commercial (8 wks)	35%	50%	37%	55%
Other (householder) applications (8 wks)	55%	65%	55%	70%
Total authorities caught	78		90	

We will provide further information in due course on the detail of the intervention regime.

I am copying this letter to Mark Bowman (HM Treasury).

Yours

Robert

ROBERT CAYZER

DEFRA
Department for
Environment, Food & Rural Affairs

Nobel House
17 Smith Square
London SW1P 3JR

Top: RD (ME)
« PD (AA)
PD (NA)
PD (JK)
PD (MH)
PD (AMc)

MATRIX

From the Secretary of State

The Rt Hon John Prescott MP
Deputy Prime Minister
Office of the Deputy Prime Minister
Dover House
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SW1A 2AU

31 July 2002

Dear Deputy Prime Minister,

TRANSFORMING PLANNING

Having consulted colleagues in DEFRA, I am writing in response to your letter of 11 July setting out your proposals for taking forward the planning reform agenda. Overall I welcome the way in which you propose to take the reforms forward and the changes you have made from the proposals set out in the Planning Green paper and its daughter documents. In particular, I welcome your proposal to introduce a statutory purpose for planning as a force for economic prosperity, social cohesion and environmental protection – for sustainable development. As drafted, I fear that the draft policy statement attached to your letter does not reflect your own commitment to ensure that the rural and environmental agendas are fully reflected in the planning system. I gather however, that it has been redrafted to read "we need a planning system which delivers in a sustainable way key Government objectives such as housing, urban and rural economic development, transport infrastructure and environmental protection, including (potential) new sources of energy and waste disposal". Without wording of this kind, it will be harder to persuade people that the measures to improve the performance of the planning system will benefit the whole community and not just business.

I have a few more detailed comments:

Planning Obligations

I am sorry that you feel you cannot proceed with the proposal for a tariff because it would be classified as a tax. While I appreciate that this requires caution and any tax proposal needs to be carefully thought through, this is not a sufficient reason for ruling the idea out altogether - there are some good arguments for taxing development values if it can be done in a way that relates the charge to the broader consequences of the development. I am not convinced that the non-statutory measures you are now proposing will be sufficient to achieve this objective.

SRP 31/7/02

Statutory Purpose

I strongly welcome your proposal to introduce a statutory purpose for the planning system as a force for economic prosperity, social cohesion and environmental protection, and the proposal for "all those carrying out functions under the Act to have regard to the need to achieve sustainable development." As we discussed when we met last week, this will need careful drafting to minimise the risk of challenge. I am advised that some precedents may exist - for example, section 2 (promotion of well-being) of the Local Government Act 2000. My Department would be happy to work with yours on the development of suitable wording.

Accessibility, Quality and Efficiency of the Development Control Process

I welcome your confirmation that parish councils will retain their right to be notified about planning applications. As you will be aware, the Government has proposed some significant strengthening of the role of parishes in both the Rural White Paper and the Local Government White Paper and to remove this right would risk undermining our positive agenda with rural communities. More broadly, I would ask you to involve my Department closely in your review of statutory consultees in relation to environmental, rural and agricultural interests.

My colleagues remain concerned that the proposed target of 90% delegation to officers is too high and risks penalising local authorities for failing to meet a target which may be quite contrary to their needs. This is a particular problem in some national parks and is likely to be so elsewhere. If a target is unavoidable, I wonder whether it could be designed in a more flexible way so as to account of local circumstances.

I note that you are considering whether to introduce statutory timetables for delivering decisions on called in and recovered appeals. I sympathise with the need to ensure consistency and speed in the decision-making process but this must not be at expense of consultation with other Government Departments where they have expertise to add. There has been at least one example recently of a planning application being called in on which neither DEFRA nor the relevant NDPB was consulted, and the quality of the final decision arguably suffered as a result. I would like to see further analysis of how such a system would work in practice.

Planning and Rural Policy

Finally, in view of way in which planning decisions can help or hinder our rural agenda and the management of the radical changes that are now taking place in the countryside, our Departments need to work together to ensure that those decisions are effectively rural-proofed. In this context I am glad that Jeff Rooker will soon be attending a meeting of the Rural Affairs Forum.

I am copying this to the Prime Minister, members of EA(PC) Committee, the Leader of the House and the Sir Richard Wilson.

Yours sincerely

A C Flowerday

MARGARET BECKETT

(approved by the Secretary of State and signed in her absence)

Local Gov.

DEFRA

Department for
Environment,
Food & Rural Affairs

Nobel House
17 Smith Square
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From the Secretary of State

The Rt. Hon John Prescott MP
Deputy Prime Minister
Office of the Deputy Prime Minister
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ME
cc NA
CO
EC

25 July 2002

Dear John.

HOME LOSS PAYMENTS – REVISION OF THRESHOLDS

Tony McNulty wrote to you on 11 July seeking DA Committee agreement to publication of a consultation paper and initial Regulatory Impact Appraisal on options for revision of Home Loss payments under compulsory purchase provisions.

The Home Loss payments consultation fulfils a commitment made in last December's wider consultation paper on the compulsory purchase and compensation system, and I can agree to publication of a range of options.

I am copying this letter to the Prime Minister, members of DA Committee, Sue Essex, Margaret Curran and Sir Richard Wilson.

Regards

Margaret

MARGARET BECKETT

DEPUTY PRIME MINISTER

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Tony McNulty MP
Parliamentary Under Secretary of State
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ME

cc. NA
SH
WP

24 July 2002

Dear Tony

PUBLICATION OF THE NEW PLANNING POLICY STATEMENT (PPS)17

This letter gives you GL clearance to proceed with the publication of a new Government planning policy document on open space, sport and recreation.

Replies were received from Alistair Darling, Tessa Jowell and Paul Boateng. All were content but a number of issues were raised.

Alistair was pleased to see that one of the planning objective will be to ensure that open spaces sports and recreational facilities are easily accessible by walking and cycling and that more heavily used facilities are planned for locations well served by public transport.

Tessa was pleased to see that the new document provided a clear and robust message to local planning authorities about the need to protect playing fields, and provided much tougher policy test which would nee to be met before such facilities would be developed. She also welcomed the emphasis that the document placed on the need for local authorities to undertake needs assessment of open spaces, sport and recreation facilities to ensure that these were planned for effectively at the local level. She said it was vital that the policies contained in the document were put in place as soon as possible.

Paul said that that it was important that the first PPS issued following the Planning Green Paper must show the Government's determination to deliver on the Green Paper's principles of shorter, clearer and more focused national planning policy. In his view, the proposed text did not deliver on these principles. He therefore asked that the document be presented as the last in the present PPG form rather than the first in the new PPS form. I understand Paul's officials and yours have agreed some wording to reflect this request.

Subject to the views expressed above, you have GL clearance to proceed as proposed.

I am copying this letter to the Prime Minister, members of GL and Sir Richard Wilson.

JOHN PRESCOTT

(F)

FROM THE RT HON ALISTAIR DARLING MP
SECRETARY OF STATE FOR TRANSPORT

Department for Transport

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Our Ref: AD/20377/02

23 JUL 2002

Tony McNulty MP
Parliamentary Under Secretary
Office of the Deputy Prime
Minister
Eland House
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SW1E 5DU

Dear Tony

PUBLICATION OF THE NEW PLANNING POLICY STATEMENT (PPS) 17

Thank you for copying to me your letter of 12 July to John Prescott, seeking agreement to publication of the new Government planning policy document on open space, sport and recreation.

I am happy for you to proceed. I am particularly pleased to see that one of the planning objectives will be to ensure that open space, sports and recreational facilities are easily accessible by walking and cycling, and that more heavily used facilities are planned for locations well served by public transport. This is in line with our Ten Year Plan for Transport.

I am copying this letter to the Prime Minister, members of DA committee, Richard Caborn and to Sir Richard Wilson.

Yours sincerely

ALISTAIR DARLING

File

FROM THE RT HON ALISTAIR DARLING MP
SECRETARY OF STATE FOR TRANSPORT

Department
for **Transport**

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Our Ref: AD/019661/02

23 JUL 2002

Dear Tony

Thank you for copying me your recent letter and enclosures to John Prescott seeking the agreement of DA Committee to the publication of a consultation paper and initial Regulatory Impact Appraisal about revised thresholds for Home Loss Payments.

I am content for the paper to be published as it stands.

The main impact for my Department would be on the road building activities of the Highways Agency. Contrary to indications given in the paper, historically, the bulk of properties acquired for roads have fallen in the middle to high price ranges so costs could be higher than suggested.

I recognise, however, the need for a review of payments in line with property and living costs and support the proposal to examine, within current legislative constraints, the several options advanced.

I look forward to the response to the paper.

Yours

ALISTAIR DARLING

I am copying this letter to the Prime Minister, members of DA Committee + Sir Richard Wilson.

The Rt Hon Patricia Hewitt MP
Secretary of State for Trade and Industry

The Rt Hon John Prescott MP
Deputy Prime Minister &
First Secretary of State
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22 July 2002

Dear John

TRANSFORMING PLANNING

I have seen a copy of your letter of 11 July seeking EA(PC) agreement to take forward the proposals for taking forward the planning reform agenda.

I welcome the changes that have been made but note that some specific proposals, such as those on Major Infrastructure Projects and Planning Obligations, lack detail currently. That said, I am happy to give my consent for you to proceed on the understanding that my officials are consulted as the detailed policy develops further down the line.

I am copying this letter to the Prime Minister, members of EA(PC) Committee, the Leader of the House and to the Cabinet Secretary.

Yours sincerely

Alan Simpson

P.P. **PATRICIA HEWITT**

File

Department for Culture, Media and Sport
Rt Hon Tessa Jowell MP
Secretary of State

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C02/09072/02619/MK

Tony McNulty MP
Minster for Housing, Planning and Regeneration
Office of the Deputy Prime Minister
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SW1E 5DU

18 July 2002

Dear Tony

PUBLICATION OF THE NEW PLANNING POLICY STATEMENT (PPS)17

Thank you for sight of your letter to the Deputy Prime Minister of 12 July, copied to members of DA, seeking his agreement to the publication of the new Government Planning Policy Statement (PPS) 17 for Open Space, Sport and Recreation.

I fully support your proposals to publish the new PPS before the recess, and share your view that the publication of this document is well overdue. As you will know the existing PPG 17 is one of the oldest planning guidance notes in current use, and its revision has been eagerly awaited throughout the sporting world. My Department has consistently cited the new revised PPS as one of the key mechanisms by which Government will be able to deliver further protection to playing fields and improve planning for high quality sports facilities and green spaces.

I am particularly pleased to see that the new document provides a clear and robust message to local planning authorities about the need to protect playing fields, and provides much tougher policy tests which will need to be met before such facilities can be developed. I also welcome the emphasis that the document places on the need for local authorities to undertake needs assessments of open spaces, sport and recreation facilities to ensure that these are planned for effectively at the local level. As you rightly point out, the policies contained within the new PPS are crucial to the delivery of the Government's agenda for sport and for the realisation of an urban renaissance and rural renewal. It is vital, therefore, that these policies can be put in place as soon as possible to effect this successful delivery.

Finally, I would like to thank your officials for working so closely with their counterparts here at DCMS and at Sport England to help deliver this new document which will provide a robust new framework to enable local authorities to plan effectively for open space, sport and recreation facilities for the future.

I am copying this letter to the Prime Minister, members of DA, Richard Caborn and Sir Richard Wilson.

Tessa Jowell.

TESSA JOWELL

FROM THE RT HON ALISTAIR DARLING MP
SECRETARY OF STATE FOR TRANSPORT

Department for **Transport**

Department for Transport

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Our Ref: AD/19766/02

17 JUL 2002

The Rt Hon John Prescott MP
Deputy Prime Minister
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cc. AA
AMc
NA
MEL
NB

Dear John

TRANSFORMING PLANNING

Thank you for sending me a copy of your letter to Gordon Brown dated 11 July, seeking EA(PC) agreement to your proposals for taking forward the planning reform agenda.

I support your proposal to introduce a statutory purpose for planning, and wish to register my Department's interest in this. I would be grateful if officials here could be consulted on any form of words that are drafted for the proposed legislation.

I am not in principle against the dropping of the "tariff" approach to planning obligations, but would like to be kept abreast of any new proposals that are taken forward. It is of particular importance to my Department as many new transport infrastructure projects are taken forward on the basis of planning obligations.

My Department has argued previously that the abolition of structure plans will make the integration of Local Transport Plans (LTPs) with land use planning more difficult. County Councils, as the local highway authorities, are best placed to lead on the development of LTPs but they need to work closely with District Councils. I am therefore pleased to see that you now envisage a role for County Councils in working jointly with District Councils in preparing Local Development Frameworks.

While I recognise your arguments for dropping the proposals to expedite planning approval for major infrastructure projects through special Parliamentary procedures, this will cause my Department some difficulty in delivering some of its major transport projects. It is therefore important that effective steps are taken to shorten public enquiries and to minimise the time taken to prepare enquiry reports. My officials would therefore welcome the opportunity to work with your Department in taking this work forward.

I am copying this letter to the Prime Minister, members of EA(PC) Committee and Sir Richard Wilson.

ALISTAIR DARLING

File

To: PD(ME)
" PD(AA)
PD(AM)
PD(NA)
PD(SS)
PD(DH)

RESTRICTED - POLICY

From the Parliamentary Under Secretary of State
Lord Hunt of Kings Heath

DH Department of Health

Richmond House
79 Whitehall
London
SW1A 2NS
Tel: 020 7210 3000

IMC: 22938

The Rt Hon John Prescott MP
Deputy Prime Minister & First Secretary of State
Dover House
Whitehall
London SW1A 2AU

17th July 2002

Dear John

TRANSFORMING PLANNING

I refer to your letter of 11 July to Gordon Brown about your proposals to take forward the planning reform agenda.

The NHS is a major customer of the Town Planning system, and welcomes any proposals that simplify or speed up the process. The importance of the planning system for the delivery of appropriate development in the correct locations is recognised, although we often struggle to secure planning consents for essential developments such as medium or high security units even on existing NHS owned sites.

Delays in the planning process increase costs, thus diverting funds from the provision of healthcare services, and more importantly delaying the provision of improved healthcare facilities.

I appreciate that wide consultations can lead to delay, but it is essential that Local Authorities should be required to consult with appropriate NHS bodies in their preparation of Local Development Frameworks and Community Strategies. Healthcare is an integral part of community services. In our representations to your Department we have also asked that healthcare provision infrastructure should be included by Local Authorities in calculating what planning obligations are appropriate to any development, and that the health service benefits from the proceeds of planning obligations. This equally applies to the provision of affordable key-worker accommodation.

I hope that the above important matters will be emphasised in future Planning Policy Guidance Notes, or other suitable guidance to Local Planning Authorities.

I am copying this letter to the Prime Minister, members of EA(PC), Robin Cook & to Sir Richard Wilson.

Yours ever

PHILIP HUNT

SP170701

SKP 17/7/02

File

Top: PD (ME)
" PPS
PD (AA)
PD (AMc)
PD (NA)
PD (JN)

Treasury Chambers, Parliament Street, London, SW1P 3AG

The Rt. Hon. John Prescott MP
Deputy Prime Minister and First Secretary of State
Office of the Deputy Prime Minister
Dover House
Whitehall
London SW1A 2AU

17 July 2002

Dear Deputy Prime Minister,

EAPC CLEARANCE OF PLANNING REFORM STATEMENT

Thank you for your letter enclosing the planning reform document you wish to publish on Thursday. We of course have a strong, shared interest in the successful delivery of the reform agenda set out in the planning Green Paper with the generous provision we have agreed in the Spending Review.

2. I understand that officials have been discussing the details of the paper you sent round. I also understand that the changes they have proposed have been accepted. I am, therefore, happy for the paper to be published as you proposed.

3. I am, however, cautious about the proposal to introduce a statutory purpose for the planning system. The possibility of regular legal challenges slowing the system down could cut across our wider objectives for reform. I am happy with the proposal in the statement that

SKP 17/7/02

we will only do this subject to legal advice that is clear we can minimise this risk, but I would like to remain involved in any decisions on this issue over the next few months.

4. I have copied this letter to the Prime Minister, members of EA(PC), the Leader of the House and the Cabinet Secretary.

Yours sincerely,

PAUL BOATENG
(approved by the Chief Secretary and signed in his absence)

File (matrix).

10 DOWNING STREET
LONDON SW1A 2AA

From the Senior Policy Adviser

16 July 2002

Dear Mark

Transforming Planning

The Prime Minister has seen the Deputy Prime Minister's letter to the Chancellor of the Exchequer of 11 July. He is content with the proposals subject to a number of detailed points both on the letter and on the proposed summary document.

The Prime Minister:

- is content with the proposal to introduce a statutory purpose for planning, but only if there is no question that it could provide grounds for legal challenge. In particular it should not become a material consideration affecting the balance of argument in planning decisions;

- is content with the proposal not to proceed with the introduction of a Parliamentary procedure for major infrastructure projects. However he has noted that the presentation of this point should reflect the Deputy Prime Minister's view that the new approach would be more effective in tackling delays;

- would like the announcement to make clear that the proposal to prevent twin tracking will only be implemented once the delays in the planning system have been substantively overcome;

- agrees with the proposal not to proceed with a development tariff.

The Prime Minister would be grateful to see detailed proposals from the Deputy Prime Minister on the statutory timetable for call-ins, for extending the scope of Best Value standards to cover plan production and on the tougher standards for dealing with planning applications in the light of the resources allocated in the Spending Review.

The Prime Minister thinks that the purpose of the review of national policy guidance should be made more explicit: to reduce the volume of guidance and to increase its clarity. The paper accompanying the Deputy Prime Minister's statement should state that the aim of the review is not to change the existing balance of economic, social and environmental objectives in national policy.

I am copying this letter to the Private Secretaries of EA(PC) Ministers, the Leader of the House and the Cabinet Secretary.

Yours sincerely

MIKE EMMERICH

Mark Bowman
HM Treasury

From: Mike Emmerich
Date: 12 July 2002

cc Jonathan Powell
Jeremy Heywood
Sally Morgan
Robert Hill
Geoffrey Norris
Martin Hurst
Natalie Acton

PRIME MINISTER

PLANNING - POLICY CLEARANCE OF REFORM PROPOSALS

JP is seeking collective agreement to the proposals proposed by CF prior to the reshuffle for reforming the planning system. There are some significant changes since you last saw the package. The proposed involvement of Parliament in major infrastructure proposals has been dropped. JP does not propose to proceed – for now anyway - with the proposal to phase out S106 agreements and to replace them with a system of development tariffs, largely because the ONS have indicated that a tariff would be classified as taxation. JP's proposals for major projects are on balance more convincing than CF's – and could reduce the time taken on projects by anything up to forty percent. JP would like to launch a paper on Thursday as part of the post-SR rollout. Subject to the points below on which your steers are invited, I think you should agree.

Reforms to be taken forward as set out in the Green Paper
The DPM proposes to press ahead with plans to a rang of reforms including to:

- simplify planning by removing a layer of plans: county level structure plans;
- introduce simplified planning zones (though JP and GB have agreed that these might be appropriate for regeneration areas as well as more traditional business parks);
- introduce a statutory timetable for projects called in by the Secretary of State (detail yet to be agreed);
- introduce statutory timetables on statutory consultees;
- extend the Best Value Performance Standards for planning to cover plan production as well as planning applications;

- raise the level of planning fees;
- reduce the volume of national planning guidance (though not the policy).

Proposals Not in the Green Paper
JP's proposals include provisions not in the Green Paper, principally that the purpose of planning is set out in statute. I am hoping to see ODPM's legal advice on this and can see no problem in principle, provided that it does not provide a grounds for legal challenge. **Subject to sight of the ODPM legal advice I think you should agree this. View?**

Dropped/Substantively amended Green Paper proposals
CF had proposed to limit the right of objectors to be heard at inquiry. JP thinks this is not tenable and proposes to revert to the status quo.

JP proposes to continue to allow developers to use repeat applications whereby developers submit substantively similar proposals as a means of pressuring Councils. I think this is justified since under the current arrangements Councils can and do frustrate developers' proposals needlessly. However, once the new system is up and running JP proposes to revert to the Green Paper proposal. This looks like a pragmatic concession to business.

Are you happy with these proposals?

Major Infrastructure Projects
There was a broad welcome for the proposal that the Government produces statements of policy – such as the Airports White Paper. Clearly the lack of such a policy hampered the Inspector looking at the T5 planning application, as there was no objective body of evidence on the need for T5. Similarly, there is every reason to be optimistic that the new rules for the timetabling of public inquiries will significantly speed things up. ODPM have set out a further proposal. It is to appoint a team of inspectors to hold concurrent hearings on different issues. It will work best where there are complex inquiries like T5 with multiple planning issues.

There was almost unanimous opposition to the role of Parliament in approving projects and ODPM have also now concluded that this approach may add to rather than shorten the overall process and are seeking to drop the idea.

Policy statements and faster, tighter inquiries, policies which are already "in the bag", plus concurrent timetabling will make a difference and they will give you a

Why can't we have a fixed time limit set for major inquiries eg. 1 yr.?

solid defence against the criticisms from business that major infrastructure projects take too long. ODPM have told me, though JP has not offered this in his letter, that they think these measures could reduce the time taken by large projects by as much as 40%. In the case of Heathrow T5, ODPM estimate that the process would have been 20% faster had there been a prior policy statement and with the faster inquiry rules already in place. A further 15% time saving may have been possible through running inquiries concurrently. **This is almost certainly as radical as can be delivered. JP wants to announce this with the rest of the package on Thursday. Are you content?**

Yes. But is it really only 20% for Heathrow

Development Tariffs

The proposals on planning gain involved the extension of the scope for planning obligations. The fear you had that the proposal looked like a development tax has been realised. ONS have made an initial ruling that that if introduced in the form proposed, they would indeed classify the revenue raised as tax revenue, something which HMT are not, at this stage, prepared to concede.

ODPM propose to announce on Thursday a fallback option whereby we continue to use S106 but tidy up the system by issuing revised policy guidance. Local authorities would still be allowed to use a form of tariff for convenience (some do already). As now, Councils would be able to obtain as much money as possible for affordable housing on residential developments and it should be possible to allow local authorities to extract planning gain from commercial development for affordable housing. The downside of this approach is that the existing system is opaque, unpredictable and lengthy, and allows Councils not to impose social housing obligations.

JP remains keen on a more radical approach and is attempting to persuade GB in the near term to go with either the original option of a tariff based on an amended S106 or to introduce a wholly new development tax; his preference being for a development tax. However the timetable for next term's planning Bill demands that a decision is taken now, unless you agree to provide support to JP if he proposes to Robin Cook that the Bill be delayed whilst this issue is resolved.

The right way forward seems to be that JP announces his fallback option and that decisions on any more radical options are deferred, pending further work including on the read across between these ideas and the proposal JP is still pushing for imposing VAT on greenfield development. Do you agree?

– don't suppose

What is your view on deferring the Bill pending resolution of this issue?

don't mention this at this stage

JP's letter is attached to this note.

MIKE EMMERICH

FD

AMc
cc NA
JJH
JN
SV

RESTRICTED - POLICY

DEPUTY PRIME MINISTER

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Tel: **020 7276 0400**
Fax: **020 7276 0196**

The Rt Hon Gordon Brown MP
Chancellor of the Exchequer
HM Treasury
Treasury Chambers
Parliament Street
London
SW1P 3AG

11 July 2002

TRANSFORMING PLANNING

This paper seeks EA(PC) agreement to the proposals for taking forward the planning reform agenda outlined in the Planning Green paper following consideration of the consultation responses. We intend to press ahead with the proposals to: simplify the complex hierarchy of plans; improve the accessibility, quality and efficiency of the development control process; make the compulsory purchase system simpler, fairer and quicker; change the system of planning obligations; introduce Business Planning Zones and revise and recast planning policy guidance notes (PPGs).

The key changes to the proposals compared to those outlined in the PGP and daughter documents are: the introduction of a statutory purpose for planning; changes to the detail of some of the proposals for development control and Local Development Frameworks. We do not propose to proceed with the proposals for introducing Parliamentary Procedures for Major Infrastructure Projects (MIPs).

I would be grateful for responses by Wednesday 17 July.

Our principal proposals were set out in the Planning Green Paper, cleared by EA(PC) in December 2001. It was supported by a series of daughter documents covering compulsory purchase and compensation, Parliamentary procedures for major infrastructure projects, planning obligations (s.106 agreements) and the Use Classes Order.

We received over 19,000 responses to the Green Paper and daughter documents – a measure of the importance of the issues.

Planning plays a central role in the delivery of Government priorities. We need the integrated approach that planning brings, if we are to deliver new housing, transport infrastructure, new hospitals and schools, more jobs, improved health, and private sector capital investment.

We need an effective planning system to help solve both housing pressures in the South and housing abandonment in the North. In order to deliver housing and infrastructure on the ground and build sustainable communities we need good regional strategies that grasp the big issues and have some teeth in delivering solutions. We need local plans that are put in place quickly and are kept up to date.

There are three elements to our plans for modernising and speeding up the system: re-engineering and streamlining process, proper resourcing, and transforming culture.

Re-engineering process is an essential part of reforming and speeding up the system, but will not be enough on its own. It needs to be coupled with a change in approach to planning as a whole, a change in culture.

Streamlining process and transforming culture are both dependent on proper resourcing of the planning functions. The progressive erosion of resources for planning, especially in local authorities, has been a major contributor to the under-performance and silting up of the system.

Many of the key proposals to re-engineer processes require legislation. This memorandum focuses on those legislative items which depart from the Green paper proposals. The TLR Select Committee has recently published its report into the Planning Green paper. The changes outlined following consultation will go some considerable way to meet the Committee's concerns.

As in the Planning Green Paper it is important that the package of reforms reflects a balance between the competing interests of business and community groups. I believe that the proposed package of reforms provide this balance.

Changes from the Green Paper proposals

Simplifying the complex hierarchy of plans

The Green Paper proposed a strategic planning tier at the regional level, and a local planning tier at the district or unitary authority level. County structure plans would be abolished. There has been no strong call to reinstate county structure plans, even from the counties themselves, but there is an issue about the role of the counties in supporting regional planning and working with the districts on local plans. We need

to keep the counties engaged because they have strategic planning skills. We think the right balance is to involve the counties in the preparation of the Regional Spatial Strategies, but leave statutory responsibility with the Regional Chambers, and allow for counties to work jointly with districts on preparing Local Development Frameworks where this is agreed between the authorities.

There was widespread concern expressed in the consultation about the proposals to remove the arrangements whereby all objectors can insist on appearing in front of an Inspector at an inquiry or formal hearing. The Green paper proposed that the right to appear might be limited (eg to those with a property interest), with the Inspector otherwise employing written representation wherever possible. The revised proposals retain the right of those who have duly made objections to appear before the inspector. However, this would be part of an overall package which encouraged resolution of issues before the testing process started, promoted alternative means of dealing with issues and which included measures to speed up the process.

Major Infrastructure Projects (MIPs)

We want to cut down the time spent on inquiries into major projects such as Heathrow Terminal 5.

The proposal was for a Parliamentary procedure which would take decisions on the principle of, need for, and broad location of a major infrastructure project in the context of clear statements of national policy (an example is the forthcoming Airports White Paper). A public inquiry would then be held to consider the detail of the proposal. The parliamentary elements of the MIPs proposals have not attracted support, while encountering strong opposition from some directions. Business in particular was sceptical about the likelihood of reducing the time spent at inquiry by referral to Parliament.

The TLR Select Committee Report was particularly critical of the proposals. The House of Commons Procedure Committee is also looking at the proposals. They are concerned about a procedure which places a heavy burden on members' time and may not in the end be quicker.

We have not been able to devise a low risk strategy that enables Parliament to consider MIPs and shorten the planning decision process. We do not intend therefore to pursue this proposal. We do intend to proceed with the proposals to issue clear statements of national policy (eg a White Paper) about the need for specific investment as this will help reduce decision times. We further propose to shorten public inquiries by allowing the consideration of issues concurrently rather than consecutively - perhaps savings in inquiry time of up to a third.

Planning Obligations

An effective planning obligations system should provide social, economic and environmental benefits to the community as a whole. It should increase the supply of affordable housing and the facilities and infrastructure needed to accommodate growth. A good planning obligations system will promote economic prosperity, but not impose unacceptable burdens on developers.

Reforming the system in the way set out in the Planning Obligations consultation paper may not be possible however. I am advised that our tariff as proposed in the Planning Green Paper is likely to be classified as a tax. I am personally sympathetic to the concept of a tax on development to help pay for new infrastructure but given the tax problem I do not propose to pursue this in legislation. This could be presented as a concession to the CBI and other sections of business that are strongly opposed to the tariff. There is a good deal that can be done without legislation to improve the way in which planning obligations are levied but these will fall short of the more significant changes we had envisaged.

Business Planning Zones

The proposal to designate zones within which business could bring forward high quality science based development without the need for detailed planning consent received a confused response in consultation. There was a clear misunderstanding of the policy aims. Some high tech companies working on the leading edge of technologies operate in an environment that is extremely fast moving and where businesses start up and either expand or fail quickly. As an example Business Planning Zones would be especially suitable for universities hoping to use scientific research to promote new products. We expect high quality development within Business Planning Zones and will set the parameters of development very tightly to ensure that good quality environments are created. Business Planning Zones will also require an environmental impact assessment to be undertaken. I think we should take forward the proposal.

Statutory Purpose

This issue emerged from the consultation. The proposal is to make a clear statement about the purpose of the planning system. This will set out the outcomes we want from planning and there are strong expectations among stakeholders that it will form part of the final package. We want planning to rediscover its purpose, to be a strategic, proactive force for economic prosperity, social cohesion and environmental protection. My preference is to include something on the face of the proposed Planning Reform and Compulsory Purchase Bill. Lawyers are concerned that it will provide fertile ground for legal challenge. It will require careful legal drafting. My officials will be working closely with Parliamentary Counsel on this.

Improving the accessibility, quality and efficiency of the development control process

The Green Paper invited views about whether there should be **statutory timetables for delivering the decisions for called in and recovered appeals.** We believe that statutory timetables would help to deliver our targets and we will therefore seek an enabling power in primary legislation for the Secretary of State to prescribe a timetable for call-in and related decisions. I will set the timetable in the light of our experience of operating new internal procedures which were launched in April.

The Green Paper identified that **statutory consultees** could be a major source of delay in the planning application process and stated that the Government regarded their performance in responding to requests for comments on planning applications as unacceptable. There was some misunderstanding of the proposals and after considering responses, we have decided:

- to introduce a statutory deadline of 21 days for statutory consultees to respond to pre-application requests for advice from developers and to introduce the same deadline for them to respond to requests for advice from local planning authorities in respect of particular planning applications. It will be possible to extend this 21 day deadline with the agreement of the relevant parties where this would clearly be appropriate.

- that the number of statutory consultees and the types of development for which they should be consulted should be reviewed but that there should be no presumption that the list should be reduced.

- to remove references to statutory consultees from primary legislation and to include them in the review of statutory consultees. Where there is still a need to consult these bodies, we will introduce a suitable requirement in secondary legislation. The use of secondary legislation will offer the flexibility for changes to be made in the future should these prove necessary.

There is a distinction between those bodies who are statutory consultees, and those who by law have to be notified. We have decided that those bodies who are notified, such as Parish Councils and the National Amenity Societies, should not lose this right.

We have decided not to take forward the proposal in the Planning Green Paper to allow charging for pre-application advice. Many responses to the PGP argued that by charging a fee developers could be deterred from seeking advice, and that the administration costs would nullify any financial benefit to the consultee. Many consultees also stated they would be unlikely to charge even if they had the power to do so. There therefore seemed little advantage in its introduction.

The Planning Green Paper sought views on whether to introduce a new **certificate to replace outline consents** whereby a developer would seek a certificate from the local authority that it has agreement for a defined period to work up a detailed scheme against parameters determined in agreement with the local authority. Responses to the Planning Green Paper demonstrated strong opposition to the removal of outline planning permission on the grounds that outline planning permission provided certainty, deemed essential for more complex schemes like regeneration projects. However the proposed certificate, which we are calling a "statement of development principles", offers advantages over outline planning permission where issues like quality and design are not always considered effectively. We therefore intend to take powers to introduce the statement of development principles. But we will not remove outline planning permission until the statement of development principles has been proven to work.

The Green Paper stated that some developers used **repeated applications** to wear down opposition to undesirable developments with the effect of damaging people's confidence in the planning process and making it inefficient. Local planning authorities (LPAs) already have powers to refuse repeat applications where the Secretary of State has refused a similar application called in by him or has dismissed an appeal against a similar application. We have decided to extend these powers in primary legislation to enable LPAs to refuse repeat applications where the LPA have refused a similar application, and there has been no appeal against that refusal to the Secretary of State. We have also decided to extend all the powers to decline to determine repeat applications to applications for prior approval under the GPDO. This will affect development in respect of: certain telecommunications apparatus; agricultural and forestry buildings and operations; toll road facilities; and demolition of buildings.

We have also decided to introduce **local development orders** - but only for the purpose of implementing policies in a development plan document which forms part of the local development framework. They can thus be used as a positive tool to encourage and speed up development in specific areas. The local order would be subject to the same consultation, testing, adoption, reporting and revision procedures as the development plan document to which it relates.

Fees

In the Green Paper we said that, at the local level, it is imperative that local planning authorities have proper fee income for the work that they do. The response has overwhelmingly supported that view, on the condition that this was accompanied by improved performance.

As promised, fees for planning applications were raised by 14% from 1 April this year. This will bring in an extra £20m. But the scope for fees remains limited to that set out in the TCPA 1990. We do not think that it is wide enough. We are undertaking a wide ranging review of fees as promised in the Green Paper which will

report early next year. Primary legislation is needed to broaden the scope for charging fees, and we will be seeking to take the necessary enabling powers to do this at the earliest opportunity. We will hold a further consultation in due course on any detailed proposals to extend the scope of charging in the light of our review. I will return to EA(PC) at that point.

The wider reform agenda

The Green Paper set out a substantial agenda for reform in other areas, for example issuing new policy guidance, taking forward initiatives to improve the education and training of planners, and promoting good practice. I will be taking forward this agenda over the coming months, consulting colleagues as necessary.

Presentation

There is a substantial story to present here, and I intend to publish a supporting policy paper which will explain our detailed decisions as part of the presentation of the Spending Review settlement for my Department.

I am copying this to the Prime Minister, members of EA(PC) Committee, the Leader of the House and the Cabinet Secretary.

JOHN PRESCOTT

PARLIAMENTARY UNDER SECRETARY

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DEPUTY PRIME MINISTER
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MATRIX

THE RT HON JOHN PRESCOTT MP
DEPUTY PRIME MINISTER
OFFICE OF THE DEPUTY PRIME MINISTER
DOVER HOUSE
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LONDON SW1A 2AU

ME

cc JN
JJH

Dear John

Our ref: PDC 50/2/4

HOME LOSS PAYMENTS: REVISION OF THRESHOLDS
This letter seeks the agreement of DA Committee to the publication of the attached consultation paper and initial Regulatory Impact Appraisal.

Home Loss payments are payable to owner-occupiers and tenants of dwellings displaced by compulsory purchase or public redevelopment to compensate for the distress and inconvenience of having to move home at a time not of their choosing. The current thresholds were set in 1991 and the Government undertook, in the Compulsory Purchase and Compensation Consultation Paper (DTLR, December 2001), to review the current home loss payment thresholds in the light of current property values.

This review is one of those parts of the compulsory purchase and compensation policy review which can be taken forward in advance of any primary legislation.

For owner-occupiers the rate for home loss payments is 10% of the value of their property, subject to a minimum payment of £1,500 and a maximum payment of £15,000. Tenants receive a flat rate payment of £1,500. The Land Compensation Act 1973 (as amended) gives you a power to alter the thresholds and the flat rate (but not the percentage payment) by regulations. This power has been devolved to the National Assembly in Wales. We have agreed with National Assembly Ministers that this should be a joint consultation exercise and they have agreed to the text of the consultation paper and initial RIA.

The consultation paper has five options. Option 1 (no change) is not recommended. Option 2 uprates the thresholds according to the latest house price index for Great Britain (currently Q1 2002), as both the original legislation and the 1991 uprating were

undertaken on a GB basis. Option 3 enhances the minimum payment to owner-occupiers on the grounds that compulsory purchase impacts more heavily on owners of low-value housing, so they should be given extra help. Option 4 is a variation that raises the flat rate to tenants by the same amount as the minimum to owner-occupiers, to avoid breaking the existing link between them. Option 5 is radical, in that it removes the maximum threshold in the majority of cases because the only claimants receiving less than 10% would be owner-occupiers of properties worth more than £500,000. (The legislation requires, however, that a maximum figure be specified).

In summary, the five options would result in the following thresholds and flat-rate payments:

Option 1 – no change: maximum £15,000, minimum £1,500, flat-rate £1,500.

Option 2 – uprating to index: maximum £26,000, minimum £2,600, flat-rate £2,600.

Option 3 – enhanced minimum: maximum £26,000, minimum £3,000, flat-rate £2,600.

Option 4 – enhanced minimum and flat-rate: maximum £26,000, minimum £3,000, flat-rate £3,000.

Option 5 – enhanced maximum: maximum £50,000, minimum and flat-rate – any of those in Options 2, 3 or 4.

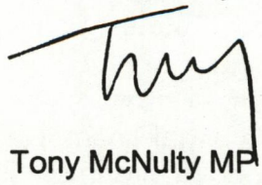
Most consultees will be expecting to see Option 2, as it represents no change of policy. Options 3 and 4 reflect relatively small changes of policy to favour those at the lower end of the scale. Option 5 (which can be combined with the minimum and flat-rate elements of Options 2, 3 or 4) would be a radical change of policy of particular benefit to those at the top end of the scale and so could be viewed as contentious.

Option 5 has been suggested by the Treasury in the hope that increased compensation for those who might be best placed to pursue objections to major schemes would save time and therefore money. They were concerned first, that there was little sense - from an efficiency point of view - in enabling acquiring authorities to give an incentive to the majority of property holders, but considerably less to the small minority that are best placed to mount effective opposition to CPOs. Their second concern was that a maximum amount at any level seems extremely arbitrary and their third was that, because home loss compensation is such a small proportion of overall scheme costs and because high-value houses are so rarely taken in CPOs, the overall cost of higher compensation levels would be extremely low.

Some colleagues may believe that Option 5 sends out the wrong signals by being overly generous to those who are already well-off, notwithstanding its economic logic. On the other hand, I am content to keep it in the consultation paper as we are not promoting any particular Option: if consultees do not like Option 5, they will choose another or suggest their own.

I should be grateful for a response by 24 July 2002. I am copying this letter and enclosures to members of DA Committee, Sue Essex AM (National Assembly for Wales), Margaret Curran MSP (Scottish Executive) and Sir Richard Wilson. Annexed to this letter is a list of the lead officials in Departments and Administrations that we know have a particular interest in compensation matters. Copyees might find this helpful.

Yours sincerely,



Tony McNulty MP

ANNEX

LEAD OFFICIALS

HMT	Tony Foot, PROD
LCD	Peter Richardson, Tribunals Policy
HO	Tony Edwards, BEMU
DEFRA	Cliff Netten, Planning
DfT	Malcolm Macleod, PS Lands Policy, Highways Agency
DoH	Ken Brown, NHS Estates, Leeds
MoD	Peter Hodgson, Defence Estates, Solihull
SO/SE	Elizabeth Baird, Planning
DTI	Gary Mohammed, Energy Policy
DfES	John Spencer, Schools Legal Team, Darlington
DCMS	Sheelagh Evans, Historic Environment Protection
NAW	Julian Dawkins, Estates Division

COMPULSORY PURCHASE POLICY REVIEW

REVISION OF HOME-LOSS PAYMENTS UNDER THE LAND COMPENSATION ACT 1973

A JOINT CONSULTATION PAPER BY THE OFFICE OF THE DEPUTY PRIME MINISTER AND THE WELSH ASSEMBLY GOVERNMENT

Introduction

1. The Fundamental Review of the Laws and Procedures relating to Compulsory Purchase and Compensation (the Compulsory Purchase Review) was announced in June 1998 as part of the Government's 'Modernising Planning' initiative. The goal of the Review was to devise a compulsory purchase and compensation system that would be more efficient, more effective and fairer than at present. The then DETR appointed an eminent group of outside advisers (the Compulsory Purchase Policy Review Advisory Group (CPPRAG)) to make recommendations on how that should be done and their Final Report was published in July 2000[1]. A Consultation Paper on the Government's proposals was published in December 2001[2]. The Welsh Assembly Government fully endorsed the Consultation Paper in February 2002.

2. One of the main thrusts of the Final Report was to make sure that the Compensation Code delivered its aim of leaving claimants neither worse off nor better off (so far as money can do so) than if their property had not been acquired by compulsion. Although a value can be put on most losses, claimants suffer certain unquantifiable losses which are caused by the fact that they have to vacate their premises at a time not of their choosing, and, for residential occupiers, the emotional wrench of losing their home.

3. These losses are recognised in the Compensation Code by the system of Home-loss payments set out in sections 29 to 33 of the Land Compensation Act 1973. After the abolition of domestic rates in 1990, the present basis for assessing the amount of the payment was established by amendments in the Planning and Compensation Act 1991.

The Present System

4. At the moment, owner-occupiers of dwellings are entitled to a Home-loss payment of 10% of the Open Market Value of their property as assessed

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[1] "Fundamental review of the laws and procedures relating to compulsory purchase and compensation" DETR July 2000: available free from ODPM Free Literature, PO Box 236, Wetherby, West Yorkshire LS23 7NB: tel 0870 1226 236; fax 0870 1226 237; text phone 0870 1207 405; e-mail odpm@twoten.press.net: product code 00 PD 0520. Also available on the ODPM web site www.odpm.gov.uk.

[2] "Compulsory Purchase and Compensation: delivering a fundamental change - The Government's proposals for reforming the system of compulsory purchase and compensation." DTLR December 2001. Availability as above: product code 01 PD 0932.

for compensation if they are displaced by a compulsory purchase order (or certain housing orders: see section 29 of the 1973 Act). This is subject to a minimum payment of £1,500 and a maximum payment of £15,000. These thresholds therefore relate to properties worth £15,000 and £150,000 respectively. Disputes can be referred to the Lands Tribunal. Occupiers without an owner's interest in the property receive a flat-rate payment of £1,500, including tenants displaced by housing orders and the carrying out of improvements or redevelopment by Registered Social Landlords.

The Options

5. The current payments have remained unchanged since September 1991, and so CPPRAG, in their Final Report[3] recommended that, pending any substantive change to the system, 'the current amounts payable for home-loss payments should be reviewed as soon as possible and, thereafter, annually, to ensure that they are revised as necessary to reflect relative changes in property values.' Both the ODPM and the Welsh Assembly Government have accepted this recommendation and have therefore agreed to conduct this consultation exercise to examine possible options. The loss payments system is likely to be extended to cover other classes of property: proposals are in the Consultation Paper.

6. The 1973 Act applies in England and Wales, and the power to amend the system by regulations is devolved. The powers of the Secretary of State and the National Assembly for Wales are limited to prescribing different minimum and maximum payments for owner-occupiers and a different flat-rate payment for tenants (see section 30(5) of the 1973 Act). We are adopting a joint approach because there is a need for consistency in the compensation code for the compulsory acquisition of residential property acquired in the public interest.

7. We therefore propose the following options for consideration:

Option 1

8. No change. This is not recommended as it takes no account of the CPPRAG recommendation and perpetuates out-of-date thresholds.

Option 2

9. Revalue the thresholds according to the change in house prices between Q3 1991 and the latest available figures. These are currently for Q1 2002. Using ODPM's Mix-adjusted Housing Index for Great Britain (all dwellings), this would give a minimum payment (rounded up) of £2,600, a maximum of £26,000 and a flat-rate of £2,600. This has the advantages of simplicity and transparency. It takes no account, however, of the relatively worse effect that compulsory purchase has on owner-occupiers of low-

[3] Ibid. Paragraphs 91-94 and 97(i) and (iv).

value houses, especially where the local market has collapsed. In these areas, the Open Market value of the houses is so low that the compensation payable will not be enough to buy a long-term replacement house in the locality.

Option 3

10. In order to take account of the fact that owners of low-value houses suffer more than others, the minimum threshold could be raised above the level indicated by revaluation to, say, £3,000. Raising the minimum in this way would not close the compensation gap identified in Option 2, but recognises that owners of low-value houses face more difficulties than owners of more expensive properties. The Government is addressing this issue by giving local authorities wider discretionary powers under The Regulatory Reform Act (Housing Assistance) (England and Wales) Order 2002[4] to provide financial assistance in these circumstances. This power could be used in addition to home loss payments in order to close the compensation gap and facilitate the purchase of another long-life property. The other payments would be as in Option 2.

Option 4

11. Option 3 decouples the flat-rate paid to tenants from the minimum paid to owner-occupiers. There is no logical reason for them to be the same and it might be thought that £2,600 is sufficient for any tenant to compensate for leaving a property that they have no permanent stake in. Conversely, it might be seen to be unfair to upset an enduring arrangement, so this option raises the flat-rate to £3,000 to match the minimum in Option 3, with the maximum remaining at £26,000.

Option 5

12. Although the vast majority of compulsory purchase schemes take very few high-value houses, it is possible that urban infrastructure schemes could take numbers of such houses. It could be argued that a maximum figure is arbitrary, and there is no reason why owner-occupiers of high-value properties should be denied the full 10% Home-loss payment. The legislation, however, in the opinion of the Department and the Welsh Assembly Government, requires that a maximum figure be quoted. Option 5 is to set the maximum at £50,000, which relates to properties worth £500,000. The increase in costs over Option 1 which might occur (see Example 4), which appear substantial in absolute terms, would typically be very small (about 0.5%) in relation to total scheme costs for large projects. The increase over Options 2 – 4 would be even smaller (just over 0.1%).

Summary of Options

Option 1 – no change: maximum £15,000, minimum £1,500, flat-rate £1,500.

[4] RRO details

Option 2 – uprating to index: maximum £26,000, minimum £2,600, flat-rate £2,600.

Option 3 – enhanced minimum: maximum £26,000, minimum £3,000, flat-rate £2,600.

Option 4 – enhanced minimum and flat-rate: maximum £26,000, minimum £3,000, flat-rate £3,000.

Option 5 – enhanced maximum: maximum £50,000, minimum and flat-rate – any of those in Options 2, 3 or 4.

Cost of Options

13. Data on how many residential properties are taken by compulsory purchase are not held centrally. Home-loss compensation paid to the owners of many properties will not change: properties valued between those attracting the new minimum payment (£26,000 or £30,000) and those attracting the old maximum payment (£150,000) will receive the same amount as at present. The only changes will be at the margins.

14. Such evidence as is available to the Department indicates that it is very rare for properties valued at £150,000 or more to be compulsorily acquired. The cost to acquiring authorities of increasing the maximum payment in most cases in most areas would therefore be *de minimis*. Major projects in urban areas could, however, have an impact on high-value property areas.

15. The main impact would therefore be felt at the lower end of the scale, particularly in clearance areas and in the redevelopment of social housing estates. Activity varies across the country, with some regions reporting no housing CPOs and others having an active programme. It should be remembered, however, that activity in the past is no sure guide to activity in the future. It is, however, expected that the need to improve or replace sub-standard local authority housing could lead to a significant increase in the number of home loss payments over the next ten years, as authorities adopt the standards outlined in the Office's 'Decent Homes Guidance'[5] and the Welsh Assembly Government's 'Welsh Housing Quality Standard'[6].

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[5] "A Decent Home – the revised definition and guidance for implementation" DTLR March 2002 is available free from ODPM Free Literature, PO Box 236, Wetherby, West Yorkshire LS23 7NB: tel 0870 1226 236; fax 0870 1226 237; text phone 0870 1207 405; e-mail odpm@twoten.press.net: product code 01 HC 1235; "Decent homes: Capturing the standard at the local level" DTLR March 2002, availability as above: product code 01 HC 1233; "Decent Social Housing Target - Implementation Plan" DTLR March 2002. All available on the ODPM web site at www.housing.odpm.gov.uk/information/dhg/index.htm.

[6] "The Welsh Housing Quality Standard – Guidance for Local Authorities on the Assessment Process and Achievement of the Standard" WAG April 2002 is available free from The Welsh Assembly Government, Construction and Domestic Energy Branch, Housing Directorate, Cathays Park, Cardiff CF10 3NQ. Also available on the Housing web site at www.wales.gov.uk/subihousing/toc-e.htm .

16. CPPRAG recommended that the thresholds for Home-loss payments should be reviewed annually. After the revision following this consultation exercise, subsequent ones would have only a marginal impact: at times when house prices are stable, the thresholds may not need to be altered in some years.

17. In a year, authorities in an English region with an active clearance programme might purchase about 200 occupied properties in 30 CPOs. In these areas, the open market value of these houses is likely to be less than £15,000. The Home-loss payment would therefore be £2,600 or £3,000 each instead of £1,500, which would cost authorities in the region an additional £220,000 or £300,000 above what would be paid under the present system: an average of £7,333 or £10,000 for each CPO. The Department would also suggest that this is insignificant in the context of the cost of an entire clearance scheme. The scale of activity required to improve or redevelop the social housing stock could, however, be considerably greater than this in order to meet the standards prescribed by the Department and the Welsh Assembly Government.

18. This might be better illustrated by some examples.

Example 1

19. A typical clearance CPO. It includes 75 houses, of which 50 are owner-occupied, 10 are tenanted and 15 are vacant. Assuming that all the houses are worth less than £15,000, the Home-loss payments are as follows:

under **Option 1** (the present system) they would be 60 x £1,500 = £90,000;

under **Option 2** they would be 60 x £2,600 = £156,000 (an increase of £66,000);

under **Option 3** they would be (50 x £3,000 = £150,000) + (10 x £2,600 = £26,000) = £176,000 (an increase of £86,000); and

under **Option 4** they would be 60 x £3,000 = £180,000 (an increase of £90,000).

(The 15 vacant houses would not attract any Home-loss payment).

20. The above example illustrates the greatest increase in compensation payable and thus the maximum impact on acquiring authorities' costs, because all the properties would have attracted the minimum compensation under the current system.

Example 2

21. If the properties in Example 1 were in, say, a renewal area and the owner-occupied houses were worth £20,000 each, the total Home-loss payment under the present system (Option 1) would be:

(50 x £2,000 = £100,000) + (10 x £1,500 = £15,000) = £115,000.

22. The payments under Options 2, 3 and 4 would be the same as in Example 1, so the increases would be £41,000 for Option 2, £61,000 for Option 3 and £65,000 for Option 4.

23. As the value of the owner-occupied properties rises, the extra liability for the acquiring authority reduces. Once the lowest value property is worth £26,000 or £30,000 depending on the Option chosen, the only extra liability for the acquiring authority would be for tenanted properties at a rate of £1,100 or £1,500 each.

Example 3

24. Large Scale Voluntary Transfers (LSVTs) of local authority housing to registered social landlords may also give rise to an entitlement to a home loss payment if a tenant is displaced by improvement or redevelopment. These would all be at the flat rate. LSVTs vary in size and in the amount of demolition required. Some transfers involve no demolition, while for others, especially in urban areas, the number of properties being demolished can be substantial, although some may be empty.

25. Some of the smaller inner-city or suburban transfers may require 50 to 300 dwellings to be demolished. If they are all occupied, the extra home loss liability will be between £55,000 and £330,000 if the flat-rate is raised to £2,600 or between £75,000 and £450,000 if it is raised to £3,000.

26. At the top end of the scale, some authority-wide transfers may require 1,000 to 4,500 demolitions. If half of these are occupied, the extra home loss liability will be between £550,000 and £2,475,000 if the flat-rate is raised to £2,600 or between £750,000 and £3,375,000 if the flat-rate is raised to £3,000.

Example 4

27. A major infrastructure project impacts on an area which takes 40 houses valued between £150,000 and £255,000 (average value £200,000) and 20 houses valued at more than £255,000 (average value of £350,000). The Home-loss payments would therefore be:

under **Option 1** (no change) 60 x £15,000 = £900,000.

under **Options 2, 3 or 4**, the payments would be (40 x £20,000 = £800,000) + (20 x £26,000 = £520,000) = £1,320,000, an increase of £420,000.

under **Option 5**, the payments would be (40 x £20,000 = £800,000) + (20 x £35,000 = £700,000) = £1,500,000, an increase of £600,000 over Option 1 or £180,000 over Options 2 – 4. In this scenario, the extra costs of Option 5, beyond those to be incurred under any of the options (2 - 4) where the maximum is uprated to index, are very small in relation to the basic land acquisition costs for these houses of £15,000,000.

Other Options

28. CPPRAG considered other ways of amending the Home-loss payments system, but these would require primary legislation. One alternative, of paying a flat-rate of, say, £10,000 to all owner-occupiers (which could be done by Regulations)[7], was rejected as a distortion of the intention behind Home-loss payments, by giving owners of low-value housing a payment perhaps higher than that of their property, while giving owners of high-value properties a payment which would be derisory in percentage terms. Consultees may, of course suggest other options (which are possible within the scope of the legislation).

The Consultation Exercise

29. The consultees are the non-Ministerial acquiring authorities and Registered Social Landlords, who pay the compensation, and representatives of residential owners and occupiers, who would claim it if their home is taken by compulsory purchase. The Department and the Welsh Assembly Government would also welcome the views of those professionals, mainly surveyors and lawyers, who advise both acquiring authorities, RSLs and claimants. Most acquiring authorities are local authorities, but they also include utilities and infrastructure undertakers who have compulsory purchase powers, together with promoters of schemes under private acts or Transport and Works Act Orders.

30. This consultation extends to England and Wales only. Secondary legislation is also devolved in Scotland (where the Land Compensation (Scotland) Act 1973 applies) and Northern Ireland. It is a matter for the administrations in those countries to decide whether the Home-loss payments regime should be amended and to what extent.

31. Responses to the consultation may be made available for inspection and may be referred to in any published analysis, **unless** a respondent states that their response is to be treated **in confidence**. All responses may be taken into account in any statistical analysis.

Replies should be sent to:

Mike Sheehan
PCID(b)
Office of the Deputy Prime Minister

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[7] Ibid. Paragraph 94.

Floor 3/H4
Eland House
Bressenden Place
London SW1E 5DU

Tel: 020 7944 3928
Fax: 020 7944 3919

E-mail mike.sheehan@odpm.gsi.gov.uk or cpocrown@odpm.gsi.gov.uk

Or

David Gardiner
Estates Division
Welsh Assembly Government
Cathays Park
Cardiff CF10 3NQ

Tel: 029 20 826123
Fax:

E-mail: david.gardiner@wales.gsi.gov.uk

by [date 2002].

Further copies of this Consultation Paper may be obtained from:

ODPM Free Literature
PO Box 236
Wetherby
West Yorkshire
LS23 7NB

Tel: 0870 1226 236
Fax: 0870 1226 237
Text phone: 0870 1207 405
E-mail: odpm@twoten.press.net

It is also available on the Department's web site: www.odpm.gov.uk

[and in Wales/Welsh language version]

The Questions

32. Do you support

Option 1 ☐

Option 2 ☐

Option 3 ☐

Option 4 ☐

Option 5 (+2) ☐

Option 5 (+3) ☐

Option 5 (+4) ☐

Other option (please describe)

.....

INITIAL REGULATORY IMPACT ASSESSMENT

REVISION OF HOME-LOSS PAYMENTS UNDER THE LAND COMPENSATION ACT 1973

The issue and objective

Issue: Owner-occupiers of dwellings are entitled to a Home-loss payment of 10% of the Open Market Value of their property as assessed for compensation if they are displaced by a compulsory purchase order or certain housing orders. This is subject to a minimum payment of £1,500 and a maximum payment of £15,000. Occupiers without an owner's interest in the property receive a flat-rate payment of £1,500, including tenants displaced by housing orders and the carrying out of improvements or redevelopment by Registered Social Landlords.

The current payments have remained unchanged since September 1991, and so the Compulsory Purchase Policy Review Advisory Group, in their Final Report recommended that 'the current amounts payable for home-loss payments should be reviewed as soon as possible and, thereafter, annually, to ensure that they are revised as necessary to reflect relative changes in property values.'

Objective: Both the ODPM and the Welsh Assembly Government have accepted this recommendation and have therefore agreed to examine options for reviewing the current threshold payments with a view to amending them in line with the changes that have occurred in property values since 1991.

Options

Five options have been identified:

Option 1

No change. This is not recommended as it takes no account of the CPPRAG recommendation and perpetuates out-of-date thresholds.

Option 2

Revalue the thresholds according to the change in house prices between Q3 1991 and the latest available figures. These are currently for Q1 2002. Using DTLR's Mix-adjusted Housing Index for Great Britain (all dwellings), this would give a minimum payment (rounded up to the nearest £50) of £2,600, a maximum of £26,000 and a flat-rate of £2,600.

Option 3

In order to take account of the fact that owners of low-value houses suffer more than others, the minimum threshold could be raised above the level

indicated by revaluation to, say, £3,000. The other payments would be as in Option 2.

Option 4

Option 3 decouples the flat-rate paid to tenants from the minimum paid to owner-occupiers. In order to reinstate that relationship, this option raises the flat rate to £3,000 to match the minimum in Option 3, with the maximum remaining at £26,000.

Option 5

Although the vast majority of compulsory purchase schemes take very few high-value houses, it is possible that urban infrastructure schemes could take numbers of such houses. Option 5 is to set the maximum at £50,000. The increase in costs which might occur (see Example 4), which appear substantial in absolute terms, would typically be very small (about 0.5%) in relation to total scheme costs for large projects.

Benefits

All benefits accrue to owner-occupiers and tenants in the form of increased payments:

Option 1 – this does not meet the objective of bringing Home-loss payments up to date.

Option 2 – this meets the objective by uprating the thresholds and payments according to the index.

Option 3 – goes beyond the basic objective by enhancing minimum payments, so giving extra help to those owning low-value properties.

Option 4 – goes beyond the basic objective by additionally enhancing payments to tenants as well as owners of low-value properties.

Option 5 – goes beyond the basic objective by raising the inevitably arbitrary cap on maximum payments to a level which is likely to cover almost all properties subject to compulsory purchase.

Compliance Costs for Business, Charities and Voluntary Organisations

Business sectors affected and small business considerations

For compulsory purchase, most acquiring authorities are local authorities or Government Departments. Utility companies and transport undertakers either have or can acquire compulsory purchase powers.

Registered Social Landlords will be affected by having to make Home-loss payments to tenants displaced by redevelopment, especially following

transfers of housing stock from local authorities. However, there are no small business considerations.

Global costs in any year are impossible to predict with any confidence. Compensation payments may be made several years after a compulsory purchase order is confirmed. Payments in any one year will therefore reflect activity in a number of previous years. It is also not possible to predict how much compulsory purchase activity will take place in the future: this is in the hands of acquiring authorities. The Secretary of State's role is complete once he confirms a compulsory purchase order: the question of compensation is a matter for the acquiring authority and the claimants.

Cost of Options

Home-loss compensation paid to the owners of many properties will not change: properties valued between those attracting the new minimum payment (£26,000 or £30,000) and those attracting the old maximum payment (£150,000) will receive the same amount as at present. The only changes will be at the margins.

Such evidence as is available to the Department indicates that it is very rare for properties valued at £150,000 or more to be compulsorily acquired. The cost to acquiring authorities of increasing the maximum payment in most cases in most areas would therefore be *de minimis*. Major projects in urban areas could, however, have an impact on high-value property areas.

The main impact would therefore be felt at the lower end of the scale, particularly in clearance areas and in the redevelopment of social housing estates. Activity varies across the country, with some regions reporting no housing CPOs and others having an active programme. It should be remembered, however, that activity in the past is no sure guide to activity in the future. It is, however, expected that the need to improve or replace sub-standard local authority housing could lead to a significant increase in the number of home loss payments over the next ten years, as authorities adopt new standards.

In a year, authorities in an English region with an active clearance programme might purchase about 200 occupied properties in 30 CPOs. In these areas, the open market value of these houses is likely to be less than £15,000. The Home-loss payment would therefore be £2,600 or £3,000 each instead of £1,500, which would cost authorities in the region an additional £220,000 or £300,000 above what would be paid under the present system: an average of £7,333 or £10,000 for each CPO. This is insignificant in the context of the cost of an entire clearance scheme. The scale of activity required to improve or redevelop the social housing stock could, however, be considerably greater than this in order to meet the standards prescribed by the Department and the Welsh Assembly Government.

This might be better illustrated by some examples.

Example 1

A typical clearance CPO. It includes 75 houses, of which 50 are owner-occupied, 10 are tenanted and 15 are vacant. Assuming that all the houses are worth less than £15,000, the Home-loss payments are as follows:

under **Option 1** (the present system) they would be 60 x £1,500 = £90,000;

under **Option 2** they would be 60 x £2,600 = £156,000 (an increase of £66,000);

under **Option 3** they would be (50 x £3,000 = £150,000) + (10 x £2,600 = £26,000) = £176,000 (an increase of £86,000); and

under **Option 4** they would be 60 x £3,000 = £180,000 (an increase of £90,000).

(The 15 vacant houses would not attract any Home-loss payment).

The above example illustrates the greatest increase in compensation payable and thus the maximum impact on acquiring authorities' costs, because all the properties would have attracted the minimum compensation under the current system.

Example 2

If the properties in Example 1 were in, say, a renewal area and the owner-occupied houses were worth £20,000 each, the total Home-loss payment under the present system (Option 1) would be:

(50 x £2,000 = £100,000) + (10 x £1,500 = £15,000) = £115,000.

The payments under Options 2, 3 and 4 would be the same as in Example 1, so the increases would be £41,000 for Option 2, £61,000 for Option 3 and £65,000 for Option 4.

Example 3

Large Scale Voluntary Transfers (LSVTs) of local authority housing to registered social landlords may also give rise to an entitlement to a home loss payment if a tenant is displaced by improvement or redevelopment. These would all be at the flat rate. LSVTs vary in size and in the amount of demolition required. Some transfers involve no demolition, while for others, especially in urban areas, the number of properties being demolished can be substantial, although some may be empty.

Some of the smaller inner-city or suburban transfers may require 50 to 300 dwellings to be demolished. If they are all occupied, the extra home loss liability will be between £55,000 and £330,000 if the flat-rate is raised to £2,600 or between £75,000 and £450,000 if it is raised to £3,000.

At the top end of the scale, some authority-wide transfers may require 1,000 to 4,500 demolitions. If half of these are occupied, the extra home loss liability will be between £550,000 and £2,475,000 if the flat-rate is raised to £2,600 or between £750,000 and £3,375,000 if the flat-rate is raised to £3,000.

Example 4

A major infrastructure project impacts on an area which takes 40 houses valued between £150,000 and £255,000 (average value £200,000) and 20 houses valued at more than £255,000 (average value of £350,000). The home loss payments would be as follows:

Under **Option 1** (no change) they would be 60 x £15,000 = £900,000.

Under **Options 2, 3 or 4**, the payments would be (40 x £20,000 = £800,000) + (20 x £26,000 = £520,000) = £1,320,000, an increase of £420,000.

Under **Option 5**, the payments would be (40 x £20,000 = £800,000) + (20 x £35,000 = £700,000) = £1,500,000, an increase of £600,000 over Option 1 or £180,000 over Options 2 – 4. In this scenario, the extra costs of Option 5 beyond those to be incurred under any of the uprating to index Options (2 - 4) are therefore very small in relation to the basic land acquisition costs for these houses of £15,000,000.

Other costs

As this is a modification of an existing system there should be no additional costs.

Enforcement and sanctions

Disputes over the amount of Home-loss payments can be referred to the Lands Tribunal for determination.

Competition assessment

Because no businesses are affected by this regulation, it has no negative effect on competition. The results of the competition filter, reported below, indicate that a competition assessment is not necessary.

The competition filter	
Question	**Answer yes or no**
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No

The competition filter	
Question	**Answer yes or no**
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the market characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

File

From Jacqui Smith, Minister of State

L 8/7

Department of Health

Richmond House
79 Whitehall
London
SW1A 2NS
Tel: 020 7210 3000

IMC: MS(C)9907

Rt. Hon. Nick Raynsford
Minister of State for Local Government & the Regions
Eland House
Bressenden Place
London
SW1E 5DU

4 JUL 2002

A McG

cc NA
SS
DH

Dear Nick

RATIONALISATION OF LOCAL AUTHORITY PLANS

Thank you for copying me your letter of 12 June regarding rationalisation of local authority plans.

I agree with the principles you have outlined, which aim to reduce the burden of planning requirements, as well as reducing the number of plans local authorities are required to submit.

The Department of Health has already made significant steps towards this, following the publication of the Portico report last year. The first stage to implement the findings of the Portico Consulting report has now been completed.

Last month, I announced in the NHS Chief Executive's Bulletin that of the 9 plans associated with grants, from next year only 2 will continue to be required: the Teenage Pregnancy Local Implementation Support Grant and the Young People's Substance Misuse Planning Grant. In addition we have also removed the requirement for authorities to submit Joint Investment Plans (JIPs).

My officials are in touch with yours about the detail of this approach and we are planning to do some further work later in the year.

I am copying this letter to the Prime Minster, members of GL and Sir Richard Wilson.

Yours

Jacqui

JACQUI SMITH MP

COUNTRY LAND & BUSINESS ASSOCIATION

16 BELGRAVE SQUARE, LONDON SW1X 8PQ
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Our ref: mj/A0224035

File

Jo Simons
Policy Unit
Cabinet Office
70 Whitehall
London SW1A 2AS

29 May 2002

Dear Sir

A LIVING AND WORKING GREEN BELT

I have pleasure in enclosing a copy of the CLA's recent report on planning policies in the Green Belt titled **'A Living Working Green Belt'.**

The CLA recognises the importance of preventing urban sprawl and achieving sustainable development. However, sustainable development aims should be met within rural areas as well as urban ones. We consider that the current guidance on Green Belts does not provide a framework to achieve this. The CLA does not wish to seek the abolition of Green Belts but rather to provide a positive framework to achieve sustainable rural communities and provide a well managed, effective and usable green buffer around towns and cities.

The aim of the working group was to consider how Green Belt policy could be reviewed to address the need of achieving sustainable rural communities. For this purpose the group identified the following key issues for analysis.

Key Issues

- The continuing role of agriculture and horticulture in the Green Belt, including farm diversification.
- The need for rural economic and social development to achieve regeneration of the rural economy.
- The need for rural housing to meet local needs.
- The need for better land management and enhancement to address degraded landscapes, and the role for wider agri-environmental measures.
- The timescale for review of Green Belt policy.
- The need to conserve other environmentally important areas both in and out of the Green Belt and the implications of local quasi Green Belt designations such as Strategic Gaps.

I look forward to the opportunity to discuss this issue with you.

Yours faithfully

MARK JONES
Senior Planning Adviser

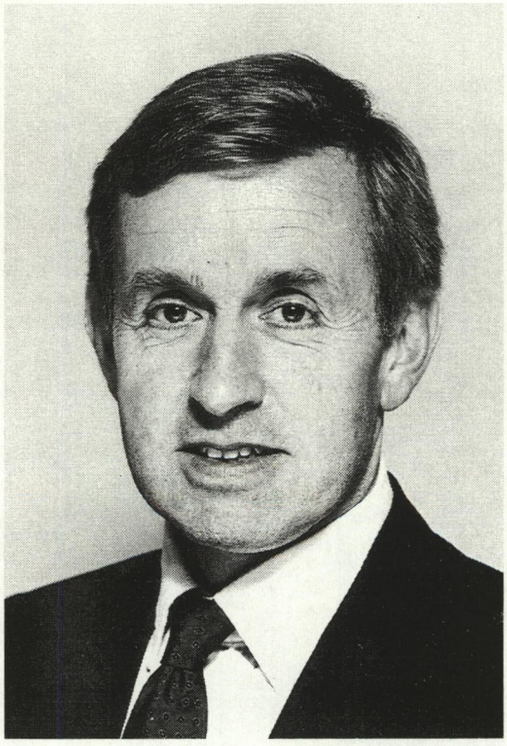
Enc:

Country Land and Business Association

A LIVING WORKING GREEN BELT

May 2002

Rural Economy is our Business



FOREWORD

Green belts have, for most of their history, been a success story. They have checked urban sprawl, prevented the amalgamation of cities like Birmingham and Coventry, or Liverpool and Manchester. They are, broadly, popular, because they are seen as providing a "green lifebelt" around our bigger towns and cities.

However, the problems that Green Belts were introduced to solve, have changed. Pressure for development beyond the Green Belt has increased. Green Belts have grown to cover an ever more extensive area. Employment in agriculture within Green Belts (and outside) has decreased. The countryside needs new sources of employment and investment to generate incomes and underpin rural communities, inside the Green Belt and out.

The CLA, as an organisation representing 45,000 farming and other rural businesses, their employees and all those who depend on them, wants to see a thriving rural economy in a well managed countryside. In our view, these are not only consistent objectives; they are interdependent. So planning policy for the Green Belt must recognise that sympathetic and sustainable development is part of the solution, not the problem, alongside, and not in conflict with, environmentally friendly land management.

In this document the CLA puts forward proposals to reinvigorate the areas within our Green Belts, for the benefit of local communities **and** the environment. To many they will seem radical. Being radical is not new to the CLA. When we proposed land management contracts as a route to agricultural policy reform more than ten years ago, we were accused of being too radical. Now these ideas are mainstream.

The document is wide ranging, and attempts to link complex elements that are essential to the future of a viable and attractive countryside. The proposals stress the continuing role of profitable farming and farm-based diversification in Green Belts. They recommend that new land uses, for leisure, recreation and forestry, should be welcomed. They call for decisions to provide a suitable mix of housing, particularly affordable housing, to sustain rural communities. And they show how agri-environment schemes should be encouraged to sustain wildlife and landscapes, support incomes and provide a backdrop for inward investment.

The most controversial proposals are for the withdrawal of the word "appropriate" in relation to development in the Green Belt. But what is "appropriate" any longer in an age where the manufacture of high-tech components can be a less polluting or unsightly activity than farming was twenty years ago? And when our aim is to secure environmental benefits in a changing countryside, are past Green Belt policies still the right ones?

If we provoke a debate, our first aim will have been achieved. If we can move to a Green Belt policy for the 21st century, we can help to bring benefits to a much broader constituency – the people who live, and work in these places, and the wider public who value a living countryside.

Edward Greenwell

Sir Edward Greenwell
President

ACKNOWLEDGEMENTS

This report was prepared by the CLA Green Belt Working Group. The members of the group were:

Mark Jones Project Manager

Mark Thomasin-Foster

Hugh Reeves

Simon Weightman

Andrew Shirley

Caroline Beddell

Beverly Barber

In addition, we are grateful for the input from the local authorities surveyed, as listed in appendix 2. During the course of the study we received written submissions from a number of CLA members, and professional staff. The group wishes to thank these individuals for their contribution.

CONTENTS

COUNTRY LAND AND BUSINESS ASSOCIATION

GREEN BELT POLICY

EXECUTIVE SUMMARY

Green Belt policy has now been part of the planning system for over 50 years but despite an evolving countryside, the aims have never changed. The purpose of introducing the Green Belts was to counter urban sprawl, retain the openness of such areas and protect the settings of towns and cities. Green Belt planning policy is as a result very restrictive. Inappropriate development (including new buildings) is considered harmful and is resisted.

The CLA recognises the importance of preventing urban sprawl and achieving sustainable development. However, sustainable development aims should be met within rural areas as well as urban ones. The CLA does not wish to seek the abolition of Green Belts but rather to provide a positive framework to achieve sustainable rural communities and provide a suitable, effective and usable green buffer around towns and cities.

Current guidance does not provide such a framework.

- It leads to the skewing of development, increasing travel distances, and failing to address relevant local needs.
- It militates against sustainable development policies such as the sequential test, in so far as the re-use of brownfield sites on the edge of urban areas are not able to be considered if within Green Belt boundaries.
- There are significant areas of degraded landscape and environment that are not being remediated.
- Businesses and communities in the Green Belt are not benefiting from the new broader countryside policies that address social, economic and environmental needs.

The CLA believes that it is now time to seek ways of reviewing Green Belt policy to address these problems.

Green Belt policy is however, the most popular planning policy in the minds of the general public, but there is confusion about what constitutes Green Belt. This is confirmed by research which found that only 24% of those surveyed knew that the Green Belt is a buffer zone around selected towns. In fact 26% thought it was all countryside, and 19% thought it was "picturesque" countryside.

For too long the debate on Green Belt has centred on the urban regeneration and urban space agenda. It is equally important to consider the rural dimension and the needs of existing rural communities and businesses within the Green Belt.

Key Issues and Recommendations

1. The role of agriculture and horticulture in the Green Belt (including farm diversification).

   Farming in the urban fringe comes with problems associated with damage due to trespass, vandalism and fly tipping. Poor quality development in the form of "shackery" also results as land managers are loathe to invest in what is considered to be 'insecure' land.

The need for diversification and re-use of rural buildings is increasingly important and this need will be just as important within Green Belt land. However, research shows that approval rates for diversification schemes in Green Belt areas are 12% lower compared to other rural areas.

- **Explicit guidance and reaffirmation should be given on the role and importance of maintaining viable agricultural businesses in meeting Green Belt objectives, to ensure that urban sprawl is restrained and the openness is retained. At the same time clarification is need to define the term openness.**
- **Recognition should be given to the importance of farm diversification, re-using buildings and the provision of new buildings to allow farm businesses to diversify.**
- **Clear reference should be made that the guidance on agricultural development and diversification contained in P.P.G.7 equally applies in the Green Belt.**
- **The role of farm diversification as an enabling development to provide landscape enhancement and recreational opportunities should be included in revised guidance.**

2. Rural Economic and Social Development.

Many other rural businesses and communities exist within the Green Belt and these also need the opportunity to develop. However, many requirements will fall under the category of 'inappropriate development'.

There appears to be a degree of agreement from local authorities on our concerns that Green Belt policy may not be compatible with achieving sustainable rural communities. There are many rural settlements in the green belt, which have, over a number of years, been unable to develop and have substantially become dormitory villages. It is suggested that such stagnation is unsustainable and green belt policy should provide the flexibility to allow for organic growth.

- **The list of appropriate developments should be removed. Recognition must be given that national guidance for rural areas (PPG7) is applicable for Green Belt and provides sufficient protection to retain the objectives of Green Belt.**
- **Guidance should be offered on the importance of social and economic development in achieving sustainable development in villages in Green Belt.**
- **The use of land for leisure and recreation facilities within the Green Belt must be encouraged together with essential ancillary facilities.**

3. Land Management, Woodland and Landscape Regeneration (Agri-environment schemes)

There is considerable scope either for utilising existing agri-environment schemes or a national scheme to target positive greenbelt management. Encouragement and finance should be given to local authorities to set up their local schemes to encourage landscape enhancement.

The need to provide an open green containment policy for urban areas could be partially met by the use of the land for commercial, conservation or amenity woodland, however; there is still a lack of financial incentive to encourage a greater

uptake. Encouragement for woodland in Green Belt could allow landowners to meet Green Belt objectives but at the same time provide an economic return.

- **It should be formally stated that Green Belt is a target area in agri environment schemes and Local Authority strategies should be used to target funding specifically for Green Belt enhancement.**
- **Consideration should be given to the introduction of a new national agri environment scheme, with specific funding, to specifically encourage Green Belt enhancement.**
- **Policy guidance should recognise that forestry is a suitable land use to meet the objectives on Green Belt Policy.**

4. The need for rural housing.

The CLA recognises that there is a need for housing in rural areas in particular but not exclusively affordable housing and that there is the need for housing to meet the local needs of rural business. The CLA does not support the provision of disproportionate housing developments on villages, and equally we do not wish to see erosion of Green Belt policy to provide large scale housing estates.

We believe that there should be sufficient housing to meet identified needs whilst at the same time respecting the character of the particular village and the countryside concerned. In addition, there may be a case for a more positive consideration of reusing rural buildings for residential uses in the Green Belt.

- **Specific guidance that housing to meet local needs is acceptable, in principle, within the Green Belt and explicit guidance stating that affordable housing is an appropriate use in the Green Belt.**

5. Skewed Development and Strategic Gaps.

The embargo on development within Green Belt areas causes increased pressure on other areas outside the Green Belt. Development can therefore become skewed in areas adjacent to the Green Belt. Strategic gap guidance may be more appropriate than green belt status in some cases.

- **To safeguard pressures on more attractive and environmentally important land, reference should be made that guidance in PPG 7, addressing rural development, is sufficient to safeguard interests in the Green Belt. Such impacts should be a material factor when considering development proposals to avoid skewing of development.**
- **The Government should issue clear guidance on Strategic Gap policies, stating where they can be used and emphasising their status in the planning system.**

1. BACKGROUND

Green Belt policy has been part of the planning system for over 50 years. The first official proposal for such a designation, around London, was made in 1935. This designation aimed *"to provide a reserve supply of public open spaces and of recreational areas and to establish a green belt or girdle of open space"*. Subsequently the 1947 Town and Country Planning Act made statutory provision for Green Belts, and further guidance widened the policy to areas other than London in 1955. (MHLG Circular 42/55).

Green Belts now cover 1,650,000 hectares, about 13% of England[1]. We provide a breakdown of these statistics at Appendix 1. The map (taken from National Guidance) shows their broad location across England.

Current guidance is set out in Planning Policy Guidance Note 2 (1995). The broad aims of Green Belt policy have not changed over the 50 years since their introduction. The primary purpose remains to counter urban sprawl, retain the openness of designated areas and protect the settings of towns and cities. The further purpose of encouraging urban regeneration was added later. Paragraph 1.5 of PPG 2 details five specific purposes that Green Belts are to achieve:-

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns from merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

The guidance goes on to identify the objectives of a Green Belt, once it has been defined (paragraph 1.6 PPG2), as follows:-

- to provide opportunities for access to the open countryside for the urban population;
- to provide opportunities for outdoor sport and outdoor recreation near urban areas;
- to retain attractive landscapes, and enhance landscapes, near to where people live;
- to improve damaged and derelict land around towns;
- to secure nature conservation interest; and
- to retain land in agricultural, forestry and related uses

[1] DTLR statistics for England, issued 3 April 2000, from 1997 data.

Interpretation of this policy leads to a very restrictive planning regime. Only a small number of developments are classed as appropriate, in principle, for the Green Belt. "Inappropriate" development is considered harmful and is resisted. New buildings in particular are controlled with only the following uses being "appropriate":-

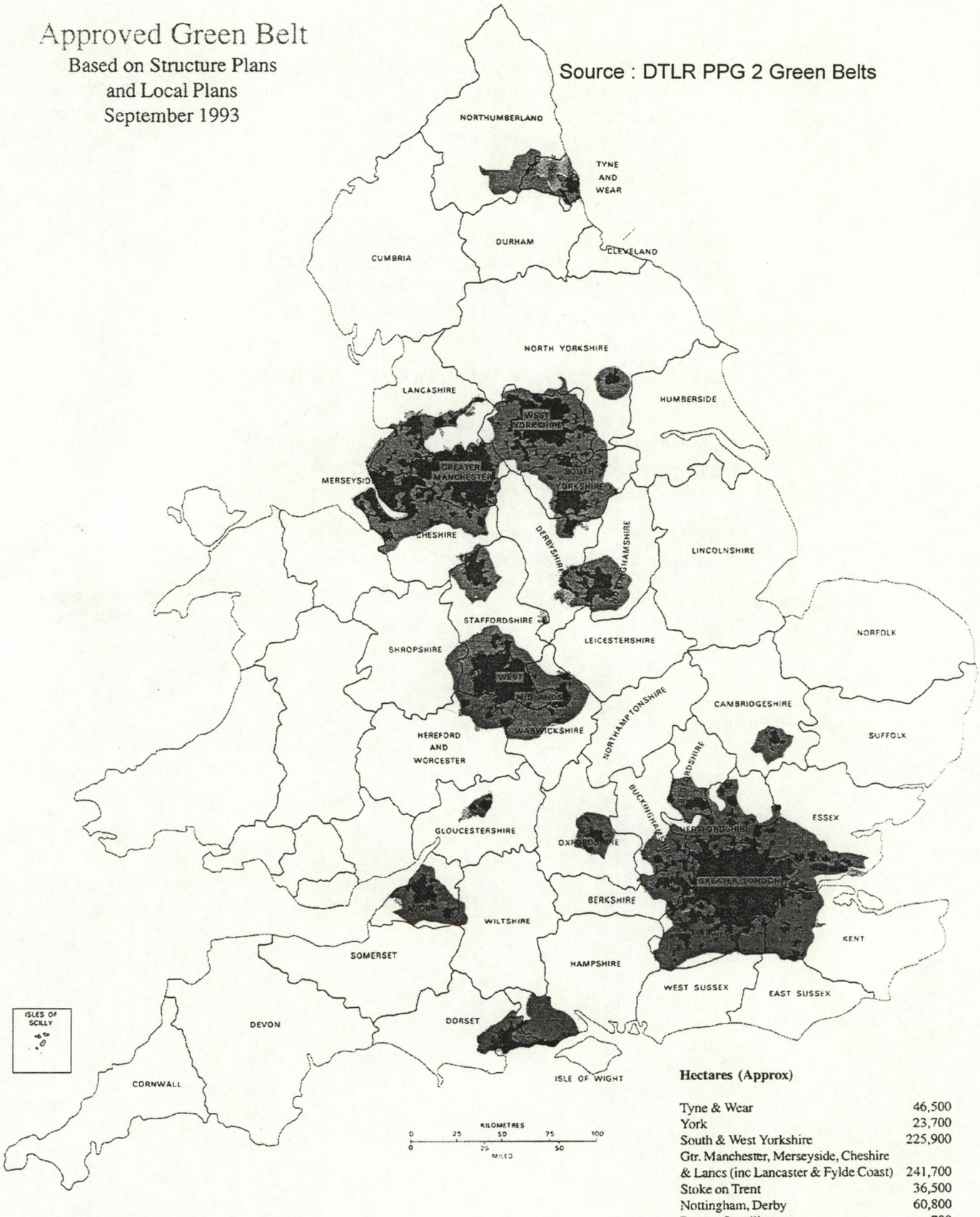
- agriculture and forestry
- essential facilities for outdoor sport and outdoor recreation, for cemeteries, and for other uses of land which preserve the openness of the Green Belt and which do not conflict with the purposes of including land in it;
- limited extension, alteration or replacement of existing dwellings;
- limited infilling in existing villages and limited affordable housing for local community needs under development plan policies according with PPG3; or
- limited infilling or redevelopment of major existing developed sites identified in adopted local plans.

It is against this historical and policy background that the CLA working group undertook this study.

Approved Green Belt

Based on Structure Plans
and Local Plans
September 1993

Source : DTLR PPG 2 Green Belts



Hectares (Approx)

Tyne & Wear	46,500
York	23,700
South & West Yorkshire	225,900
Gtr. Manchester, Merseyside, Cheshire & Lancs (inc Lancaster & Fylde Coast)	241,700
Stoke on Trent	36,500
Nottingham, Derby	60,800
Burton-Swadlincote	700
West Midlands	209,300
Cambridge	26,100
Gloucester, Cheltenham	8,100
Oxford	34,800
London	485,600
Avon	70,600
SW Hampshire/SE Dorset	85,400
Total	**1,555,700**

2. THE AIMS OF THE STUDY

The CLA recognises the importance of preventing urban sprawl and achieving sustainable development. However, sustainable development aims should be met within rural areas as well as urban ones. We consider that the current guidance on Green Belts does not provide a framework to achieve this. The CLA does not wish to seek the abolition of Green Belts but rather to provide a positive framework to achieve sustainable rural communities and provide a well managed, effective and usable green buffer around towns and cities.

Current guidance does not provide such a framework. It leads to the skewing of development, increasing travel distances, and failing to address relevant local needs. It militates against sustainable development policies such as the sequential test, in so far as the re-use of brownfield sites on the edge of urban areas are not able to be considered if within Green Belt boundaries. There are significant areas of degraded landscape and environment that are not being remediated. Businesses and communities in the Green Belt are not benefiting from the new broader countryside policies that address social, economic and environmental needs. We believe that it is now time to seek ways of reviewing Green Belt policy to address these problems.

Green Belt policy remains the most popular planning policy in the minds of the general public. The issue of, and more often than not the threats to, Green Belt generate a massive response from the public and the media. However, it is debatable how much this actually reflects concerns on specific Green Belt issues. There seems to be confusion between what constitutes Green Belt. Frequently there is misunderstanding of what is a greenfield site and what is a Green Belt site. The public's misunderstanding and confusion is confirmed by research carried out by Gallup, on behalf of Chartered Surveyors Strutt and Parker. This found that only 24 % of those surveyed knew that the Green Belt is a buffer zone around selected towns. In fact 26% thought it was "all countryside" and 19% thought it was "picturesque" countryside. We argue a review of Green Belt principles and policies need not undermine public confidence in countryside protection as long as the issue is explained properly.

The aim of the working group was to consider how Green Belt policy could be reviewed to address the need of achieving sustainable rural communities. For this purpose the group identified key issues for analysis. Our report and recommendations are based on these, set out below.

Key Issues

- The continuing role of agriculture and horticulture in the Green Belt, including farm diversification.
- The need for rural economic and social development to achieve regeneration of the rural economy.
- The need for rural housing to meet local needs.
- The need for better land management and enhancement to address degraded landscapes, and the role for wider agri environmental measures.
- The timescale for review of Green Belt policy.
- The need to conserve other environmentally important areas both in and out of the Green Belt and the implications of local quasi Green Belt designations such as Strategic Gaps.

Methodology

This report is the result of work carried out by the CLA Green Belt Policy Working Group between August 2001 and April 2002.

The research methodology was a mixture of desk based literature research, stakeholder meetings, a survey of local planning authorities with Green Belt interests, and analysis of issues raised by CLA members.

CLA Survey of Local Authorities

A questionnaire was sent to 50 local authorities who have part of their land within a designated Green Belt (Appendix 2). 22 replies were received giving a response rate of 44%. The questionnaire requested information on the attitude of the local authority to current Green Belt policy, the role of strategic gap type policies and how landscape regeneration could be encouraged within Green Belts. The findings of the survey are reported in the relevant sections of this report.

3. THE ROLE OF AGRICULTURE IN GREEN BELT

Green Belt land is predominantly rural and much of the land is in agricultural use. Many viable agricultural businesses are being carried out in the Green Belt. However, there are two aspects that require specific attention.

First, there are often problems associated with farming in the urban fringe, such as damage due to trespass, vandalism and fly tipping. There are difficulties for farming operations where they are close to residential properties. In particular, potential nuisance claims and loss of permitted development rights can affect livestock enterprises. These problems can limit the farming activities that can be carried out. In the worst cases this leads to abandonment of traditional farming as land managers attempt to avoid the loss and disturbance and reduce their investment in land. The result is fragmentation of land holdings, associated with the erection of poor quality buildings – or "shackery".

Second, changes to agricultural policy in general as a result of current crises, such as BSE and Foot and Mouth Disease, together with CAP reform. A survey conducted by professional services firm Deloitte & Touche released on 11 October 2001 shows that the national average profit recorded for a 500 acre family farm has plummeted from £80,000 at the peak in 1995/96 down to £8,000 last year and £2,500 in 2001. These changes mean farmers need to look at alternative and additional means of providing income in addition to 'traditional' agricultural activities. The need for diversification and re-use of rural buildings is increasingly important. Government policy is firmly pointing farmers and land managers in this direction, with funding and advice under the England Rural Development Plan. This need will be as important within Green Belt land as in other rural areas. However, rural diversification requires more than re-use of existing buildings. Policy needs to address the need for new buildings of an appropriate scale, and the need to allow for wider range of uses of land.

Current guidance in PPG 2 does offer some positive encouragement for diversification, in relation to reuse of buildings. Paragraph 3.7 recognises that reuse of such building is unlikely to affect the openness of the Green Belt as the buildings are already there. Paragraph 3.8 goes on to list criteria by which an application for reuse should be judged to determine if the reuse is appropriate, as follows;

- it does not have a materially greater impact than the present use on the openness of the Green Belt and the purposes of including land in it;
- strict control is exercised over the extension of re-used buildings, and over any associated uses of land surrounding the building which might conflict with the openness of the Green Belt and the purposes of including land in it (e.g. because they involve extensive external storage, or extensive hardstanding, car parking, boundary walling or fencing);
- the buildings are of permanent and substantial construction, and are capable of conversion without major or complete reconstruction; and
- the form, bulk and general design of the buildings are in keeping with their surroundings.

However, research still shows that there is a significant difference in approval rates for diversification schemes in Green Belt areas as compared to other rural areas. The DTLR research report issued in October 2001, on the implementation of PPG7 in relation to farm diversification projects, found that approval rates in Green Belt areas was 71%, this is 12% lower than other rural areas. Paragraph 5.28 of this research states,

" Approval rates within Green Belts are 12% below the average found for all farm diversification, representing the lowest approval rate of any designation. ...In 50% of these cases, specific mention was also made of the need to maintain the open aspect of the Green Belt..... Similarly, in six out of nine appeals in a Green Belt, the inspector raised the appropriateness of development in the Green Belt as a key issue."

It is considered that guidance on re-use of farm buildings in PPG 2 should now be revised in line with the guidance in PPG 7, as amended in 2001. PPG 7 offers explicit encouragement for on farm diversification and recognises that in such instances it may be acceptable to allow for the provision of new buildings to meet the needs of a diversified business.

Green Belt policy must address the above points by including explicit guidance on the importance of encouraging agricultural development and diversification. This provision may be linked to providing suitable schemes of land enhancement. A wider approach to sustainable development might include the negotiation, by means of planning agreements, of conditions that provide landscape remediation and improvements or the provision of usable green space. Sustainable rural development through farm diversification offers an opportunity to provide a better recreational and aesthetic resource for inhabitants of towns and cities in the Green Belt, particularly at a time when there is concern over the lack of urban green spaces.

Recommendations

- **Explicit guidance and reaffirmation should be given on the role and importance of maintaining viable agricultural businesses in meeting Green Belt objectives, to ensure that urban sprawl is restrained and the openness is retained. At the same time clarification is needed to define the term openness.**

- **Recognition should be given to the importance of farm diversification, re-using buildings and the provision of new buildings in order to allow farm businesses to diversify.**

- **Clear reference should be made that the guidance on agricultural development and diversification contained in P.P.G.7 equally applies in the Green Belt.**

- **The role of farm diversification as an enabling development to provide landscape enhancement and recreational opportunities should be included in revised guidance.**

4. RURAL ECONOMIC AND SOCIAL DEVELOPMENT

Green Belt includes a multitude of other rural businesses and communities within its boundaries. These businesses and people also need the opportunity to develop. However, many of their requirements will fall under the category of inappropriate development, as defined by PPG 2.

Current guidance is very specific on development in existing villages. PPG 2 Paragraph 2.11 states:-

> "Development plans should treat existing villages in Green Belt areas in one of the following ways.
>
> If it is proposed to allow ***no new building*** beyond the categories in the first three indents of paragraph 3.4 the village should be included within the Green Belt. The Green Belt notation should be carried across ("washed over") it.
>
> If ***infilling only*** is proposed, the village should either be "washed over" and listed in the development plan or should be inset (that is, excluded from the Green Belt). The local plan should include policies to ensure that any infill does not have an adverse effect on the character of the village concerned. If the village is washed over, the local plan may need to define infill boundaries to avoid dispute over whether particular sites are covered by infill policies.
>
> If ***limited development*** (more than infilling) ***or limited expansion*** is proposed, the village should be inset. Development control policies for such settlements should be included in the local plan."

There appears to be a degree of agreement from local authorities on our concerns that Green Belt policy may not be compatible with achieving sustainable rural communities. In response to the CLA survey on this issue 30 % thought Green Belt policy was incompatible with other sustainable development polices with a further 25% agreeing in part. The main reasons given for this response were:-

- Incompatible with promoting the rural economy.
- Incompatible with reducing the need to travel.
- No local variations.
- Fails to address local development needs.
- Deflects large development to unsustainable locations.
- Conflicts with diversification of agricultural economy.
- Does not provide sustainable rural land use policy.
- Conflicts with sustainable housing policy.

The current guidance has hardly changed over the life of Green Belt policy, but over the same period general rural planning policies have evolved bringing more and more control on activities and uses in the countryside. In our opinion, the guidance on wider rural development given in P.P.G.7 is equally applicable to Green Belt areas and there is no need for a further level of protection. The list of appropriate development should be removed. Wider countryside policy has moved on from perceptions of what is "appropriate" to consideration of specific issues such as scale, siting and design. This has been welcomed by the CLA, and should equally be applied to land within the Green Belt. Recognition must be given to the need to encourage new businesses to develop in the rural economy and policy must not stifle entrepreneurial skills.

There are many rural settlements in the green belt, which have, over a number of years, been unable to develop. They have been unable to accommodate housing, economic and social development, which have made them substantially dormitory villages being reliant on the major urban areas for all their requirements. It is suggested that such stagnation is unsustainable and policy should provide the flexibility to allow for organic growth. Green Belt policy should reflect this.

One issue that causes particular concern is the provision of leisure and recreation facilities, such as equestrian centres, golf and fishing. The key issue is not the principle of these types of uses but the need for essential ancillary facilities such as menages and car parks. It is not uncommon to meet arguments that such ancillary developments are not suitable in Green Belt areas, which effectively denies the ability to provide the facility. We would argue that such developments cannot effectively be provided in urban areas. Positive encouragement should be given to leisure and recreation facilities in the Green Belt.

Recommendations

- **The list of appropriate developments should be removed. Recognition must be given that national guidance for rural areas (PPG7) is applicable for Green Belt areas and provides sufficient protection to retain the objectives of Green Belt.**

- **Guidance should be offered on the importance of social and economic development in achieving sustainable development in villages in Green Belt.**

- **The use of land for leisure and recreation facilities within the Green Belt must be encouraged together with essential ancillary facilities.**

5. RURAL HOUSING

The CLA recognises that there is a need for housing in rural areas, in particular (but not exclusively) affordable housing. There is also a need for housing to meet the local needs of rural business. These types of development will usually be small scale i.e. infill and minor extensions. The CLA does not support the provision of disproportionate housing developments on villages, and equally we do not wish to see erosion of Green Belt policy to provide large scale housing estates. We believe that sufficient housing to meet identified needs should be permitted, whilst at the same time respecting the character of the particular village and the wider countryside concerned.

We argue that the guidance on infilling and minor extensions set out in PPG 3 in relation to rural housing could apply to Green Belts, subject to two qualifications:

- an explicit statement that affordable housing would in principle meet planning objectives in the Green Belt.
- a more positive consideration of reusing rural building for residential uses in the Green Belt as the building is already there the use will not affect the openness but will help meet the housing need of a village.

Current Green Belt policy, as set out in PPG 2 currently offers very little clear guidance on affordable housing. Housing policy in relation to Green Belts is at annex A of PPG 3 – Housing, which states:-

> "11. This guidance does not alter the general presumption against inappropriate development in the Green Belts. Green Belt policy remains as set out in Planning Policy Guidance note 2.
>
> "12. Most Green Belt areas are by their nature close to the main conurbations, and conditions are not typical of the generality of rural areas to which this policy is addressed. Special considerations may, however, arise in some of the more extensive areas of Green Belt away from the urban fringe, particularly in areas where there are many small settlements and it may not be practicable or appropriate to define Green Belt boundaries around each one.
>
> "13. In some of these areas local planning policies already recognise that very limited development within existing settlements may be acceptable and consistent with the function of the Green Belt. It is for local planning authorities to judge whether low cost housing development for local community needs would fall within the scope of such policies.
>
> "14. The release, exceptionally, for small-scale, low cost housing schemes of other sites within existing settlements, which would not normally be considered for development under such policies, would again be a matter for the judgement of the planning authority, having regard to all material considerations, including the objectives of Green Belt policy and the evidence of local need."

It is considered that this guidance leaves decision makers uncertain whether affordable housing is an appropriate use in the Green Belt. Green Belt Policy should be clear that affordable housing is an appropriate use and together with PPG 3 consider innovative ways of meeting the identified need.

Recommendations

- **Specific guidance that housing to meet local needs is acceptable, in principle, within the Green Belt.**

- **Explicit guidance stating that affordable housing is an appropriate use in the Green Belt.**

6. LAND MANAGEMENT AND LANDSCAPE REGENERATION

The use of innovative planning agreements can secure significant landscape regeneration. In addition, there is considerable scope either for using existing national agri- environment schemes backed up by new local schemes to target positive green belt management or introducing a new national scheme that is specific to Green Belts.

Land management

There are three main areas we recommend be given consideration:

- Greater weight could be given to applications for existing national schemes, such as Countryside Stewardship, within green belt areas, particularly where landscape restoration was proposed.
- A new national scheme addressed at Green Belt land management might be funded within the rules of existing agri-environment provisions, along the lines of the Environmentally Sensitive Areas scheme, to enhance landscape and environmental management. This would require additional funding.
- Encouragement and finance could be given to local authorities to set up their local schemes to encourage landscape enhancement. Such schemes and funding could be part of existing local authority strategies such as Biodiversity Action Plans, and Community Strategies.

A wider role for woodlands

The need to provide an open green space between urban areas can be met in part by the use of the land for commercial timber production, conservation woodland or amenity woodland. The current guidance on community forests, in PPG 2 and PPG 7, is adequate in the areas where they exist, however there is still a lack of financial incentive to encourage a greater uptake.

Wider encouragement for woodland creation on Green Belt could allow land managers to meet Green Belt objectives but at the same time provide an economic return. There are a number of forestry policy issues to be resolved (as discussed in the CLA report on Rural Regeneration[2]) but there is a need to offer encouragement in the guidance to the principle of such a use.

The benefits of landscape improvements were recognised by local authorities in their response to the CLA survey. 70% of responses agreed that such improvements should be encouraged within the Green Belt, only 5% felt this should not be encouraged. Surprisingly, 53% did not believe that a specific scheme with funding should be introduced for this purpose. However, closer analysis seems to suggest that this response was due to some misunderstanding on details of such schemes.

The Government research report on Strategic Gaps[3] published in January 2001 also highlighted the benefits of landscape improvements, stating,

"All of the Counties studied had pursued positive measures to improve the environment of their urban fringe areas, and such initiatives were often keyed to the particular designations studied. These included strategic gap management frameworks, countryside management projects and river corridor enhancement studies. There was general acceptance of the view that environmental improvement measures were a necessary complement to restraint".

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[2] CLA Publication, "Rural Regeneration, a policy framework for business diversification" CLA, August 2001

[3] DTLR Report "Strategic Gap and Green Wedge Policies in Structure Plans" (2001)

Recommendations

- **Policy guidance should recognise that forestry is a suitable land use to meet the objectives on Green Belt Policy.**

- **It should be formally stated that Green Belt is a target area in agri environment schemes.**

- **Consideration should be given to the introduction of a new national agri environment scheme, with specific funding, to encourage Green Belt enhancement.**

- **Local authority strategies should be used to target funding specifically for Green Belt enhancement.**

7. TIMESCALE OF GREEN BELT POLICIES

Currently the designation of Green Belt is a permanent feature. We believe that there should be clear guidance that policy should be reviewed periodically. We would suggest that this occurs as part of the Regional Planning Guidance review because of the strategic issues involved in Green Belt designation.

A 20-year span would allow time to properly assess whether issues have changed sufficiently to require the alteration of policy in order to allow for sustainable development. The RPG process would also allow communities and local authorities the proper mechanism to put forward their views on the issue.

Bringing Green Belt policy within a more local/ regional context could also fit within the proposals identified by the Government in their recent Green Paper, "Planning: Delivering A Fundamental Change". This policy could be addressed within the regional spatial strategy and the intention to allow the whole plan process to be subject to swifter reviews would allow Green Belt policy to assessed more regularly against the relevant sustainable development agenda at a particular time.

Recommendation

- **Green Belt policy should be reviewed as part of the RPG process every 20 years, or any new process that is created in the light of the Planning Green Paper.**

8. OTHER DESIGNATIONS

The effective embargo on development within Green Belt areas places increased pressure on other areas outside the Green Belt. Development can therefore become skewed in areas adjacent to the Green Belt. Development pressures may be pushed further out into what may in fact be more attractive and more sensitive areas of countryside. As rural policies have developed and taken more development under planning control, this pressure adds weight to the argument that there is no need for additional guidance on appropriate development. We argue existing rural guidance is more than adequate to safeguard Green Belt objectives.

Recent years has seen an increase in the use of local designations to supplement the statutory ones identified by national policy. There is now a multitude of quasi Green Belt designations, such as Strategic Gaps and Green Wedges, some of which overlay Green Belt designations. There are two particular aspects that are addressed in this report.

Sustainable development

First, whether such designations provide any positive benefit to the goal of sustainable development? In view of the fact the fact that these designations are made within the development plan system there is the obvious benefit that they are subject to review more frequently. However, if they are implemented as an additional layer of restrictions on top of national Green Belt designations this leads to an even more restrictive and negative regime making it difficult to enable sustainable rural development.

The Government published a research report on January 2001 called "Strategic Gaps and Green Wedge Policies in Structure Plans". The report identified the basic purposes of such designations as follows

- for *strategic gaps*; they are to protect the setting and separate identity of settlements, and to avoid coalescence; retain the existing settlement pattern by maintaining the openness of the land; and retain the physical and psychological benefits of having open land near to where people live;
- for *rural buffers*; to avoid coalescence with settlements (including villages) near a town until the long-term direction of growth is decided; and
- for *green wedges*; to protect strategic open land helping to shape urban growth as it progresses; to preserve and enhance links between urban areas and the countryside; and to facilitate the positive management of land.

This report found that a "clear impression from the study was how far local planners operating strategic gap, rural buffer and green wedge policies considered them an improvement on Green Belt. They were capable of delivering wider objectives, while giving more flexibility to respond to newly-emphasised priorities of sustainable development. This brings forward the question of how far the existing purposes and long-term rigidities of Green Belt policy are appropriate in current circumstances".

This fact seems to be backed up by the findings in the CLA survey of local authorities. 40 % of respondents believed that strategic gap type policies offered greater flexibility than Green

Belt policy in the aim of achieving sustainable development. The main reasons given for this response were;

- More versatile.
- Allow the phased growth of a settlement to be planned and beyond the life of a local plan.
- Allows for sustainable development.
- Do not preclude planned urban extensions.
- Easier to review.
- Allows development to meet community needs.
- Less rigid and more flexible

Notably, only 30% did not believe that strategic gaps were a better means to achieve sustainable development.

A hierarchy of control?

The second issue is the fact that many of these local designation policies are as restrictive, if not more so in some cases, than national Green Belt Policy. This is unreasonable. Such local policies, if needed at all, should be set in a proper hierarchy and not accorded the same status as Green Belts. This point also seems to have found favour in the Government research on Strategic Gaps[3] that stated,

"There would be significant problems in giving strategic gaps and green wedges the status of Green Belts. Strategic gaps as Green Belts would reduce peripheral land development options on the edges of large settlements, often in sustainable locations. Problems over the interpretation of permanence, and the possible need for safeguarded land would also occur. If *green wedges* were given Green Belt status then the area covered by a strong presumption against development would be more closely drawn into cities and large towns. It would therefore be important to retain parts of urban peripheries free of the policy, as demonstrated in the Leicestershire and Norwich examples."

As a way forward the this research suggested,

"From the central Government point of view there are problems with how far such policies are needed and what form they might take. There is no agreement on what a strategic gap or rural buffer zone is, and PPG7 is not enlightening on this aspect. In terms of the future:

- *strategic gaps,* in that they deliver important outcomes, and are strictly limited in size, could be a useful feature of planning at County level. It should be made clear that land within them could be considered on an equal basis with non-designated land when Structure Plans are reviewed;

- *rural buffers*, in that they are an interim policy for towns which are exceptionally fast growing, are probably only likely to be used sparingly; but there is a potential for *green wedges*, delivering a wide variety of desirable outcomes, to become a successful future model for the urban fringe.

It is important that the Government clarifies the position of strategic gap and green wedge type policies. If the current Green Belt policy remains this should emphasise that they are not to be considered as identical to Green Belts and should only be accorded appropriate

[3] DTLR Report "Strategic Gap and Green Wedge Policies in Structure Plans" (2001)

weight. The reforms of the planning system proposed might mean that such policies will be subject to regular review, which should be encouraged.

Recommendations

- **To safeguard pressures on more attractive and environmentally important land, reference should be made that guidance in PPG 7, addressing rural development, is sufficient to safeguard interests in the Green Belt. Such impacts should be a material factor when considering development proposals to avoid skewing of development.**

- **The Government should issue clear guidance on strategic gap and green wedge type policies, clearly outlining where they could be used and emphasising their status within the planning system.**

9. CONCLUSION

Review of Green Belt Policy has been fiercely resisted in the past. However, at a time when Government planning policy is under review, and the need for sustainable development policies has been widely recognised, it seems an opportune time to look at the issue again. For too long the debate on Green Belt has centred on the urban regeneration and urban space agenda. The CLA argues it is equally important to consider the rural dimension and the needs of existing rural communities and businesses within the Green Belt.

This paper has attempted to address these specific rural concerns in a positive and constructive manner. Although PPG 2 has not been identified as a priority for review in the Planning Green Paper, in due course it will be subject to a review in line with the Government's commitment to review all national planning policy and guidance.

This paper is not intended to be considered as a new draft PPG 2 but aims to offer a starting point for change that properly addresses rural needs and produces a useful and sustainable Green Belt policy.

The CLA encourages Government to consider carefully our recommendations and review PPG2 as soon as possible.

LIST OF ALL RECOMMENDATIONS

- Explicit guidance and reaffirmation should be given on the role and importance of maintaining viable agricultural businesses in meeting Green Belt objectives, to ensure that urban sprawl is restrained and the openness is retained. At the same time clarification is need to define the term openness.

- Recognition should be given to the importance of farm diversification, re-using buildings and the provision of new buildings in order to allow farm businesses to diversify.

- Clear reference should be made that the guidance on agricultural development and diversification contained in P.P.G.7 equally applies in the Green Belt.

- The role of farm diversification as an enabling development to provide landscape enhancement and recreational opportunities should be included in revised guidance.

- The list of appropriate developments should be removed. Recognition must be given that national guidance for rural areas (PPG7) is applicable for Green Belt and provides sufficient protection to retain the objectives of Green Belt.

- Guidance should be offered on the importance of social and economic development in achieving sustainable development in villages in Green Belt.

- The use of land for leisure and recreation facilities within the Green Belt must be encouraged together with essential ancillary facilities.

- Specific guidance that housing to meet local needs is acceptable, in principle, within the Green Belt.

- Explicit guidance stating that affordable housing is an appropriate use in the Green Belt.

- Policy guidance should recognise that forestry is a suitable land use to meet the objectives on Green Belt Policy.

- It should be formally stated that Green Belt is a target area in agri environment schemes.

- Consideration should be given to the introduction of a new national agri environment scheme, with specific funding, to specifically encourage Green Belt enhancement.

- Local authority strategies should be used to target funding specifically for Green Belt enhancement.

- Green Belt policy should be reviewed as part of the RPG process every 20 years, or any new process that is created in the light of the Planning Green Paper.

- To safeguard pressures on more attractive and environmentally important land reference should be made that guidance in PPG7 addressing, rural development, is sufficient to safeguard interests in the Green Belt. Such impacts should be a material factor when considering development proposals to avoid skewing of development.

- The Government should issue clear guidance on strategic gap and green wedge type policies, clearly outlining where they could be used and emphasising their status within the planning system.

- Review PPG 2 guidance on Green Belts as soon as possible.

APPENDIX 1 AREA BREAKDOWN OF GREEN BELT COVERAGE

England	**1,650,000**
Tyne and Wear	53000
York	25,400
South and South West Yorkshire	251,3000
North West	249,500
Stoke on Trent	44,100
Nottingham and Derby	62,000
Burton and Swadlincote	700
West Midlands	229,800
Cambridge	26,700
Gloucester and Cheltenham	7,000
Oxford	35,000
London	514,300
Avon	68,400
SW Hampshire and SE Dorset	82,300

(DTLR Local Planning Authority Statistics: England 1997, 3 April 2000)

APPENDIX 2 LIST OF LOCAL AUTHORITIES SURVEYED BY CLA

Aylesbury Vale District Council *
Bath and North East Somerset Council
Bracknell Forest Borough Council
Bridgnorth District Council
Bristol City Council
Bromsgrove District Council
Cannock Chase District Council
Chelmsford Borough Council
Cheltenham Borough Council *
Cherwell District Council *
Chester City Council
Chester-Le-Street District Council
Christchurch Borough Council
Elmbridge Borough Council
East Cambridgeshire District Council *
East Hertfordshire District Council
Gateshead Metropolitan Borough Council
Guildford Borough Council
Harrogate Borough Council *
Hertsmere Borough Council *
Maidstone Borough Council
Mid Bedfordshire District Council *
Mid Sussex District Council *
New Forest District Council *
Newark and Sherwood District Council *
North East Derbyshire District Council *
North Somerset District Council *
North Wiltshire District Council
Purbeck District Council
Sevenoaks District Council
South Bedfordshire District Council *
South Bucks District Council *
South Cambridgeshire District Council
South Derbyshire District Council *
South Gloucestershire District Council
Staffordshire Moorlands District Council
South Oxfordshire District Council
Stratford on Avon District Council
Test Valley Borough Council
Tynedale District Council *
Uttlesford District Council *
Vale Royal Borough Council *
West Lancashire District Council *
West Wiltshire District Council
Woking Borough Council
Wokingham District Council
Worcester City Council *
Wyre Borough Council *
York City Council

* Responses received from local authorities

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Department for
Environment, Food
& Rural Affairs

Nobel House
17 Smith Square
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Fill

ME

cc SV
NA
MH
SK

From the Secretary of State

The Rt Hon Stephen Byers MP
Secretary of State for Transport,
Local Government and the Regions
6th Floor, Eland House
Bressenden Place
London SW1E 5DU

27 May 2002

Dear Stephen,

PLANNING GREEN PAPER AND RELATED CONSULTATIONS

Together with my colleagues in DEFRA, I have been considering the planning green paper and its related consultation documents. Overall, the package of proposals is welcome to my Department, although I attach some comments made by Ministers here on aspects of the detail that you will no doubt wish to consider carefully.

We fully support the aim of your proposals of ensuring that the planning system operates efficiently. Many policies on which DEFRA takes the lead are implemented partly or fully through the planning system. While this is true of other Government Departments, I believe that no Department other than your own has as wide an interest in planning outcomes as DEFRA. So it is essential to us that the planning system should be fit for its purpose, taking proper account of economic and social considerations without impeding rural diversification and the achievement of environmental benefits.

However, there is a risk that the impetus for speed and efficiency will be at the expense of the proper consideration of all the issues. It will be important to get across to the public a clear message that the objective of these wide-ranging proposals is to secure high quality planning outcomes, not just to provide a speedy and certain service to developers.

It was therefore helpful that Charlie Falconer recently made clear your intention to legislate to make sustainable development a statutory purpose of the planning system.

I very much welcome this proposal which will deliver a central policy objective for the Government as a whole, as well as being my own Department's overarching aim.

One particular outcome that an improved planning system must deliver is the ability to be able to meet the strong demand for more **affordable housing** in rural areas. In doing so, the system should provide additional affordable housing in a way which retains the properties for future generations.

Some of the points I have raised are addressed in the important report on *Environmental Planning* from the **Royal Commission on Environmental Pollution**. The Government should provide a convincing response to this report no later than the time when you publish your firm proposals. Since the report is principally about the planning system, it is appropriate that your Department should take the lead on the response, but as sponsor of Royal Commission I would like my Department to be fully involved in the preparation of the response.

A number of the points made in this response turn on the need for close co-operation between our two Departments. Although there have been some useful meetings both between members of our Ministerial teams and between officials, since the machinery of government changes last June inter-Departmental consultations have not always been as close and effective as they should have been. You will know that Ministers and officials in DEFRA have considerable expertise and experience across the range of planning issues including the economic and social aspects (which are of particular concern to rural communities), as well as leading on the environmental aspects that are often of very great interest to the public. We ought to harness this expertise more effectively. In particular, I suggest that officials should develop better lines of communication between our two departments.

I hope that in working up your proposed reforms you can make clear both the Government's positive vision for the planning system as a contributor to improving the quality of life and how that quality will be enhanced by making the system more efficient. Members of my Ministerial team will be happy to work with your Ministers to cover the detail.

I am copying this letter to the Prime Minister, the members of EAPC and Sir Richard Wilson.

Regards

Margaret

MARGARET BECKETT

ANNEX

SUMMARY OF POINTS MADE BY DEFRA

Planning Green Paper

- Planning processes: sustainable development provision
  role of early informal consultations
  90% target for officer decisions
- Policy delivery rural policy and rural proofing
  review of PPGs
- Statutory consultees specialist bodies
  parish councils

Other Consultation Documents

- Major infrastructure projects
- Planning obligations: affordable housing
  environmental measures
- Use Classes Order: farm diversification
  clay pigeon shooting

DETAILED COMMENTS

PLANNING GREEN PAPER

Planning processes

1. It will be important to secure a higher level of sustainability in planning decisions generally. This goes right across the system. Key issues for DEFRA are economic and social aspects of planning outcomes, ensuring that rural diversification is fostered, and securing real environmental benefits from development under the planning system. We therefore welcome the proposal to make sustainable development a statutory purpose of the planning system. However, for this principle to be effective, it needs to influence day-to-day decision-making. I would like my Department to contribute to the development of this legislation to help ensure that it works effectively.

2. We support the Green Paper proposals for early (pre-application) consultations with local community interests about both development plans and specific development proposals. These proposals are an essential component of the overall package and need to be developed as vigorously as the proposals for reducing the formal procedures later in the process.

3. We are concerned about the proposed target of 90% of planning decisions at local level being delegated to officers rather than elected councillors. The number of delegated decisions properly reflects local circumstances, including the nature of the applications, and the quality of both councillors and officers. 90% will often be too high. Local authorities should not be penalised for failing to meet a target which may be quite contrary to their needs.

Policy delivery

4. **Rural policy and rural proofing.** Rural policy is an area in which we need to consider carefully how the planning system affects policy delivery. As in other fields a balance has to be struck between policies that encourage development and diversification and policies for landscape and nature conservation. The system should also provide flexibility to enable changes of use to more extensive land use for animal production, for example, to meet improved animal welfare standards. These points need to be brought out clearly in the PPG revisions. In addition, I would be interested to know what steps your Department has taken to 'rural proof' the proposals in the Green Paper and the consultation documents, and how you propose to ensure that future local planning policy proposals are rural proofed. It will also be important to 'rural proof' the PPG revisions as they are made.

5. **Review of PPGs**. I agree fully with your objective of simplifying and slimming down the corpus of PPGs, but need to ensure that the essentials of DEFRA policies are clearly articulated in the PPGs where this is the best way of promulgating those policies. This affects many of my Department's policies, including, for example, the

need to promote biomass and other green fuels; the need to cover risks of flooding in strategic and individual planning decisions; and rural policy generally. DEFRA officials are already engaged in work on PPG7 (The Countryside), PPG9 (Nature Conservation) and PPG22 (Renewable Energy). More thought also needs to be given to the role of the recently issued PPG25 (Development and Flood Risk), including the ideas on which we are currently consulting for a flood plain levy. For these reasons it is important that my Department should be fully involved with all the PPG revisions in which we have an interest and that the revised documents fully reflect adopted Government policies, whichever Department may be in the lead.

Statutory consultees

6. **Specialist bodies.** Your proposals to review the role of statutory consultees are a potential cause of concern. The purpose of requiring consultations on planning applications is to ensure that relevant information is brought to the attention of the planning authority before it makes decisions. To achieve this objective, the number of statutory consultees should not be limited, as proposed in the Green Paper, to bodies whose advice has health and safety implications or which operate parallel consent regimes, but should include all public bodies whose responsibilities and policies may be affected by a planning decision. In particular, it is essential that DEFRA's agencies and NDPBs continue to be consulted on all planning applications as before. I also believe that the idea that statutory consultees should charge for their advice requires further thought.

7. **Parish councils.** Additionally, I could not support any proposal to reduce the number of statutory consultees where that would adversely affect the position of parish councils. The Government has proposed some significant strengthening of the role of parishes in both the Rural White Paper and the Local Government White Paper. The right to be consulted about planning applications is one that is valued by many people in the parishes and arguably contributes as much as any of the parish councils' other functions to local cohesion by bringing people together to discuss local issues. I would welcome an assurance that under your proposals parish councils will continue to have a statutory right to be informed about planning applications relating to land in their areas. Items like this can put at risk our efforts to engage rural communities.

OTHER CONSULTATION DOCUMENTS

Major Infrastructure Projects

8. I am concerned that the proposal for a Parliamentary procedure for major infrastructure projects will only command support if it demonstrably allows the balance of national and regional or local interests to be assessed. The distinction between national and strategic issues on the one hand, and those that are essentially more local on the other, will need to be carefully defined.

9. I welcome the indication that Charlie Falconer has given that Parliamentary votes on projects falling within these proposals would not be whipped. But your proposals do

not make clear how Parliament might wish to obtain and manage the information that it would need, or how it would ensure that it gives proper consideration to the whole range of interests involved. As a particular point, it is difficult to see how the local side of the equation can be considered without adopting procedures for taking evidence from those with an interest. Once Parliament starts down that track questions must arise over whether a dual procedure involving both Parliament and a public inquiry would really be faster than a planning inquiry with the speedier handling of appeal cases that you propose.

10. While this would be a significant new role for Parliament, it is not one that Members are likely to want to play, or are well equipped to play if they wanted to. As a minimum, it would be necessary for your Department to provide effective technical planning support.

Planning obligations

11. The proposals here need to ensure that planning decisions about affordable housing are tied to tenure. It is important to tackle this point which is of particular importance for rural housing.

12. I must emphasise the important contribution that agreements on particular planning obligations can make to securing vital environmental measures in relation to particular developments. It will be important to ensure that a more standardised system of tariffs does not weaken the environmental controls that individual planning agreements make possible. For that reason I would be grateful for your assurance that my Department will be fully consulted during the development of these proposals.

Use Classes Order

13. **Farm diversification.** I am concerned that local authorities are sometimes inhibited from giving permission for desirable farm and forestry diversification proposals because of fears that relaxations of control - e.g. via the Planning Use Classes Order - which may be sensible in an urban or suburban context might then open the door to inappropriate developments in the countryside. Although past suggestions that it might be possible to create a separate "rural use class" to overcome the perceived and real obstacles have not proved practical, I am keen for a way to be found to give better outcomes where planning permission is needed for change of use away from agriculture and forestry.

14. **Clay pigeon shooting.** A further point arises from your proposals on temporary uses of land within the general 28 days per year permitted under the General Permitted Development Order. It will be important for the Government to demonstrate that it remains committed to a wide rural agenda even while we are refining the options to control hunting with hounds. We should be seen to be supportive of other rural activities that offer particular business opportunities for land users, and I should be

grateful if you would consider the possibility of widening the current temporary use provision applying to clay pigeon shooting.

Top: PD(ME)
PD(NA)
PD(CS)
QS

FROM CHARLES FALCONER
MINISTER FOR HOUSING, PLANNING AND REGENERATION

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Rt Hon Robin Cook MP
Chairman
LP Committee
Privy Council Office
2 Carlton Gardens
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Dear Robin

- 8 MAY 2002

10 MINUTE RULE BILL
PLANNING (PUBLICATION AND INFRASTRUCUTURE) – DEREK WYATT MP

This letter advises LP Committee on the Parliamentary handling of Derek Wyatt's (Planning Publication and Infrastructure Bill), which he intends to introduce under the 10 Minute Rule. I recommend that the Bill is allowed to be introduced unopposed, but that it is blocked at Second Reading.

The long title of the Bill is: 'to bring in a Bill to require applications for planning permission to be published at the time notice of the application is given; to require planning permission for new housing and business development to be conditional upon fulfilment of planning obligations relating to infrastructure; and for connected purposes.'

The purpose of the Bill would be twofold: to require planning applications to be published when the applicant notifies any landowners or tenants who are interested parties, which must occur before submitting the planning application; and to ensure planning obligations are fulfilled, with non-granting, or loss, of planning permission as the penalty for non-fulfilment.

While sympathetic to the apparent intent of the Bill - to ensure the public is aware of planning applications being considered by local planning authorities, and to ensure developers fulfil planning obligations - for various reasons, it is appropriate to oppose the Bill.

SKP 9/5/02

Firstly, it is inappropriate timing to introduce new legislative measures in land use planning, and particularly in development control and planning obligations, since the Government is currently considering responses to the Planning Green Paper, which proposed wide-ranging reforms to the planning system, and 'Reforming Planning Obligations' which proposes a new system of planning obligations. We are working towards a policy statement before the summer recess, with the possibility of a Planning Bill next Parliamentary Session.

Further, the Bill is unnecessary. Planning applications, once accepted by local planning authorities, are placed on the Planning Register, which the public has a right to inspect. It would be inappropriate to publish applications before local planning authorities have inspected them and decided whether they are valid, as this Bill would require. Also, procedures already exist to require developers to fulfil planning obligations, through the legal courts; and in cases where a development has already been completed, it would be impracticable to make grant of planning permission dependent on fulfilling obligations.

I am copying this letter to the Prime Minister, members of the LP Committee, First Parliamentary Counsel and Sir Richard Wilson.

Yours ever

CHARLES FALCONER

Department for Transport, Local Government and the Regions

Planning Green Paper
Planning: Delivering a Fundamental Change

Planning Green Paper & Associated Documents

Planning Green Paper, Planning: Delivering a Fundamental Change

Planning Green Paper, Planning: Delivering a Fundamental Change *(Adobe Acrobat 349kb)*

New Parliamentary Procedures for Processing Major Infrastructure Projects

Possible changes to the use classes order and temporary uses provisions- a consultation

Planning: Delivering A Fundamental Change (Regulatory Impact Appraisal)

Planning Fees

Compulsory Purchase and Compensation: the Government's Proposals for Change

Planning Obligations: Delivering a Fundamental Change

A document above has been made available in *Adobe Acrobat* format for downloading. The *Adobe Acrobat Reader* can be freely downloaded. Viewers with visual difficulties may find it useful to investigate services provided to improve the accessibility of Acrobat documents -- http://access.adobe.com

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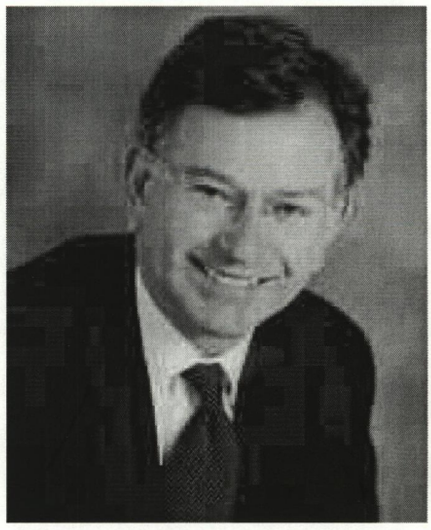
foreword



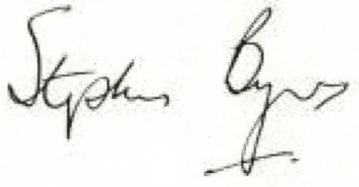
Planning is fundamental to the way our cities, towns and villages look, the way they work and the way they relate to each other.

Getting planning right means that our goals for society are easier to achieve. Good planning can have a huge beneficial effect on the way we live our lives. It must have a vision of how physical development can improve a community.

But, some fifty years after it was first put in place, the planning system is showing its age. What was once an innovative emphasis on consultation has now become a set of inflexible, legalistic and bureaucratic procedures. A system that was intended to promote development now blocks it. Business complains that the speed of decision is undermining productivity and competitiveness. People feel they are not sufficiently involved in decisions that affect their lives.

So it is time for change.

We need good planning to deliver sustainable development, to harness growth to build a better future. We need a better, simpler, faster, more accessible system that serves both business and the community. That is exactly what this Green Paper seeks to achieve.



The Rt Hon Stephen Byers MP
Secretary of State for Transport, Local Government and the Regions

contents

Cover photograph: Humberstone Gate, Leicester. Photograph courtesy of Leicester City Council.

chapter one

The planning system we need: our objectives for planning

1.1 This Green Paper is about delivering fundamental change to the planning system.[1]

1.2 England is one of the most crowded countries in the world. Only 8% of the land surface is urbanised, but over 90% of our population lives in urban areas. We need good planning to deliver development that is sustainable and which creates better places in which people can live and work.

1.3 A proper planning system is vital to our quality of life. People can be dramatically affected by the quality of their environment and they care deeply about new development and how it changes the surroundings in which they live and work. That is why we need a planning system that fully engages people in shaping the future of their communities and local economies. And that is why we need to use the planning system to set out a positive vision for the future development of our communities: seeing planning as a positive tool rather than merely a negative brake on development.

1.4 A successful planning system will promote economic prosperity by delivering land for development in the right place and at the right time. It will encourage urban regeneration by ensuring that new development is channelled towards existing town centres rather than adding to urban sprawl. It will help to conserve greenfield land and re-use urban brownfield land. It will value the countryside and our heritage while recognising that times move on. It has a critical part to play in achieving the Government's commitment to sustainable development.

1.5 To be successful, the planning system needs to have the confidence of many different groups. These include almost half a million direct customers who are applicants for planning permission every year and who want a quick, predictable and efficient service; families and individuals affected by plans and planning applications; and the wider community who care about proposals for the future development of their area. All parts of the community – individuals, organisations and businesses – must be able to make their voice heard.

1 This Green Paper applies only to England. Different planning regimes exist in Scotland and Northern Ireland. The National Assembly for Wales will be issuing a separate consultation document on the planning system in Wales.

1.6 The customers of planning departments have a right to an efficient and user-friendly service. Business in particular, needs to know that their planning applications will be dealt with efficiently and predictably. Time delays caused by bureaucracy, lack of skilled staff or over-complex systems are bad for business and do little good for anyone else. Delays in receiving a planning decision can mean loss of competitiveness for business, something that we simply cannot afford in the modern global economy.

1.7 Whilst some 90% of planning applications are eventually approved, we need to address the flaws and inefficiencies in the system that frustrate business and others seeking to develop land. Development for business, housing, services and infrastructure are all vital to the health of our economy. We need the planning system to ensure that it is delivered in a way that is sympathetic to our environment and that benefits the whole community. But we do need good development: planning must be about accommodating change not just resisting and stifling it.

1.8 We believe in good planning. The present system, by general consent, does not deliver our objectives. We want a system that is capable of reaching decisions that command public confidence and which is seen to be open and fair. A system that underpins our desire to improve productivity by being capable of reaching a proper balance between our desire for economic development and for thriving communities. A system that is clear and comprehensible, that comes to robust decisions in sensible time frames. The proposals in this consultation document are intended to help us produce such a system. It is time for fundamental change.

chapter two

The need for change

2.1 We need to know what is wrong with the planning system in order put it right. In this chapter we consider the deficiencies of the present system.

The planning system we have

2.2 The planning system falls short of what we need. There are a number of problems that need to be tackled.

Complexity

2.3 Planning is complex, remote, hard to understand and difficult to access. Issues commonly raised include:

- the multi-layered structure of plans with up to four tiers in some areas – at national, regional, county and local levels. Plans are often out of date and can be inconsistent with one another and with national planning guidance;

- national planning guidance is long and often unfocused. It mixes key planning policy principles which must be followed, with good practice advice;

- the rules applying to different types of development are often unclear. For example, some developments do not need specific planning consents, others do; and

- the planning appeal procedure can seem obscure. People find it hard to understand the way in which the system works. Both applicants and others with an interest in a proposed development can find it hard to understand the basis on which decisions are taken.

Speed and predictability

2.4 The planning process is too often perceived to be a set of rules aimed at preventing development rather than making sure good development goes ahead. Communities frequently feel detached from the process and suffer from planning blight. Business finds planning delays frustrating and potentially damaging to their competitiveness. Problems include:

- speed of decision-making. This is both slow and variable between local authorities. Over 90% of councils fail to meet the target that 80% of planning applications should, on average, be decided within 8 weeks;

- lack of predictability. The outcome of applications is frequently uncertain because there is insufficient clarity about the criteria against which an application will be judged. It is uncertain whether and why an application will be called in for determination by the Secretary of State or an appeal recovered. The time it takes to deliver a decision is uncertain;

- the process of up-dating plans is expensive and always takes several years. It is increasingly being regarded by local authorities as unaffordable. Although the current plan-led system was put into place in legislation enacted in 1991, 13% of local authorities have still to put their first plan in place and 214 current plans are now out of date; and

- speed of dealing with appeals and call ins. Last year, 80% of appeals dealt with in writing were decided within 17 weeks, 21 weeks if there was an oral hearing and 31 weeks for a public inquiry. Central Government only manages to deal with three-quarters of call-in cases within our own 20 week deadline.

Community engagement

2.5 The current system is very "consultative" but despite that, too often fails to engage communities. The result of all this is that the community feels disempowered:

- the procedures that lead to the adoption of a plan can be so protracted that few community organisations or businesses with an interest can afford to sustain their involvement. There is a perception that the system favours those with the deepest pockets and the greatest stamina;

- planning committees can make decisions on planning applications without the applicants or significant objectors having an opportunity to present their case;

- some planning procedures are legalistic and effective participation tends to demand at least some specialist knowledge. People who are inexpert in the workings of the system find this difficult and sometimes community organisations can find it hard to present their case without access to professional advice.

Customer focus and standards of service

2.6 Planning is not customer focused and local planning departments are overstretched. Problems include:

- people find it hard to obtain straightforward advice about how to submit a planning application. Once submitted, applicants are unable to access information about the progress of their application. E-business is poorly developed;

- user-friendly information about planning is not always readily accessible. Local planning departments are frequently so burdened with householder applications that they are unable to give more complex commercial and industrial applications the detailed attention they require; and

- there are serious skill and resource shortages in most planning departments. Elected councillors serving on planning committees are often insufficiently well trained to undertake their important duties.

Enforcement

2.7 Effective action needs to be taken against those who try wilfully to avoid planning controls. Without effective enforcement, confidence in the system is undermined. Unfortunately, where planning regulations are broken, there is a perception – often accurate – that they are not being sufficiently enforced.

Our proposals

2.8 All these problems are very real. They deprive us of the system we need to plan for a sustainable future. They make the planning system the subject of constant attack and its decisions suspect. This in turn has seriously demoralised the planning profession and damaged its ability to recruit new blood. Until there is a clear sense that the system has overcome these problems, it will not attract the degree of public confidence that a good planning system deserves.

2.9 We intend that planning should have a new strategic focus. We will simplify the complex hierarchical system of plans and replace local plans with new Local Development Frameworks. These will connect up with the local Community Strategy and help deliver the policies it contains. The frameworks will include a clear set of criteria by which local authorities will be able to steer development and use growth to deliver the vision for their areas. Action plans will be drawn up for town centres, neighbourhoods and villages.

2.10 There will be a fundamental change in planning so that it works much better for business. Business will be able to submit applications, confident of the basis on which their applications will be considered and that they will get a fast decision. Business planning zones will allow planning controls to be lifted where they are not necessary. New handling targets for local authorities will distinguish business from householder applications and we propose delivery contracts between local authorities and business for reaching decisions on the biggest planning applications.

2.11 We are going to deliver a system that better engages communities. We propose real community participation in the preparation of our new Local Development Frameworks and especially in drawing up action plans which bear on local areas and may result in the regeneration or conservation of particular neighbourhoods. Master planning of major sites will help developers plan for higher quality development in partnership with local authorities. There will be clearer information for planning applicants and new requirements for openness and accountability within the planning process.

2.12 We believe in good planning. Fundamental change is needed. This consultation document is about how we will deliver it.

chapter three

How the planning system works

3.1 The basic structure of the planning system is over 50 years old, although the first town planning legislation dates from 1909. It was not until the end of the Second World War that the need to plan for reconstruction of devastated areas made new planning legislation imperative, which resulted in the 1947 Act. The legislation was last modified in 1991.

3.2 Planning over the last half century has had its successes and its failures. The least successful aspects of planning come quickly to mind: the sprawling housing estates completed in the 1960s and 70s; concrete jungles that replaced our town centres and which we now know attract grafitti and vandalism; and inner ring roads that were seen as a way of increasing mobility but all too often broke up urban communities.

3.3 There have also been some clear wins. Planning has helped preserve our best landscapes in National Parks and Areas of Outstanding Natural Beauty and many of our best buildings and townscapes through listed building and conservation area controls. Green Belts have prevented urban sprawl. More recently, our policies on re-use of brownfield land have promoted urban renaissance and the regeneration of town centres.

The current system

3.4 The current planning system in England has two main parts: a framework of plans and development control. A third element is the role of the Secretary of State in determining planning policy, deciding planning appeals and some important applications.

Plans

3.5 Our current planning system is plan-led, which means that if planning applications are in accordance with the development plan, they are likely to be approved unless there are 'material considerations' that suggest otherwise. These may be, for example, subsequent national policy statements that may override the plan or changes in local circumstance. In practice, such material considerations very often do apply because local plans are frequently out of date.

3.6 Regional Planning Guidance provides a strategic planning framework in each of the eight English regions and in London, the Mayor prepares a Spatial Development Strategy. Development plans are produced by county authorities (structure plans), district councils (local plans) and, in unitary authorities, a unitary development plan which combines elements of both. National parks also produce their own plans.

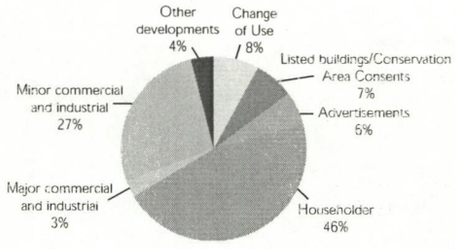
Greenwich Millennium Village – picture courtesy of English Partnerships

Development control

3.7 The system by which planning applications are determined is known as development control. Development control authorities are normally the districts and unitary authorities responsible for putting local plans in place. Planning applications are submitted to these authorities and decided either by their elected councillors or by local authority officers accountable to them.

3.8 Last year some 550,000 planning applications were submitted, almost half of which were for householder developments. In total, some 90% were approved. Local authorities have a target that 80% of planning applications should be determined within 8 weeks. In practice, only about 65% of applications are determined within that timescale and this proportion has been steady for some years.

figure 1: Planning decisions by type of development, 2000/01



The role of the Secretary of State

3.9 The Secretary of State for Transport, Local Government and the Regions has three key roles. His Department sets out the planning policies that essentially drive the whole planning system and these are principally contained in 25 Planning Policy Guidance notes (PPGs) together with a series of Minerals Planning Guidance notes (MPGs).

3.10 Secondly, planning applicants who have had their application refused by a local planning authority or which has not been determined within an 8 week timescale have a right to appeal to the Secretary of State. There were over 15,000 planning appeals last year of which a third were allowed.

3.11 Appeals are administered by the Planning Inspectorate which is an executive agency reporting to the Secretary of State. It comprises a body of expert planning inspectors who consider appeals by three methods – written representations (74%), hearings (20%) and public inquiries (6%). The Planning Inspectorate has time targets for handling appeals (see para 6.8).

3.12 Nearly all appeals are decided by Inspectors, but a small number are recovered for decision by the Secretary of State. In addition, the Secretary of State can call in planning applications which he believes should be decided by himself, on the basis of a report by an Inspector. Local authorities are required to notify applications that fall into particular categories to the Secretary of State so that he can decide whether to call them in for national decision. This includes those where the local planning authority proposes to grant permission that departs from the current development plan and applications for large housing developments on green field sites. Last year, there were 127 called in applications and 163 recovered appeals.

chapter four

A fundamental change for plans

4.1 Development plans have two purposes – to describe the intended use of land in an area and to provide an objective basis for the consideration of planning applications. Inevitably there will be differences of view about the need for new development and where it should take place. The planning system seeks to resolve these on the basis that, if an application is in accordance with the development plan, it is likely to be approved.

4.2 We believe that it makes sense to continue to have a "plan-led" system of development control. However, there is a need for fundamental reform. We need to:

- simplify the plan hierarchy, reducing the number of tiers and clarifying the relationships between them;
- deliver shorter, better focused, plans at the local level which can be adopted and revised more quickly;
- engage the community more closely in the process of plan preparation; and
- improve integration with other local strategies and plans.

Local plans

4.3 Local plans are the means by which local authorities express the land-use implications of their policies and shape the future of their communities. In producing their plans, local authorities have to take account of policies determined at the national and regional levels.

4.4 The plan provides a framework to engage people in the way in which their communities might grow and change. For business it provides an essential source of information about where to propose new development and the type of development likely to be appropriate.

4.5 Local planning is therefore important. It has real-world effects. But the current arrangements for area-wide local plans introduced in 1992 have never worked effectively:

- the system is over complex. As well as regional and national planning guidance, in some areas there are two tiers of plans – structure (county) and local (district) – while in other, mainly urban areas, there is a single tier of "unitary" development plan;

- there are too many inconsistencies. Too often local plans are inconsistent with policies set out at regional or national level. If there are policy changes at a higher level, a plan can be over-ridden when planning decisions are made. This makes it hard for those using the system to be confident that they know what policies apply;

- plans are too long. Local plans have tended to address the development status of every part of their area and they often try to anticipate every development control eventuality. Rather than setting out a clear strategy for development, they have become lengthy and inflexible rule-books for development control;

- preparation is slow and expensive. Because local plans are site-specific and comprehensively cover a local authority's area, they attract numerous representations from both developers and those opposing development. Delay in dealing with contentious proposals can hold up adoption of the rest of the plan. Significant numbers of plans are not yet in place[2]. We cannot continue with a system that takes over five years, and as much as ten, to put a plan in place; and

- local plans are too inflexible. Because plans contain so many detailed policies (200 or more is not unusual), they are time consuming and expensive to review. As a result, it is difficult to make changes to reflect new policies or changing local circumstances.

4.6 As a result, local plans are failing their users. People find the plan adoption process both complex and obscure. At the end of it, the status of the plan is sometimes uncertain. This affects the ability of business to plan with confidence. Whilst consultation is a statutory requirement in the preparation of plans, in practice the complexity and length of the process has made it difficult to engage the whole community effectively.

4.7 Furthermore, arrangements for preparation of local plans are being overtaken by new local authority policies and programmes. Local authorities now have to prepare Community Strategies (see box). In addition, at a more local level, there are regeneration and neighbourhood renewal initiatives. The arrangements for putting such strategies in place are more flexible and inclusive than the local plan process. We need to ensure that local plans are better integrated into this new framework, enabling them to become the land use and development delivery mechanism for the objectives and policies set out in the Community Strategy.

2 By November 2001, 13 per cent of 362 local plans/UDPs have still to be put in place. The time limited elements (eg housing allocations) of 214 current plans have expired and many authorities have no estimated date for the deposit of proposals for alteration or replacement of those plans.

Community Strategies

Local authorities have a new duty to prepare Community Strategies, which they develop in conjunction with other public, private and community sector organisations. Community Strategies should promote the economic, social and environmental well-being of their areas and contribute to the achievement of sustainable development. They must have four key components:

- a long-term vision for the area which focuses on the outcomes that are to be achieved;
- an action plan identifying shorter-term priorities and activities that will contribute to the achievement of long-term outcomes;
- a shared commitment to implement the action plan and proposals for doing so; and
- arrangements for monitoring the implementation of the action plan, for periodically reviewing the community strategy, and for reporting progress to local communities.

Community Strategies will play a key role in informing the preparation of Local Development Frameworks. In turn, the Framework must assist in delivering the policies in the Community Strategy.

A new framework

4.8 We propose a fundamental reform of the development plans system. We propose to abolish structure plans, local plans and unitary development plans and replace them with a new single level of plan. This would be known as a Local Development Framework and consist of:

- a statement of core policies setting out the local authority's vision and strategy to be applied in promoting and controlling development throughout its area;
- more detailed action plans for smaller local areas of change, such as urban extensions, town centres and neighbourhoods undergoing renewal; and
- a map showing the areas of change for which action plans are to be prepared and existing designations, such as conservation areas.

4.9 Plans produced on this basis would take less time to prepare, amend and keep up to date. They would provide business with greater certainty and provide communities with a clear means of getting involved. The statement of core policies would be a short, focused and strategic document.

Statement of core policies

4.10 The statement of core policies would form the heart of the new Local Development Framework. It would be a succinct statement of:

- the Framework's role in delivering the long-term vision for the area, complementing that set out in the authority's Community Strategy;
- clear objectives for what the local authority is seeking to achieve in terms of the development and improvement of the physical environment of its area, together with a proposed timetable;
- a strategy for delivering the objectives. We would expect the vision, objectives and the strategy to be shared with the local community and endorsed by them;
- a Statement of Community Involvement setting out arrangements for involving the community in the continuing review of the Local Development Framework and in significant development control decisions; and
- criteria-based policies to shape development and deliver the strategy. These would form the basis for development control. The policies would need to cover key issues, such as housing, business development, planning obligations, transport, waste disposal and recycling, and the historic environment.

4.11 The statement of core policies will be concerned only with policies affecting the development and use of land. However, this may include policies that are not solely reliant upon the grant of planning permission for their delivery, for example, infrastructure investment, management of land and traffic management issues. In National Parks and Areas of Outstanding Natural Beauty, the statutory management plan will be relevant.

4.12 The statement of core policies will also need to take full account of the land-use consequences of other policies and programmes relevant to the Community Strategy, including education, health, waste, recycling and environmental protection and consider how it can assist in the delivery of these and other economic, environmental and social objectives. In planning jargon, it would be much more of a "spatial" strategy.

Action plans

4.13 We propose that, in their statement of core policies, local authorities should be required to identify where more detailed action plans should be produced. These are most likely to focus on areas of change where site-specific policies are needed to guide development. Equally, they might address conservation areas or village plans.

4.14 Depending on the situation, an action plan could be new and free-standing or based on existing plans or strategies. This flexibility would avoid duplication and enable action plans to effectively reflect local circumstances. Examples of the types of plans that might be prepared are shown in the box below.

Possible action plans would include:

- **Area master plans** – comprehensive plans for a major area of renewal or development covering design, layout and location of new houses and commercial development supported by a detailed implementation programme.
- **Neighbourhood and village plans** – setting out how the distinctive character of a neighbourhood, village or parish is to be preserved, the location of any new development and the design standards to be applied. They should also identify the key services and facilities.
- **Design statements** – setting out the design standards and related performance criteria for an area or type of development.
- **Site development briefs** – setting out detailed guidance on how a particular site is to be developed.

4.15 Action plans will be principally about planning for local areas. However, depending on local circumstance some may need to be prepared on a topic basis which cover a wider area to show for example:

- Green Belt boundaries or other area-based designations;
- housing allocations where issues of timing of land release might need to be addressed;
- specific proposals for major developments which may have local authority-wide implications;
- the safeguarding of land for transport and other purposes.

Making the new system work

4.16 We propose to establish clear guidelines on the production of Local Development Frameworks. These will not be overly prescriptive but will lay down absolute requirements, such as the need for proper community participation, timetables for production and review, and procedures for testing the document. We will support the guidelines by issuing best practice advice.

Preparation of Local Development Frameworks

4.17 We would normally expect Local Development Frameworks to be prepared individually by the relevant district, unitary and National Park authorities. However, there is no reason why authorities should not work together to produce joint frameworks. This may be particularly advantageous for smaller authorities. We shall expect Local Development Frameworks to be prepared in a period of months rather than years.

Status of the Local Development Framework

4.18 It remains important to have a system of development control in which decisions are predictable and consistent with the planning policies that have been put in place. We therefore propose that decisions about planning permission should be made in accordance with the statement of core policies in the Local Development Framework and action plans where they are in place. The option exists for action plans to cover the majority of major development sites.

4.19 Under present arrangements[3] local plans may be overtaken by new statements of planning policy at the national, regional and county levels. These policy statements may be taken into account as a 'material consideration' in planning decisions. The effect is that plans become outdated.

4.20 We propose to tackle this by:

- requiring the statement of core policies set out in the Local Development Framework to be continuously updated, so that it is consistent with national and regional policies;
- focusing national and regional planning policy only on issues which need to be addressed at these levels. We shall distinguish policies which we expect to see applied in full from guidance which can be interpreted in the Local Development Framework;
- abolishing structure plans (see para 4.37).

This approach will reduce the complexity of the system and ensure that the Local Development Frameworks provide much more clarity about the acceptability of development in an area.

3 Under Section 54A of the Town and Country Planning Act 1990, decisions have to be taken in accordance with the development plan, unless material planning considerations indicate otherwise.

Engaging the Community

4.21 We shall encourage all local authorities to work with Local Strategic Partnerships to establish effective mechanisms for community involvement, building on their work preparing Community Strategies. We would expect local authorities to involve all sectors within the local community, including local business, residents, tenants and voluntary groups. The proposals in paragraph 5.57 on community advocacy would support the ability of such groups to prepare and present their case more effectively.

4.22 We propose that the Local Development Framework should contain a Statement of Community Involvement, setting out how the community should be involved in both the continuing review of the Framework and in commenting on significant planning applications. The Statement will set the standard for good practice in engaging those with an interest in proposed development. It will offer a simple and clear guideline that will enable the community to know with confidence when and how it can expect to be consulted and will provide a benchmark for applicants for planning permission about what is expected of them. It might, for example, include contact details for key organisations, both local and other consultees, who need to be aware of a particular application.

4.23 In the case of large developments, we propose that compliance with the terms of the Statement and its requirements for engaging the community, should be a material consideration supporting a planning application. This is in keeping with our view that there is mutual benefit in developers and communities working together to plan developments that are likely to have a major impact on a local area.

4.24 Action plans should form a new focus for community involvement in developments affecting neighbourhoods or other local areas. Local authorities will have the opportunity to seek direct participation from local people in shaping the future of their communities, taking their view on the type of development they would like to see and how it is to be laid out. Our concept of action plans is very much one which encourages planning to be undertaken close to the people who it most directly affects.

Sustainability appraisal

4.25 There will need to be an integrated and comprehensive appraisal covering economic, environmental and social impacts of the Local Development Framework. We will issue appraisal guidance, taking full account of the requirements of the EU Directive on Strategic Environmental Assessment.

Adopting the Framework

4.26 Under the present system, everyone has the right to make objections to draft local plans and for these to be heard, usually in a public local inquiry. Unfortunately, this approach often proves time-consuming and adversarial. We need to find a better way to test the new Local Development Frameworks and would welcome your views on options. These might include wide public participation followed by adoption by the Council; an examination before an independent chair to test the adequacy of the plan and its preparation process; or a public informal hearing of representations before an inspector. Under the latter two options we envisage that the report of the independent chair or inspector would be binding on the local authority.

4.27 Procedures for the adoption of action plans will need to reflect the use to which they will be put. An action plan may set out site specific proposals or land allocations to which the local authority wishes to attach weight in the decision making process. In this case, it is important that people whose property rights are directly affected are allowed to make representations and heard if they wish to be. As most action plans will each cover only a small part of a local authority's area we would expect this process to be conducted quickly.

4.28 We envisage that the Secretary of State would retain a reserve power of direction to amend Local Development Frameworks. This would only be used in exceptional circumstances, such as where national or regional policy has been incorrectly applied, or where the Statement of Community Involvement was inadequate.

Keeping plans up to date

4.29 It is essential to our proposed new approach that Local Development Frameworks are kept up to date. It is in the authority's own interests and those of the business and the wider community to ensure that the Framework takes full account of any changes to planning policies at national and regional levels.

4.30 The core policies in the Local Development Framework are unlikely to be subject to frequent change. We shall, however, require local authorities to keep them under continuous review. This should ensure that they fully reflect changes to national and regional planning policies. Where policies are simply transposed to the local level, there should be no need for further consultation or consideration of objections. The Framework can simply cross-refer to the national and regional policies.

4.31 So that everyone using the system has access to the latest Local Development Framework, we will require local authorities to publish the statement of core policies each year, and to keep a continuously updated version of the Framework on their website. We propose that, every three years (or in line with revision of their Community Strategies), local authorities should review their core policies and refresh their vision for an area and their strategy for achieving it. We intend to make the updating and review of Frameworks a requirement and will use Best Value intervention powers to ensure compliance.

4.32 The lifespan of action plans will vary. We would expect that the need for each action plan would be reviewed annually, with fresh areas being identified and plans introduced where appropriate.

National, regional and sub-regional policy

4.33 At present, local plans are prepared in the context of planning policies set at national, regional and, in some areas, county level.

4.34 National planning policy guidance published by Government, sets out national policy priorities. Regional Planning Guidance (RPG), prepared at a regional level but issued by the Secretary of State after consultation and a non-statutory public examination, sets longer term development strategies for individual regions. RPG also provides a regional context for the preparation of local authority development plans and local transport plans. Guidance on sub-regional issues is increasingly being provided as part of RPG.

4.35 The current hierarchy of regional, county and local plans is complex and confusing: too often plans are produced to different time-scales and contain inconsistent policies. We believe that the multi-level structure of plans has become a major barrier to responsive and effective planning. We need a better approach.

County structure plans

4.36 Under the present arrangements county structure plans address strategic issues. These include house building, the broad location of new employment sites, improvements to transport infrastructure, and policies on the development of built up areas or the conservation of the countryside. Where there is no county council, part 1 of the unitary development plans deals with similar issues.

4.37 We believe that the county no longer remains the most appropriate level at which to consider many of the key strategic planning issues. Many of these issues cut across county boundaries, and they are increasingly being dealt with at either regional level or across sub-regions. We propose to abolish structure plans although we would welcome views about whether the counties should have a role in assisting the regional, district and unitary authorities in preparing their plans. Until the necessary legislation is introduced, counties should fulfil their statutory obligations and carry out reviews of structure plans on the issues that matter.

4.38 Counties (and unitary authorities) also produce topic-based plans for minerals and waste and make decisions on planning applications on mineral and waste matters. We think it is right that plan preparation should rest at the same level as that at which planning decisions are made. We do not think that it would be appropriate for decisions on such applications to be made at a regional level and we therefore propose to maintain the existing arrangements for preparing Mineral and Waste plans or deciding applications on these land uses.

Regional planning policy

4.39 We believe that there is a continuing need for effective planning at the regional level. Regionally-based policies are needed for issues such as planning the scale and distribution of provision for new housing, including setting a brownfield target and the growth of major urban areas. Additionally, there is a need for coastal planning, planning for regional transport and waste facilities, and for major inward investment sites and other aspects of the Regional Development Agencies' (RDAs') economic strategies. Regional planning policy provides a framework within which local authority development plans, local transport plans and other relevant plans and strategies can be prepared.

4.40 Last year, we set out revised guidance on the preparation of Regional Planning Guidance (PPG11 "Regional Planning"). It made clear that RPG should be more concise, avoid unnecessary repetition of national policy, address specific regional or sub-regional planning issues, be outcome-centred, focused on delivery mechanisms (of which the development plan and the local transport plan are the most important) and be subject to annual performance monitoring. It also introduced more open and transparent procedures for considering draft RPG.

4.41 Many of these objectives have yet to be achieved:

- RPGs are still long and insufficiently strategic. Rather than setting clear, regional priorities, the documents continue to restate national policy or defend local interests;
- RPGs are insufficiently integrated or coordinated with other regional strategies (such as the Regional Development Agencies' strategies);
- there is overlap and duplication between regional and county plans. This reflects the increasing importance of sub-regional policies within RPG; and
- the process of preparation can lead to RPGs avoiding difficult decisions, for example in relation to the provision of an adequate supply of housing in the South East of England or the location of key growth areas.

Changing the system: regional policy

4.42 We want to strengthen the arrangements for preparing regional strategies and ensure that they provide a strategic policy framework within which Local Development Frameworks and local transport plans can be prepared. We propose to:

- replace RPG with new Regional Spatial Strategies (RSSs);
- give the RSS statutory status. The Local Development Frameworks and local transport plans should be consistent with it, unless there is more recent national policy;
- make the content of RSS more focused. RSS should outline specific regional or sub-regional policies, address the broad location of major development proposals, set targets and indicators where necessary and cross-refer to, rather than repeat, national policy;
- ensure that each RSS reflects regional diversity and specific regional needs within the national planning framework;
- integrate the RSS more fully with other regional strategies. Each RSS should provide the longer term planning framework for the Regional Development Agencies' strategies and those of other stakeholders, and assist in their implementation. We will publish best practice advice on integration of strategies at the regional level; and
- promote the preparation of sub-regional strategies, where necessary, through the RSS process.

4.43 We propose to revise PPG11 to reflect and emphasise the points made above. The arrangements established in PPG11 will apply to the RSS, with comprehensive reviews required at least every five years.

Responsibility for preparing Regional Spatial Strategies

4.44 At present, different bodies take responsibility for preparing Regional Planning Guidance. In the North West, South West, South East and Yorkshire and the Humber regions, Regional Chambers are now responsible for preparing draft RPG. Elsewhere, it continues to be prepared by regional planning conferences or associations of local authorities.

4.45 We are looking for significant improvements in the quality of regional guidance to match the importance we attach to effective regional strategic planning. There has been a tendency to avoid making the hard strategic choices, such as accommodating demand for new housing or the location of areas of key employment or retail growth. Instead, a lowest common denominator approach is taken, which in the long term can damage development across the region.

4.46 We shall expect the regional planning bodies charged with preparing RSSs to satisfy four main criteria:

- they should demonstrate that they are representative of key regional interests – groups comprised solely of local authorities will not be acceptable. The preparation of the new RSS will be a partnership process and we expect the steering group in charge of producing the RSS to include the Regional Development Agency and representatives of the public, business and voluntary sectors;

- the planning bodies should consult a broad range of regional stakeholders through focus groups or planning forums, as PPG11 advises;

- they should work closely with all groups to ensure delivery of the strategy; and

- they must be capable of taking a strategic regional view addressing, where necessary, difficult regional choices.

4.47 We invite views on what changes might be made to the present institutional arrangements to secure these objectives.

4.48 As with current Regional Planning Guidance, Government Offices will be closely involved in the preparation of Regional Spatial Strategies. After the public examination, the Secretary of State will seek to implement any recommendations arising, except if they are inconsistent with national policy or if they adversely affect another region. The Government does not propose any change to the Mayor's role in the arrangements for planning in London.

Sub-regional planning

4.49 Strategic planning issues rarely fit neatly within administrative boundaries. An increasingly important feature of regional planning has been the need to bring local authorities, Government Offices, RDAs and the full range of other partners together to resolve issues at the sub-regional level. These are of particular importance:

- for major conurbations, especially those that are composed of several local authorities;
- where the planning of major towns and cities and their hinterland raises strategic issues which can only be resolved on a joint basis by neighbouring local authorities. An example is to ensure a sensible use of housing land between adjacent greenfield and brownfield authorities;
- to develop strategies for areas which straddle regional or county boundaries, such as already exist for the Thames Gateway and in planning for growth around Cambridge.

4.50 We do not envisage sub-regional planning strategies for all areas. Our model for the planning system is of a two-tier structure of plans with strategic policies at the regional level and clear Local Development Frameworks at the local level. However, we would expect that most regions would have a small number of areas requiring a sub-regional planning strategy. In addition some matters and in particular the distribution of housing provision to districts, will need to be addressed on a comprehensive basis at the sub-regional level and incorporated into the RSS.

4.51 The need for sub-regional strategies should be identified, as now, within the regional planning process. They would be specifically approved by the Secretary of State and incorporated in the Regional Spatial Strategy. The sub-regional strategy would be subject to the same public examination arrangements as the RSS.

Elected regional government

4.52 We have proposed that provision should be made for directly elected regional government in regions where people decide in a referendum to support it and where predominantly unitary local government is established. A forthcoming White Paper will set out the Government's proposals for regional government in detail, including the specific functions that might be undertaken by regionally elected assemblies.

4.53 If directly elected assemblies are established it is envisaged that they, as democratically accountable bodies, would take over the regional planning role. We do not propose to consider in detail in this consultation document what their role might be. In the meantime, we propose that the Secretary of State should continue to issue the regional strategy in its final form.

National planning policy

4.54 National policies are principally set out in 25 Planning Policy Guidance notes (PPGs) and 15 Mineral Planning Guidance notes (MPGs). In addition, there are numerous circulars, policy statements, good practice guidances, advice on procedures and other material, such as cross-references to other relevant policies.

4.55 National planning policies are an essential way for the Government to achieve its objectives for housing, transport, urban regeneration, the countryside and a range of other policy areas. Planning authorities must take national policy into account when preparing local plans or regional planning policy. It is also a 'material consideration' in making development control decisions. It helps to ensure consistency in the application of planning policies and enables the Government to implement the land use aspects of international obligations and European Directives.

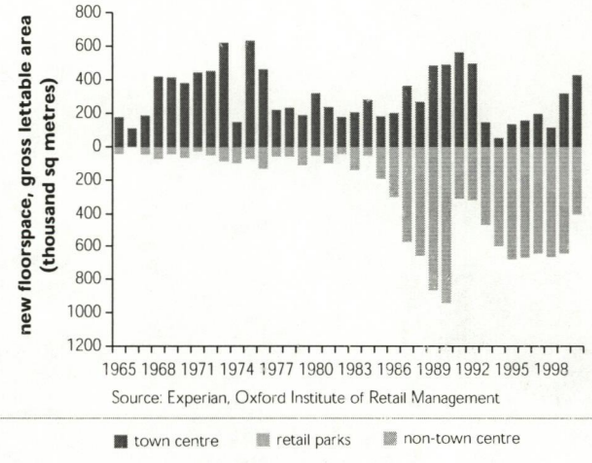
Current National Planning Policy Guidance Notes

PPG1	General Policy and Principles
PPG2	Green Belts
PPG3	Housing
PPG4	Industrial and Commercial Development and Small Firms
PPG5	Simplified Planning Zones
PPG6	Town Centres and Retail Development
PPG7	The Countryside: environmental quality and economic and social development
PPG8	Telecommunications
PPG9	Nature Conservation
PPG10	Planning and Waste Management
PPG11	Regional Planning
PPG12	Development Plans
PPG13	Transport
PPG14	Development on Unstable Land
PPG15	Planning and the Historic Environment
PPG16	Archaeology and Planning
PPG17	Sport and Recreation
PPG18	Enforcing Planning Control
PPG19	Outdoor Advertisement Control
PPG20	Coastal Planning
PPG21	Tourism
PPG22	Renewable Energy
PPG23	Planning and Pollution Control
PPG24	Planning and Noise
PPG25	Development and Flood Risk

4.56 Our planning policies have generally proved a success. For example, national targets for recycling land have reduced reliance on greenfield development and encouraged urban regeneration. National guidance on out of town shopping has contributed to the regeneration of our town centres (see figure 2). Our best landscapes have enjoyed the highest protection as National Parks and Areas of Outstanding Natural Beauty.

figure 2: New retail floorspace in town centres and out of town: 1965-2000

United Kingdom



Source: Experian, Oxford Institute of Retail Management

4.57 However, there is far too great a volume of national planning policy – PPGs on their own run to a total of 852 pages. The sheer amount of guidance imposes a considerable burden on the planning system and reduces its effectiveness as a means of communicating national policy priorities.

4.58 We think that Government is prescribing too much at the national level – the extent of national guidance and the degree of detail in some of it serves only to stifle regional and local flexibility. Furthermore:

- much guidance is insufficiently focused with little differentiation between statements of policy and advice on process and best practice;
- the guidance is too prescriptive. Consistency in application of national guidance is valuable but too much prescription does not allow for local circumstance. Some planning policies may be better made at regional or local level, rather than set nationally;

Porlock Bay in Exmoor National Park – a treasured landscape, a special place – photograph courtesy of Exmoor National Park

- the guidance is of uncertain status. It can be a "material consideration" when a planning application is assessed and may or may not be adequately reflected in plans and decisions at a regional and local level;

- whilst the planning system has been overburdened with national policy guidance, there has been a failure historically to provide sufficient guidance on the Government's policies for delivering the country's major infrastructure needs.

A new approach

4.59 We intend that national planning policy should concentrate on the important policy issues that need to be resolved at national level and leave to regional or local level those matters that can better be expressed at those levels. The overriding need is to set out our national policy principles clearly and not cloud them with ancillary material and detailed instruction about how policies are to be delivered.

4.60 To that end, we propose to:

- review all PPGs and MPGs. We will ask whether they are all needed. Our aim is to seek much greater clarity in the expression of planning policies and to describe them much more in terms of objectives and outcomes to be achieved;

- separate policy guidance from practical implementation making clear the distinction between national *policy* which should be followed and *advice* which can be interpreted more flexibly. A model for our new approach will be PPG3, planning guidance on housing, which is supplemented by five good practice guides;

- issue national statements about our major infrastructure needs so that we set a clear policy framework for investment decisions which have national significance (see paragraph 6.4). An example is our intention to make a clear policy statement on the need for additional airport capacity.

4.61 To commence our evaluation of the delivery of national planning objectives, we propose to focus on the following PPGs:

- PPG1 which is the headline guidance for the planning system;

- PPG4 on Industrial and Commercial Development and Small Firms which needs to be updated;

- PPG6 Town centres and Retail Development where policy needs to be more clearly expressed;

- PPG 7 about the Countryside;

- PPGs 15 and 16 on the Historic Environment and Archaeology, following the review of policy on the historic environment; and

- PPG5 on Simplified Planning Zones which we expect to withdraw. There will need to be new guidance in respect of our proposed new business zones (see para 5.36).

4.62 We will also review MPG1 on the headline guidance for mineral working and restoration. To the extent that further material is needed, the remaining MPGs would then become technical or system notes on specific minerals, environmental mitigation and minerals legislation.

4.63 We propose to timetable these reviews over the next two years so that our core policies will be fit for purpose when our new Local Development Frameworks are introduced following legislation. In the meantime, we would expect local planning authorities to continue to implement fully the provisions of existing PPGs.

chapter five

A fundamental change in development control

5.1 Development control is the process by which decisions are made on applications to develop land or buildings or to change their use. This is the point at which people are most likely to encounter the planning system.

5.2 A system for regulating development in the public interest is undoubtedly needed. But the present system of development control is not customer-friendly and is not well understood.

5.3 Not only is the speed of processing planning applications often very slow, it is also highly variable between local authorities with a particular impact on business. Business applicants also complain that the planning system is insufficiently responsive to their needs. In particular, they are concerned that the slow pace of decision-making shows insufficient appreciation of the impact of both the timing and nature of planning decisions on investment decisions. Communities are equally affected by the uncertainty arising from delays in making planning decisions.

5.4 We need to look at the system afresh. We want a fundamental change in performance, a system that:

- 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 community.

5.5 Our proposals to meet these objectives are set out below. We propose 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 masterplanning to improve the quality of development;
- promote better community involvement by offering community groups advice on planning;
- introduce delivery contracts for planning for major developments;
- introduce new 'business zones' where no planning permission is required for certain forms of development; and
- seek better and tougher enforcement against those who evade planning requirements.

Improving customer service

5.6 Most people only have limited experience of the planning system. They may encounter it because they wish to start up or expand a business, extend their house or because they are consulted on a planning application submitted by someone else which may affect their property. Whichever is the case, for many people and small businesses, the development control process is unfamiliar. We have got to make it much more understandable, more service-orientated and responsive to customers.

The user-friendly checklist

5.7 Because people find the planning system complex and hard to understand, too many planning applications are poor in quality and incomplete. This slows down the processing of applications and often leads to frustration with the process. One local authority estimates that around 30% of the applications it receives are deficient in that they contain insufficient information to allow a decision to be made.

5.8 Applicants need much better guidance about how to prepare and submit a planning application so that it can be processed quickly and efficiently. We propose that local authorities should publish a user-friendly checklist of the information needed in an application. It should explain in plain English what the applicant is expected to do and the information they should provide. In return, the local authority should state how the application will be processed and the service they will offer. We propose to work with the Local Government Association to develop a model checklist that can be used or adapted by local authorities.

Pre-application discussion

5.9 The checklist will help to improve the quality of applications and the information needed to support them. We also want to encourage pre-application discussions between applicants and local authorities. These can frequently help to guide applicants through the process, clarify what is required and help them formulate acceptable proposals, particularly for larger schemes. This can be of particular help to small business and individuals who may find the planning process difficult to understand.

What a model checklist might contain

- name of applicant or their agent
- signed and dated application form
- signed and dated certificate of ownership
- site identification plan identifying the site for development and any other land in an applicant's ownership or control
- a clear statement of what is proposed including its design, materials, impact, accessibility and environmental effects
- clear plans of the proposed development at a suitable scale and in sufficient detail to allow the proposal to be assessed
- a statement of planning policies in the Local Development Framework which refer and the development's compliance with them
- a statement of the action plan policies or land use designations that apply and the development's compliance with them
- a copy of the notice served on the owner if this is different from the applicant
- a statement of what consultation has been carried out in conformity with the Statement of Community Involvement and the originals of all correspondence with anyone affected by the proposed development who has been consulted
- a statement of consultation with any statutory and non-statutory consultees and their response
- reasons in support of the application

5.10 We recognise that pre-application discussions can represent a significant drain on authorities' resources. The Local Government White Paper announces our intention to enable local authorities to charge for most discretionary activities. This will enable local authorities to charge for pre-application advice, if they wish. In setting fees for pre-application discussions, local authorities will need to ensure that they are not set at such a level as to discourage applicants from seeking advice which might improve applications, thereby lessening the burden on the local authority later in the planning process.

Customer care

5.11 Applicants sometimes complain that their applications disappear into a black hole and they are not kept informed of progress. We expect all customers of the planning service to be able to keep track of the progress of their application. Local authorities should identify a nominated officer so that applicants know who to turn to for advice and guidance. For larger schemes, we have recommended use of a project approach (see para 5.25).

E-planning

5.12 We must make sure that the local planning department is user-friendly and orientated towards customer service. Almost 40% of households now have internet access and electronic technology has a huge potential to make the planning system more transparent and accessible, more responsive and more efficient.

5.13 The Government has given over £6m backing to a new project, the Planning Portal, which will provide publicly available information and advice on the planning system and allow greater electronic access to national, regional and local planning policies. It will soon be possible to make applications for planning permission and planning appeals on-line. The system will unlock major efficiency gains and will also allow people to track the progress of individual applications.

5.14 Some authorities are well down the road but others have a lot to do to meet the Government's 2005 target for electronic provision of planning services. We are talking to local authorities about making the investment and operational changes and will shortly publish good practice guidance for local authorities on ICT and planning.

One stop shop

5.15 At the moment, it is quite possible that more than one consent regime may apply to a single development. For example, alterations affecting a listed building may need planning permission and listed building consent. This can be very confusing for people and time-consuming both for the applicant and those dealing with the applications. We need to make the process simpler and more customer friendly.

5.16 We will move quickly to standardise application and administration procedures under different consent regimes. We will encourage local authorities to provide a single application point for such consents. We will also continue to support the development of Infoshop, a computer-based package to deliver a one-stop shop for a range of local authority services. We propose to initiate a review of the case for integrating the present array of controls into a single consent regime.

Parallel consents with pollution control authorisations

5.17 For development with potential for polluting emissions, such as waste management facilities and some industrial plants, separate consents are required from two different organisations – a planning authority on land use matters and from the Environment Agency on pollution control matters such as control of emissions to air, water and land. We think that such developments can be handled more efficiently and both the developer and the community can benefit from greater certainty if those proposing to develop such facilities apply for pollution control authorisation and planning permission at the same time.

5.18 Consequently, the Environment Agency has been working with the Local Government Association and the Confederation of British Industry to produce a concordat, aimed at synchronising the two processes and reducing delays and uncertainty. A consultation exercise on the proposals will be carried out shortly.

Faster delivery

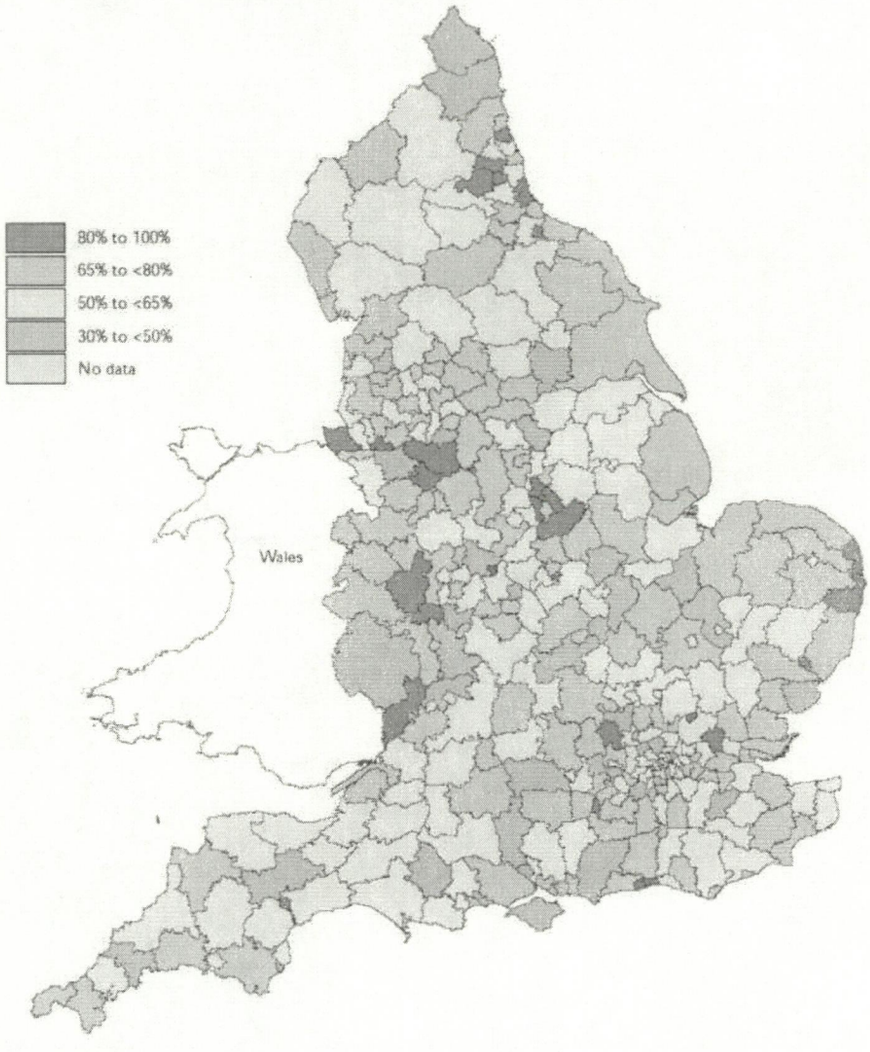
5.19 One of our objectives is to deliver planning consents in a predictable and transparent way. Slow planning processes can be a source of frustration for all planning applicants and may have real economic consequences for business. We need to ensure that better service to the customer is matched by an increase in the speed with which local authorities deal with planning applications.

New targets

5.20 Best Value imposes a duty on local authorities of continuous improvement in the delivery of their services. It requires regular fundamental review of functions and implementation of changes arising from those reviews, with the aim of providing better customer focus. Performance achievement is measured against a set of national indicators.

5.21 The current target is for local authorities to determine 80% of applications within 8 weeks. We are concerned that local authorities are struggling to meet this target. Average local performance is around 65% and has been for many years; only 30 authorities meet the current target; 45 authorities decide less than 50% of applications in 8 weeks (see figure 3).

figure 3:
Local authority performance: 2ooo/o1 Percentage of decisions made within 8 weeks



5.22 We recognise that the current target is unsatisfactory. It does not differentiate between applications which may have a big local impact and those that will have minimal effect. It may even encourage authorities to give priority to simpler applications to the **detriment** of those that are more complex.

5.23 We have set new handling targets for 2002/03 which are:

60% of major commercial and industrial applications to be determined in 13 weeks;

65% of minor commercial and industrial applications to be determined in 8 weeks;

80% of all other applications to be determined in 8 weeks.

5.24 Current achievement is well below these targets (see figures 4 and 5) These targets will be monitored through the Best Value regime and will be one of the principal ways in which the performance of local planning authorities will be judged. We say more about Best Value in para 6.43.

figure 4: Major commercial and industrial decisions, 2000/01

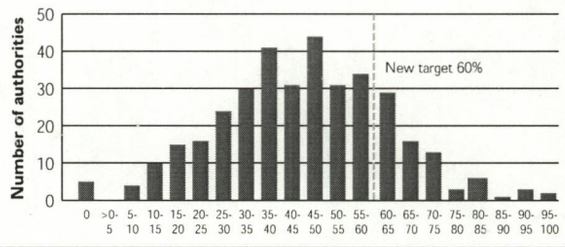
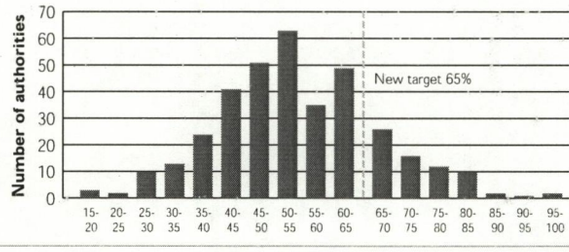


figure 5: Minor commercial and industrial decisions, 2000/01



Delivery contracts

5.25 While our new targets should give much greater certainty to most commercial and industrial applicants for planning permission, the bigger development proposals will inevitably take longer to consider. We need a framework for ensuring that larger applications are delivered to clearly agreed timetables.

5.26 Business organisations tell us that business would be prepared to waive the right to appeal against non-determination of an application if, in exchange, they had greater predictability about when a decision will be made and were kept informed about its progress. We propose that, for the bigger applications, local authorities and developers should at the outset agree a timetable for delivering a decision. This would be set out in a contract or undertaking reached between the local authority and the developer.

5.27 We will work with business organisations and local government to develop a model undertaking. We would expect that it would include an agreed project plan with a project manager. It would also take account of the potential input of consultees and any need to agree a planning obligation (see box). The contract would need to be open to variation by mutual agreement to address unforeseen delays.

5.28 There would need to be sanctions if an application was not decided by the agreed date without good reason. We propose that in such an event, if agreement cannot be reached on a revised delivery date, either party should be able to refer the application to the Planning Inspectorate and that it should be automatically handled on a fast-track basis.

Planning obligations

Planning obligations (or section 106 agreements) are usually contractual agreements reached between a local authority and an applicant to help facilitate a development. They may include a financial contribution covering, for example, the cost of constructing a new site access or to provide a new bus route to serve the development.

An important form of planning obligation routinely used by many local authorities is an agreement to require that a proportion of new residential development should be affordable homes.

Planning obligations have been criticised for being complex, difficult to agree and for delaying the planning process. It has also been alleged that they are agreed behind closed doors and are not sufficiently open to public scrutiny. Our proposal in para 5.59 addresses this point.

We are publishing a companion consultation document with proposals for changing the basis of planning obligations. We think that there is a strong case for allowing local communities to share in the benefits of development and growth. Our proposed new Local Development Framework will set out clearly a local authority's policies towards seeking planning obligations. The consultation document will show how the agreement of planning obligations can be speeded up to complement our other measures to make the planning system more efficient.

Statutory and non-statutory consultees

5.29 There are two classes of expert consultee. Some, like the Environment Agency and English Heritage, must by law be consulted on particular types of applications, and these are statutory consultees. In other cases, consultation with certain bodies is advised, and these are the non-statutory consultees.

5.30 Consultees are important to the planning process because they can contribute expertise which is invaluable to both the applicants and to the local planning authority. Unfortunately, they are also a major source of delay. While planning decisions may be made without necessarily waiting for advice from non-statutory consultees, most planning authorities will not take a decision in the absence of advice from a statutory consultee.

5.31 Many consultees are Government-funded bodies and we regard their performance in responding to requests for comments on planning applications as unacceptable. We recognise, however, that regularly commenting on planning applications can be a drain on consultees' resources. These bodies do not currently prioritise such work, particularly as they are not statutorily required to respond to planning consultations.

5.32 A very effective way of speeding up planning decisions, especially for larger applications, is for the developer to consult a statutory or non-statutory consultee direct before an application is submitted. If developers chose to use this approach then we propose that the statutory consultees should be allowed to charge a fee, subject to provision of a timely and better service.

5.33 We further propose to:

- reduce the number of statutory consultees. There are a wide range bodies that are required to be consulted depending on the nature of the application. We propose that only those bodies whose advice has health and safety implications or which operate another parallel consent regime (such as listed building, playing field or environmental consents) will be given statutory consultee status;

- allow the new list of statutory consultees to charge a fee for their response provided that a substantive response is given in a defined timescale of 21 days. No fee would be chargeable to an authority that needed to pursue with a consultee issues unresolved when an application was submitted;

- impose a statutory responsibility on statutory consultees to respond to consultation requests within a statutory timescale; and

- link future funding to satisfactory performance where statutory or non-statutory consultees are dependent upon Government for financial support, based on new arrangements to monitor performance.

5.34 Some consultees are already identifying low-risk areas and types of development where they can provide standing advice to local authorities. Because they do not provide advice on individual planning applications in these categories, the time needed for consultation is reduced, thereby removing a potential impediment to the decision-making process. We shall ask consultees to build on this approach and see if it can be adopted more widely.

5.35 We do not want to add unnecessarily to the list of consultees. However, given their role in promoting regional economic development, it will be important for Regional Development Agencies to be able to make representations in respect of major investment proposals likely to have an economic significance that extends to the region or sub-region. The RDAs themselves do not expect there to be more than a handful of cases in each region each year.

Business planning zones

5.36 We need to ensure that the planning system is capable of meeting the needs of fast-moving businesses such as our leading-edge technology companies. Planning delays can prove a significant obstacle to the development of such companies. We propose to allow local authorities, working in the context of a need identified in regional economic and planning strategies, to create business planning zones where no planning consent will be necessary for development, if it is in accordance with tightly defined parameters.

5.37 We intend such zones to be specific to types of business that have a low impact on the surrounding area, such as clusters of high-tech industry. Low impact means that they would not add significantly to high local housing demand, have large infrastructure requirements or require special environmental precautions to be taken. This would not be free-for-all development. Criteria would be set to ensure that the quality of development is of the highest standard in order to ensure that the zones remain attractive to leading-edge companies and are acceptable to their local communities.

5.38 We would expect the need for most business zones to be identified in regional strategies and to be planned by local authorities in partnership with universities, RDAs and leading edge companies but we think that any of the partners should be able to initiate proposals for the designation of a business zone. We propose that every region should have at least one such zone to promote technology companies. It is equally possible that an existing business area could apply to have special business zone status. We should welcome views on the concept of business zones and the safeguards that might be necessary to ensure that they deliver quality development.

Masterplanning larger developments

5.39 Large sites can take time to plan properly. They are also highly significant in relation to our objectives to involve local people in planning the future of their community and to improve the quality of development. Masterplanning developments can help speed up the planning process by indicating clearly the nature, type and design of development expected on a particular site or area.

5.40 Where a site is specifically identified as a major development opportunity by a local planning authority, the expectation will be that there will be an action plan drawn up for it under the Local Development Framework. At the moment, the principle of development may be explored in pre-application discussions or by the submission of an outline application. Neither option is very attractive because there is no clear masterplan or design brief with which the community can be engaged. All too often the result is that local authorities receive an application for outline planning permission but with no guarantee that the concept approved will actually be delivered.

5.41 The community, developers and the local authority all need a safeguard in these circumstances. Our solution is to engineer a way in which they can all work together on a development proposal.

5.42 We would like views on a proposal to introduce a new arrangement to replace outline consents whereby a developer can seek a certificate from a local authority that it has agreement for a defined period to work up a detailed scheme against parameters determined in agreement with the local authority. The certificate might cover, for example, design, affordable housing provision and community participation. Any resulting formal application would subsequently be submitted in detail rather than in outline form and the existence of a certificate – and compliance with its requirements – would weigh heavily in the final determination of planning consent. Alternatively, the certificate would automatically lapse on a predetermined date if no application has been made. In appropriate cases, the masterplan might be formally recognised as a local action plan in the Local Development Framework.

Improving the effectiveness of the system

Repeated applications

Some developers use repeated applications to wear down opposition to undesirable developments. This is damaging to people's confidence in the planning process and inefficient. We propose that once a planning application has been refused and not appealed, or appealed and refused, no substantially similar planning application for the same site should be accepted unless there is a material change in circumstances, such as a relevant new policy in the Local Development Framework.

Twin tracking

It is not unusual for housebuilders and other larger developers to twin-track identical applications so that one can be submitted to appeal once the statutory period for determination of an application has been passed. It is a negotiating ploy and wastes resources. The proposed new delivery contracts (see para 5.25) would make this practice unnecessary. We propose in any event to supplement authorities' current powers so that they can refuse to accept a substantially similar application for the same site if a previous one is still being considered by them or is at appeal or has been called-in.

Time limited consents

Permissions and consents normally last for five years and are often automatically renewed. We think that five years is too long and that unimplemented consents effectively prevent the use of potentially developable land for other purposes. We intend to limit permissions and consents to three years and they should automatically lapse thereafter. Applications to renew permission and consents will need to be considered afresh in the same way as completely new applications and tested against the policies and priorities prevailing at the time.

Use of compulsory purchase powers for land assembly

The successful implementation of major planning proposals, whether for new infrastructure, the re-use of brownfield sites or the regeneration of run down areas, depends on the timely assembly of land. This, in turn, requires a simple and speedy method of acquiring the necessary land, by compulsion if necessary, with fair recompense to those from whom the land is taken.

We have launched a comprehensive Procedure Manual, to help acquiring bodies to navigate their way quickly and accurately through the whole compulsory purchase process and we have published new public information booklets to better inform those affected by orders.

We are publishing a consultation document setting out our proposals for major changes to the way that the compulsory purchase and compensation system operates. Our objective is to make the system simpler, fairer and quicker. We will:

- simplify the law, consolidating the complex mass of case law;
- clarify the powers available for acquiring land for planning and regeneration purposes;
- speed up the confirmation process;
- ensure that implementation follows promptly once an order is confirmed; and
- provide a fairer basis for assessing compensation.

Entering the appeals process

5.43 One of the pinch points at which applicants can experience delay in the planning system is when they decide to exercise their right of appeal either against a decision by a local planning authority or because their application has not yet been determined. We have two proposals to make:

- in the case of appeal against non-determination, a planning inspector should pick up the local authority's case file and take over jurisdiction. This means that work done to consider the application is not wasted but transferred. If the application is determined before the inspector starts work then that decision would stand, unless appealed;
- both local communities and developers need certainty about whether an appeal is to be made. At the moment, the applicant has 6 months to decide whether to lodge an appeal. We think this is too long and we propose to reduce this period to 3 months.

Clearer scope

5.44 One of the questions we have asked is whether we can streamline the planning system by ensuring that planning applications do not have to be submitted unnecessarily. There are two measures that are available to achieve this objective – permitted development rights and use classes.

Permitted development rights

5.45 The General Permitted Development Order (GPDO) enables certain kinds of development to proceed without the need for a planning application. For example, many home extensions do not require a planning application. By establishing a threshold below which applications are unnecessary, permitted development rights significantly reduce the regulatory burden of the planning system.

5.46 The GPDO is widely regarded as being difficult to understand. Lack of understanding of what is, and what is not, permitted development leads to queries about whether particular developments require planning permission.

5.47 We recognise that any relaxation of permitted development rights raises difficult issues: even small structures or alterations can have a real impact on neighbouring properties and the way people feel about their homes and their neighbourhood. For this reason, we are not proposing any significant change in the national regime for permitted development rights but we intend to update the GPDO and make it more comprehensible.

5.48 At present, permitted development rights are determined nationally. One option is to allow local flexibility in the definition of permitted development rights. Local orders could help authorities to be proactive in encouraging development by cutting red tape for developers: they are already able to make permitted development rights more restrictive in, for example, conservation areas.

5.49 On the other hand, local permitted development rights could lead to inconsistent arrangements between and within local authority areas and become a source of confusion. We would welcome your views on whether the introduction of local permitted development rights would help or hinder efficient planning.

Use Classes

5.50 Development control extends not only to new building work but also to changes in use of buildings and other land. However, certain uses are so similar in land-use planning terms – for example, noise, traffic, visual appearance and parking – that there is no obvious reason why a planning permission for change of use should be required. The Use Classes Order (UCO) excludes from planning control any change of use where both existing and proposed uses fall within one class. The GPDO provides some additional flexibility to move between classes without making a planning application.

5.51 We believe that the UCO should be constructed in a way that allows the maximum possible deregulation consistent with delivering planning policy objectives. We have recently published research into the operation of the UCO and will issue a consultation paper early next year seeking views on a range of possible changes.

Greater access for the community

5.52 A key test of the planning system is the extent to which it is trusted by the community. Its workings have to be honest and transparent and allow access by people who want to engage in the process of planning the future of their community. That trust depends not only on the formality or length of the process but on whether it allows the community's influence to be felt.

Consultation

5.53 Consultation on planning applications has a vital role to play in giving the community an opportunity to express their views on individual development proposals. Current arrangements fail to provide adequately for this.

5.54 We believe that, as far as possible, consultation should take place and issues should be resolved before an application is submitted. Consultation by a local authority on an application can account for a significant proportion of the time taken to determine an application. Advance consultation not only potentially speeds up the decision process but helps to build consensus and reduce suspicion about the proposed development.

5.55 We have considered whether we can shift the duty of undertaking effective consultation solely to the applicant. Our view is that this would impose too much of a burden on individuals and small businesses, who may find it difficult to carry out a consultation unassisted. However, we strongly believe that, with larger and more complex proposals, developers ought to be engaging with local communities to the greatest extent possible in advance of submitting a planning application, in line with the proposals for Statements of Community Involvement set out in para 4.22.

5.56 There remains an important distinction between consultation with near neighbours and giving the wider population information about planning proposals in their area. So we do not propose to withdraw the requirement to list planning applications weekly in local newspapers. New technology may offer the opportunity to dispense with newspaper advertisements in due course, though these may still have a place for major development. The requirement will need to be reviewed in the future, as local authorities routinely use e-business for accepting and processing planning applications.

Community advocacy: Planning Aid

5.57 Individuals and community groups often feel in need of independent and impartial advice about how to engage effectively with the planning process and lack the resources to be able to use planning consultants. They want help to develop planning advocacy skills and they need access to better training and planning advisory services. We propose to help.

Community planning event, Reydon, Suffolk. Photograph courtesy of John Thompson & Partners

5.58 Planning Aid, a network of 600 planners who give their services voluntarily, can be one source of help, particularly for individuals with a planning problem. We fully support the aims of Planning Aid and we are working with the RTPI on ways in which the service can be expanded and, subject to the introduction of necessary statutory powers, better funded.

Open committees

5.59 Almost two thirds of local authorities regularly provide the opportunity for the public to speak at planning committee meetings. Discussions of planning applications by local authority planning committees should, in our view, always be held in public. We look to local authorities to ensure that their new constitutions, which they are bringing forward under the Local Government Act 2000, provide a transparent framework for making decisions on planning applications, as well as other issues. We propose that Best Value inspectors should take the failure of local planning authorities to open up their meetings to public participation into account when considering the performance of local authorities.

Giving reasons

5.60 People need to know why a planning application has been agreed as well as why it has been refused. We propose that local authorities should always give reasons for their decision to approve a planning application as they already do when they refuse one. This should include relevant reference to plan policies. The Secretary of State will follow the same principle in respect of called in planning applications (see para 6.18).

Access to planning papers

5.61 One of the aspects of the planning system which is repeatedly criticised by community groups is the level of charges levied by local authorities for copies of plans, committee papers and planning applications. The cumulative cost of these can be significant in a community organisation's budget over the year.

5.62 We accept that local authorities should charge for any hard copies they produce but these charges must be reasonable. We intend that copies of plans and planning applications received electronically should routinely be entered on the local authority website (in due course, as part of the Planning Portal project (see para 5.13)) and should be available to download free. We strongly encourage planning authorities to have a publicly available terminal in planning departments in order to access such information.

5.63 In addition, we encourage local authorities to use other means to make documents available at low or no cost. Public libraries usually have publicly available web access with trained staff who can help those unfamiliar with internet use who can help to access planning information; copies of documents relating to significant planning applications might also be made available in public libraries for inspection or for free overnight loan.

Planning obligations

5.64 Many planning consents for larger developments attract planning obligations (see box on page 36) Many people feel that they are negotiated behind closed doors, they are subsequently not well publicised and they are insufficiently transparent.

5.65 A separate consultation document is being published which considers wider reforms to the process of delivering planning obligations. We intend, as part of that initiative, to change the law to make it a requirement that information on planning agreements and undertakings is entered on the planning register. At the moment this is done as a matter of good practice but we will ensure that all such agreements are openly available to public inspection so that councils can be better held accountable for them.

Information about appeals

5.66 If people are to participate fully in the planning process, they need to know that appeals have been lodged and that inquiries may take place. Less publicity is currently required for appeals and called in applications than for planning applications. We will review the requirement to publicise planning appeals and called in applications with the aim of encouraging greater participation.

Understanding diversity

Planners working on the ground often have a good appreciation of the impact of planning policies on the needs of different groups in the community, including ethnic and religious minorities, the elderly and the disabled.

At all levels of the planning system, special attention is paid to the elderly and disabled people whose needs are particularly apparent. There may be other groups that have been less engaged in considering whether there are planning policies that impinge particularly on them.

We invite black, ethnic minority and other groups to respond to this consultation and let us know whether there are aspects of the planning system considered in this Green Paper on which they have a particular viewpoint.

Better enforcement

5.67 We are creating a simpler faster development control system. We must also ensure that it is a system which people trust. Deliberate evasion or abuse of the planning system is unfair to others and brings the system into disrepute. We need more effective sanctions against those trying to cheat the system.

5.68 The current enforcement system is unduly complex and cumbersome. Whilst minor breaches of planning regulations can often be resolved through negotiation and persuasion without the need for formal enforcement action, it can be difficult and expensive for local authorities to take effective action against those deliberately evading the system.

5.69 There are several issues:

- developing without planning consent or in breach of that consent is not an offence. There is a case for reviewing the law;
- existing sanctions do not act as a deterrent and they may be insignificant in proportion to the value of the unauthorised development or the income derived from it; and
- those seeking to evade the planning system may appeal to the Secretary of State against enforcement notices in order to delay action being taken against unauthorised development.

5.70 Planning enforcement is a complex subject that raises difficult issues. We intend to review current arrangements with the intention of introducing simpler procedures. As part of this process we will look again at whether there should be punitive charges for retrospective applications and whether a deliberate breach of planning regulation should constitute an offence immediately pursuable through the courts.

chapter six

Fundamental change at national, regional and local level

6.1 Chapter 4 of this consultation document deals with reforming the plan-based system. Chapter 5 considers the changes needed to speed up development control and make it more customer responsive. This chapter sets out what Government will do to improve our own performance within the planning system and goes on to look specifically at how local government might be better equipped to deliver.

Delivering the national role

6.2 The Government has several roles within the planning system:

- we set national planning policy and issue guidance and advice on planning policy and procedures;
- we operate the appeals system through the Planning Inspectorate which reports to the Secretary of State for Transport, Local Government and the Regions; and
- the Secretary of State calls in a small number of planning applications each year for his own decision and recovers a similar number which have been appealed.

We need to improve our performance across all these areas and, in particular, provide a faster service.

National planning guidance

6.3 As we have said in chapter 4, we propose to review the whole body of national planning guidance and particularly the PPG series so that it concentrates on the key planning policies that should be determined at the national level.

6.4 We will also make clear statements of policy on the development of major infrastructure. A separate consultation document is being issued on new Parliamentary procedures for planning of major infrastructure.

Major infrastructure projects

Investment in major infrastructure, like airports and reservoirs, is essential to continued economic growth. The process for making planning decisions about these projects takes too long, is expensive and is highly adversarial. We want to find a better way, increasing the speed with which decisions are made whilst safeguarding quality of decision making, public consultation and involvement.

In July 2001, we announced our proposals for a new approach:

- there will be clear statements of Government policy setting out our priorities for investment;
- a stronger regional framework for identifying investment needs and strategies;
- robust arrangements for prior public consultation;
- new Parliamentary procedures for approving projects in principle before detailed aspects are considered at a public inquiry;
- improved public inquiry procedures;
- improved arrangements for compulsory purchase and compensation.

We are issuing a consultation document setting out our proposals for introducing the new Parliamentary procedures that will be associated with this.

Some of these new arrangements will require primary legislation, which we will introduce when Parliamentary time permits.

Crown Development

6.5 In general, developments undertaken by or on behalf of the Crown are not subject to control by local planning authorities. This is in accordance with the normal common law principle of Crown immunity. We remain committed to the principle of removing Crown immunity from planning control, subject to certain safeguards relating to the national interest, such as security and defence. We will introduce legislation when an opportunity arises.

6.6 Our proposals for major infrastructure projects (see box) will provide for Crown development proposals to be subject to those procedures, where appropriate. Highways Act procedures will continue to apply for trunk road development.

Resolving disputes

6.7 Up to 16,000 planning applications refused by local planning authorities or not determined by them within the statutory 8 week deadline will be appealed to the Secretary of State this year. Most appeals are considered using written representations. More than 20% are subject to hearings, an informal process which is increasingly popular and a good alternative to the more legalistic inquiry process. Only 6% of appeals go to public inquiry.

Mediation

No one doubts the need for an appeals system and there is confidence in the Planning Inspectorate as an organisation which secures fair and impartial planning decisions. But there is equally a feeling that many planning disputes should never enter the appeals system and could be resolved if an alternative means of resolving them was available.

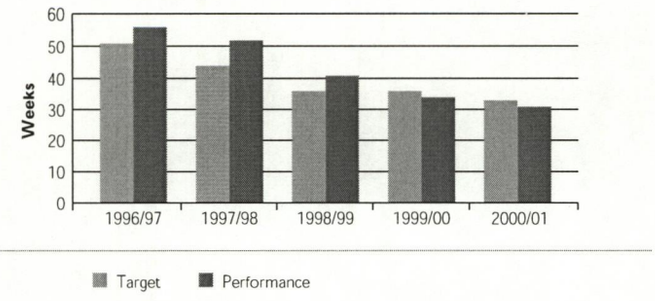
Mediation is a simple, constructive and user-friendly form of dispute resolution. It helps the parties reach their own agreement rather than seeking to make an independent decision based on the evidence presented. We have published the results of research which shows that it may have wider application in:

- resolving objections between neighbours where an objection has been made to small scale household development;
- enforcement where there appears to be scope for a negotiated solution; and
- narrowing down the areas of disagreement in large planning cases, especially those going to public inquiry.

We will undertake further work on mediation and consider how a mediation service might be funded and appropriately staffed.

6.8 Concern has been expressed at the length of time that it can take for appeals to be resolved. We are determined that the appeals process should not cause unnecessary delay. Each year, the Planning Inspectorate is set targets by Ministers for its work in handling planning appeals and for its other responsibilities. We have progressively tightened the Inspectorate's targets and given it more resources to increase the number of inspectors: in consequence, its performance has dramatically improved. We are working with the Inspectorate to consider ways in which its targets might be improved still further without compromising quality.

figure 6: Performance of Planning Inspectorate against target of 80% of planning appeals by inquiries to be decided in (weeks): England



Time taken measured from the date at which all relevant information is received from the appellant to the date when the decision is issued, including the time taken by the inquiry.

Called in and recovered appeal cases

6.9 The vast majority of planning applications are decided by local authorities. Similarly, the vast majority of appeals are determined by planning inspectors appointed by the Secretary of State. About 300 cases a year are exceptionally 'called in' applications or 'recovered' appeals for the Secretary of State's decision. These are cases where policy issues of more than local importance are involved.

6.10 Local authorities are also required to notify certain types of planning application to the Secretary of State so that he can decide whether to call them in. This includes those where the local planning authority proposes to grant permission that departs from the current development plan (departures) and applications for large housing developments on greenfield sites.

6.11 Once the Secretary of State has been notified, permission or consent cannot be granted by a local authority until he has decided whether or not to call in the application. In certain cases, he can issue a holding direction to give more time to make the decision. Although the Government tries to use such directions sparingly, a large number of them are issued causing inevitable delays. More than 300 holding directions were issued last year. Waiting to find out whether an application is to be called in can cause considerable uncertainty and anxiety for both developers and communities.

6.12 Currently there is a range of targets for deciding whether or not to call in an application. The most important one is that 80% of cases should be dealt with within the statutory deadline, usually three weeks. Where a holding direction has to be used, 80% of these cases should be dealt with within four weeks of issuing the direction.

6.13 Generally, these targets are achieved. For example, in relation to departures, 80% of decisions about whether to call in an application were reached in three weeks. Where holding directions were issued, 91% were processed in the four week timescale. But there are areas where the target has not been met. For example, only 65% of retail cases were decided within the three week timescale. We shall focus on such cases in order to improve our overall performance.

6.14 There can be further delays once Ministers have decided to call in an application or recover an appeal. Before the Secretary of State makes the decision, there is usually a public inquiry. Business rightly complains about the time it takes for call-ins and recovered appeals to be processed and the uncertainty about when decisions will be announced.

6.15 The Government has targets for dealing with call-ins and recovered appeals. Current targets are to decide 80% of call-ins within 13 weeks after receipt of the inspector's report and all of them within 20 weeks. For recovered appeals, the targets are 80% in 8 weeks and all in 13 weeks. These targets are not being met.

figure 7: Government performance against target: Called-in applications 2000/01

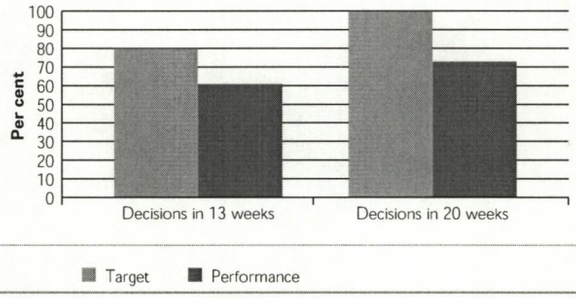
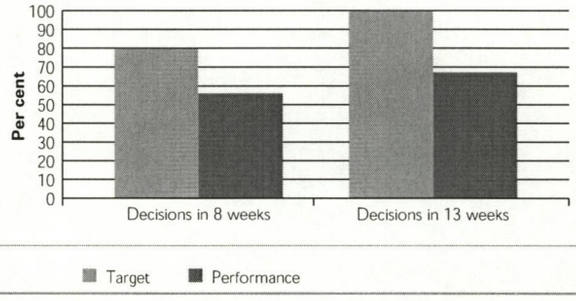


figure 8: Government performance against target: Recovered appeals 2000/01



6.16 Some call-in decisions will always take a significant length of time to decide. These include many of the biggest and most controversial developments proposed anywhere in the country.

6.17 We have set ourselves the target of cutting in half the average time taken from the close of the inquiry to issue of the decision to the applicant. Following a comprehensive review by independent consultants of Government Office, Planning Inspectorate and DTLR procedures, we are going to establish new management arrangements to deal with these cases. This will deliver dramatic improvements in the way in which we handle call-ins and recovered appeals. The Government will also consider, and would welcome views about whether we should set ourselves statutory targets for delivering decisions on call-ins and recovered appeals, subject to exception arrangements for the most difficult cases.

6.18 At the moment, we state the reasons for calling in a planning application for the Secretary of State's decision and place on the DTLR planning web site both copies of letters calling in applications and notifying applicants of Ministers' final decision. We have not given reasons for not calling in a planning application. In the interests of greater transparency, we will now, as from today, give reasons for not calling in individual cases and to put copies of these letters on the Department's web site.

Third Party Rights of Appeal

6.19 Some people believe that there should be a right for third parties to appeal to the Secretary of State against a decision by a local authority to grant planning permission. 'Third parties' in this context means people who have views about a planning application, whether or not they are directly affected by it. It is argued that this would give people who feel disadvantaged by a planning approval a comparable form of redress to those whose planning application is rejected but who have a right of appeal.

6.20 The contrary viewpoint is that such a right would not be consistent with our democratically accountable system of planning. Elected councillors represent their communities – they must take account of the views of local people on planning matters before decisions are made and justify their decisions subsequently to their electorate.

6.21 Proponents of a third party right of appeal themselves recognise that it could not be unlimited because there must be some mechanism to prevent frivolous appeals. The situations in which advocates of third party rights suggest that they might be exercisable are as follows:

- departures from the plan. The difficulty with this proposal is that a considerable number of development proposals could contain minor departures from the detail of a plan or, under our new proposals, from the Local Development Framework. In practice, proponents of third party rights have in mind only significant departures. But defining what is and is not 'significant' is not straightforward and is ultimately a matter of judgement exercised by local authorities. We believe that the end result of such an approach would be a stream of court

cases debating which approvals can be appealed. This would make planning more uncertain, legalistic and confrontational. This is precisely what we are seeking to avoid and we therefore do not believe that the planning system can operate efficiently in such a climate;

- major projects. This links with a separate proposal that third party rights should be exercisable to challenge projects that require an Environmental Impact Assessment. These are normally larger projects. The problem with either proposal is that it would further delay investment in major developments that will already have received particularly thorough and careful scrutiny by a local planning authority following consultation with local people. We are separately proposing in a companion consultation document new Parliamentary procedures for planning for major infrastructure projects of national significance; (see page 49);

- where officers' recommendations to reject an application are overturned by the elected councillors. Again this proposal goes straight to the heart of the democratic process. Elected members must be allowed to reject their officers' advice: it is the councillors, not the officers, who are answerable to their electorate. We are proposing that local authorities should now give reasons for approving a planning application as well as for refusing it (see para 5.60);

- where a local authority grants planning permission to itself. There are around 5,000 cases a year in which local authorities have an interest in land to which they grant planning permission. Sometimes these are town centre sites, often they involve regeneration. Local authorities are very often in the position of taking decisions on issues in which they have dual interests (for example, social services policies may bear directly on residential care provided directly by the authority) and they operate under strict rules to deal with possible conflicts and avoid any impropriety.

6.22 None of these approaches adds up, in our view, to a case for a third party right of appeal. It could add to the costs and uncertainties of planning. We cannot accept that prospect.

6.23 We believe that the right way forward is to make the planning system more accessible and transparent and to strengthen the opportunities for community involvement throughout the process. We have set out our proposals in this consultation document to achieve this objective. In addition, we have explained the safeguard provided by the Secretary of State's powers to call in planning applications for his own decision which is underpinned by statutory requirements to notify him of:

- departures from plans;

- large proposed greenfield housing developments; and

- large retail developments.

Delivery at the regional level

6.24 Our proposals for strengthening delivery at the regional level are set out at paragraphs 4.39-51. We have proposed that the bodies charged with preparing the new Regional Spatial Strategies should be:

- representative of key regional interests – including the Regional Development Agency and representatives of the public, business and voluntary sectors; and

- capable of taking a strategic regional view, addressing, where necessary, difficult regional choices.

We have invited views on what changes might be made to present institutional arrangements to achieve this.

6.25 We have also highlighted the increasing importance of working in partnership to resolve planning issues at the sub-regional level, where necessary.

6.26 It will be particularly important in establishing new administrative arrangements capable of delivering these new roles that key partners and, in particular local authorities, ensure that regional planning activities are adequately funded, building on current arrangements for preparation of Regional Planning Guidance.

Delivering local government's role

6.27 In Chapters 4 and 5 we set out our proposals for improving local authorities' planning performance.

6.28 We recognise that to deliver a fundamental improvement in performance, local authority planning needs to be properly resourced. We will review the fee regime to ensure that it better covers the costs of the service. We will also require local authorities to better account publicly for both the resources they use and their planning performance.

6.29 We share with local authorities a concern about the loss of skilled planners. The planning profession has become less attractive as a career and able planners are increasingly in short supply. We need to improve skills and build the profession. Equally, councillors need to be better trained to undertake the difficult decision-making role that they exercise on Planning Committees.

Local Planning Advisory Service

6.30 There is a big agenda for change set out in this consultation document. We are making fundamental changes to the planning system and we are expecting real improvements in performance from local government. In order to help local authorities deliver, we believe that there is a need for a central advisory service to work with the Best Value Inspectorate. It would help local authorities put in place the sort of changes that will make a real and immediate difference to all users of the planning system, whether individuals, business or community groups.

6.31 Working in partnership with the Local Government Association and business organisations, we propose to establish a Local Planning Advisory Service to help implement changes on the ground.

Better resourcing

6.32 We need to ensure that local government's planning function is properly resourced. Like other local services, planning is supported by national taxpayers through revenue support grant, by business ratepayers and by council taxpayers. In addition, applicants for planning permission pay a fee on a national scale prescribed by Government. This arrangement is designed to strike a balance between the regulation of development in the wider public interest and the wish of the planning applicants to pursue their development proposal.

6.33 The Government has commissioned research on the impact of resourcing on local authority planning performance and how significant this is compared to other factors, such as management, local authority culture, resources available to other stakeholders and training. As part of the 2002 Spending Review, we will be reviewing the amount of money provided to local authorities to help support local services by way of revenue support grant and will address the resourcing needs of the local planning service in that context.

6.34 We propose to carry out a fundamental review of the fee regime. This will consider:

- whether the current ceilings on fees for the biggest applications should be raised;
- whether, and the extent to which, fees tariffs should be determined locally, subject to the safeguard of nationally prescribed ceilings; and
- the scope of activities covered by fees.

We are separately consulting on whether there should be a system of supplementary fees to cover the extra costs of monitoring minerals extraction and landfilling.

6.35 Any increase in fees must be matched by better service. But we know that current fees have already fallen well behind costs. A recent study[4] compared the national planning fee income with costs and found that fees need to be 14% higher to achieve full cost recovery. We will therefore introduce a 14% increase in fee levels from April 2002. This will ensure that fee income, in aggregate across the country, better matches the costs of development control.

Better accounting

6.36 If fees are to be increased to reflect the cost to local authorities of providing the planning service, there must be greater transparency about how much authorities are spending on planning as a whole, and development control functions in particular.

6.37 We intend to require all authorities to account separately for their planning service including income (from grant, council tax and fees) and for their expenditure. We shall expect this information to be aligned with planning performance data so that local electors can judge whether their local planning service is getting its fair share of resources and whether they are getting value for money.

Improving local authority practice

Delegation to officers

To speed up decision-making, authorities should delegate decisions to officers as far as practicable. To encourage this process we have set for 2002/03 a new target of delegation of 90% of decisions to officers, which will be monitored through Best Value.

Committee cycles

It is clearly right that some decisions should be decided by elected members. But this can be a cause of unnecessary delay where committees meet infrequently. Authorities should review their committee cycles to ensure they are consistent with delivering decisions to meet Best Value targets and undertakings about delivery dates. If they are not, the frequency of committees should be increased to ensure that these can be met.

4 'Planning Fees', DTLR 2001, ISBN 185112 515 9

Better skills

6.38 Planning requires specialist skills and expertise. Shortage of properly qualified planners affects authorities' ability to deliver. We need to make planning a more attractive profession and ensure that the skills which planners have the skills to support a customer-focused service.

6.39 We want our reform agenda to change the image and culture of planning by underlining the positive role that it has to play in delivering economic and social change and shaping the future of our communities. We want a more confident and dynamic profession. The planners' professional body, the RTPI, has already launched an Education Commission to undertake a fundamental review of the education, training and certification of planners. We will work with that review and with the Local Government Association (LGA) and the Improvement and Development Agency (IdeA) to develop an action plan to deliver major improvements in the recruitment, retention and training of planners in local authorities.

6.40 Elected members also need to become more expert. In partnership with the RTPI, LGA and IdeA we issued in May 1999 a syllabus for councillor training on planning. In our view, councillors should undergo training before they sit on planning committees and take decisions affecting development in their areas. Like officers, members need to keep their skills up-to-date too. We will review the current training regime to ensure that it is able to deliver this.

Making use of the private sector

6.41 We believe there is considerable scope for local authorities to make use of private sector planners in the provision of planning services. The private sector may, in particular, provide a useful supplementary resource where local authorities are facing application backlogs or peaks of work that would otherwise affect their ability to meet performance targets, or where there is a need to free up in-house resources to focus on larger, more complex applications. Cannock Chase is one authority that has adopted this approach, contracting out minor applications to a private sector planner. We would encourage other local authorities to consider whether there may be benefits to be gained from making use of the private sector in handling planning casework. We will work with the LGA, RICS and the RTPI to develop best practice advice for local authorities considering this.

6.42 Where a local authority's planning services are failing or consistently underperforming, we will consider transferring responsibility for administration of planning applications to private sector contractors (see para 6.45 below).

Best Value

6.43 Best Value imposes a duty of continuous improvement in service delivery on local authorities. It requires regular fundamental review of existing delivery practices and detailed implementation of changes arising from reviews, leading to better customer focus in the service provided. The Local Government White Paper sets out our proposals for assessing local authorities' performance and capacity to improve.

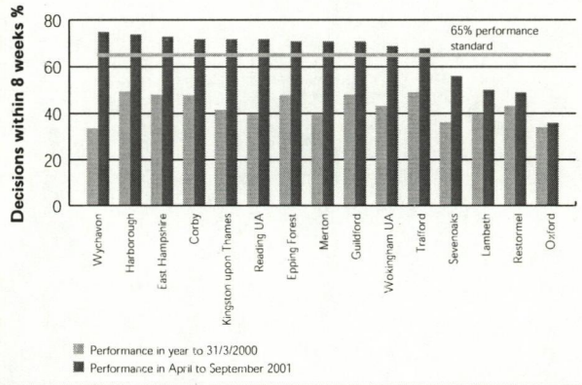
6.44 The Best Value regime is underpinned by a package of indicators, targets and standards. The new delivery targets for planning that will go into place in April 2002 are set out at para 5.23.

6.45 The Local Government White Paper confirms the Government's intention to intervene decisively where there is persistent failure across the range of local services, and will include more radical options where there are serious corporate weaknesses. In the case of poorly performing planning services action may include:

- tough targets for performance improvement;
- negotiated or imposed peer or external support;
- transfer of the processing of planning applications to an arms length body, another local authority or to a private sector contractor.

6.47 We are firm in our intention to use these powers if necessary. We have already required action by 15 of the worst performing local planning authorities. They were asked to process 65% of their planning applications in 8 weeks in 2001/02, and we are pleased that most have made strong improvements in performance. We have announced that a further 78 local authorities may be set new performance standards in 2002/03 because of their record of poor performance.

figure 9: Authorities subject to 2001/02 best value performance standard:



Next steps

The consultation period will run until 18 March 2002. Details of how to submit your views are set out below.

Following the consultation, we will publish a statement setting out how we intend to take forward our proposals.

Sending us your views

This Green Paper seeks your views on the Government's proposals for modernising the planning process. We invite responses by 18 March 2002. You may wish (but are not obliged) to use the form at the back of this Green Paper to set out your response. A similar form is available on-line at www.planning.dtlr.gov.uk. All responses received by the closing date for the consultation will be considered.

All responses should be addressed to:

Planning Green Paper Responses
Department of Transport, Local Government and the Regions
Eland House
Bressenden Place
London SW1E 5DU

Or e-mailed to:

planning.greenpaper@dtlr.gsi.gov.uk

Any questions about the Green Paper may be directed to:

Ian Piper
Planning Green Paper Team
Department of Transport, Local Government and the Regions
Zone 4/J6
Eland House
Bressenden Place
London
SW1E 5DU
(tel 0207 944 3975, fax 0207 944 3979).

It would be helpful if responses from representative groups could give a summary of the people and organisations they represent.

The Department may wish to make responses to these proposals available to Parliament and to public inspection in the Department's library. We will assume that you do not object to this unless you specify otherwise. Responses that are submitted on a confidential basis will, nevertheless, be included in any numerical analysis of responses.

If you have comments or complaints about the consultation process itself (rather than the content of the Green Paper) these should be directed to DTLR's Consultation Co-ordinator:

Martin Leppert
DTLR
Corporate Business Division
6/J10 Eland House
Bressenden Place
London
SW1E 5DU

Or e-mailed to Martin.Leppert@dtlr.gsi.gov.uk

Planning Green Paper: response form

You may wish to use this form to set out your views. A similar form is available online at www.planning.dtlr.gov.uk

Name: _____

Address: _____

_____

_____

Email address: _____

1. We propose to replace local plans and Unitary Development Plans with a Local Development Framework (paras 4.8-4.32). Do you agree? ☐ yes ☐ no

Comments:

2. We propose that Local Development Frameworks should include community-based action plans (paras 4.13-4.15). Do you agree? ☐ yes ☐ no

Comments:

3. We are proposing new arrangements for community involvement in preparation of the Local Development Framework and in significant planning decisions (paras 4.21-4.24 and 5.52-5.58). Do you agree? ☐ yes ☐ no

Comments:

4. We are proposing to simplify the hierarchy of plans by strengthening regional planning and abolishing county structure plans (paras 4.36-4.51) Do you agree? ☐ yes ☐ no

Comments:

5. We propose to review national planning guidance to reduce its volume and complexity (paras 4.54-4.58). Do you agree? ☐ yes ☐ no

Comments:

6. Do you have any further comments on our proposals for reforming plans? ☐ yes ☐ no

Comments:

(continued)

7. We are proposing to speed up the planning system, and set new targets for local authorities and central government for dealing with applications and appeals (paras 5.20-5.24, 6.9-6.18, 6.43-6.47). Do you agree? ☐ yes ☐ no

Comments:

8. We are proposing to impose new performance standards for statutory consultees and allow them to charge fees for consultation, to help improve their performance (paras 5.29-5.35). Do you agree? ☐ yes ☐ no

Comments:

9. The Green Paper continues a number of other proposals aimed at making the planning system faster, simpler and more effective. Do you agree with them?

- user-friendly checklist (paras 5.7-5.8) ☐ yes ☐ no
- masterplanning larger developments (paras 5.39-5.42) ☐ yes ☐ no
- business planning zones (paras 5.36-5.38) ☐ yes ☐ no
- preventing twin tracking and repeated applications (box, page 40) ☐ yes ☐ no
- limiting planning consents to 3 years (box, page 40) ☐ yes ☐ no
- increasing planning fees to help finance better local authority performance (paras 6.32-6.37) ☐ yes ☐ no

Comments:

10. Do you have any further comments on our proposals for improving the development control process? ☐ yes ☐ no

Comments:

Are you: Business ☐ Environmental/Community Group ☐ Interested member of public ☐ Local authority ☐ Local councilior ☐ Other ☐

Have you been involved with planning system as: An applicant ☐ Objector ☐ Respondant to plan consultation ☐ *(tick all that apply)*

Do you want this response to be confidential? ☐ yes ☐ no

Please return to: Planning Green Paper Responses, Department of Transport, Local Government and the Regions, Eland House, Bressenden Place, London SW1E 5DU.

appendix

The Cabinet Office Code of Practice on Consultation sets out criteria with which Government consultations must comply:

- the timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage;

- it should be clear who is being consulted, about what questions, in what timescale and for what purpose;

- a consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain;

- documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals;

- sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation;

- responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken;

- Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure the lessons are disseminated.

This Green Paper and associated consultation meets these criteria.

H M Treasury

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www.hm-treasury.gov.uk

9 May 2002

Dear Mike

LOCAL DEVELOPMENT FRAMEWORKS

Following our discussion on the green paper proposals for Local Development Frameworks, I thought it would be helpful to set out our thinking in more detail.

I am encouraged that we appear to be thinking very much along the same lines. In particular, I agree that it is at the pre-deposit and modifications stages that current local development plans are subject to the greatest delays. Addressing these delays will be vital to ensuring a more effective approval procedure for LDFs.

There are a number of specific points that I think it is worth registering at this stage.

(1) I agree that there is an issue around ensuring that LDFs are sufficiently coherent and joined-up. This may necessitate some form of overall proposals document pulling together housing, employment, transport etc, along the lines we discussed. The clear danger, however, is recreating local development plans by another name, but with an added level of planning – action plans – below them. To avoid this, and to ensure that LDFs deliver real efficiency gains it will be vital to ensure that (a) all components of the LDF function as a single coherent tier of planning, and (b) it is possible to update action plans and themes (e.g. housing land allocations) within the framework of the overall proposals document, without a wholesale review of the entire plan. National guidance would need to be very clear that the overall proposals document should be extremely minimalist in comparison to current local development plans. This may suggest that the overall proposals document should be thought of more as a summary of local authority proposals – the point at which action themes (housing, employment etc) and action areas are brought together – rather itself being a tool for active planning. I would welcome your thoughts on the options for the format of LDFs.

(2) It is clear that the key delays to current procedures for approving local development plans arise at the pre-deposit and modifications stages. Across the case studies analysed as part of the RTPI's 1997 report on local plans – in which I understand you were involved – pre-deposit consultation procedures added an average of 10-11 months to the overall plan preparation process. The

modifications stage took between 7 and 19 months, with the majority of local authorities towards the upper end of this range.[1] DTLR data on the state of local plan preparation as at 31 December 2000 suggest a similar conclusion. We would therefore strongly support your current assumption that there will be no pre-deposit consultation procedures for LDFs and that modifications procedures will be effectively abolished by (a) making post-inquiry reports binding on local authorities and (b) ensuring that local authorities update plans far more frequently than at present. In a world of regular updates and revisions, it should not be open to local authorities to make post-inquiry changes to their LDFs. The summer policy document should announce these changes.

(3) Public inquiry procedures, although often lengthy, do not appear to be nearly as significant as pre-deposit and modification procedures in delaying the adoption of local development plans. In addition, inquiry procedures play an important role in ensuring that plans have the clear mandate required to facilitate speedy development control decisions. We are therefore comfortable with the summer policy document proposing to retain the possibility of public inquiry procedures for certain types of site-specific action plans. Your suggestion of considering statements of core policies through an Examination in Public, while at the same time creating greater flexibility for Planning Inspectors to handle objections to site-specific action plans in whatever way they feel is most appropriate – whether through round table discussion, informal hearing or full public inquiry – appears to strike the right balance. The key is to ensure that we do not duplicate the public consultation and scrutiny function provided by the Examination in Public / Inquiry stage at both the pre-deposit and post-inquiry stages.

(4) It will clearly be important to ensure that the LDF is properly related to the Community Strategy and to any Local Neighbourhood Renewal Strategy. For example, current local development plans often identify deprived areas as 'priority zones for regeneration' or similar. It would clearly be desirable for such designations (which might become action plan areas) to line up with proposals in any LNRS.

Obviously, I would be more than happy to meet to discuss these points in more detail if you feel that it would be useful.

I am copying this letter to Jeff Channing, Mike Emmerich, John Kingman, Martin Wheatley, Simon Ridley and Miles Gibson.

Yours sincerely,

Tony Foot
PROD

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[1] *Slimmer and Swifter: a Critical Examination of District Wide Local Plans and UDPs,* RTPI, November 1997

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MIKE ASH
DEPUTY DIRECTOR PLANNING
HEAD OF PLANS, COMPENSATION AND INTERNATIONAL DIVISION

DEPARTMENT FOR TRANSPORT,
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Tony Foot
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16 MAY 2002

Dear Tony

LOCAL DEVELOPMENT FRAMEWORKS

Thank you for your letter of 9 May. I agree that it would be a good idea for us to meet to discuss current thinking on LDFs. In advance, you might like to have these reactions to the points you have made. My comments relate to the numbered sections of your letter.

(1) I think that we are broadly in agreement on the points you have raised. In particular, the detailed proposals we are developing will ensure that LDFs function as a single coherent tier of planning, but with the flexibility to update relevant parts as and when necessary. You may like to be aware that we propose to introduce something we are currently calling an "LDF scheme". In effect this will be a three year project plan to be produced by the local authority setting out its intentions as regards the preparation of core strategy and action plans, with intermediate milestones etc. The purpose of this is two-fold. Firstly, as a source of information for business, local people etc as to what plans are being produced and when. Secondly, as a means of performance assessment in the context of Best Value and any targeted grant.

You comment on the need for the "overall proposals document" to be minimalist. I think it would help to set out in more detail what we propose. The Planning Green Paper said that the LDF would comprise:

- Statement of core policies, setting out the authority's vision and strategy to be applied in promoting and controlling development throughout its area, not site specific;
- Map showing action plan areas;
- More detailed site specific action plans for:
    - areas of development and change;
    - for area wide topics which required boundaries or areas to be defined (eg Green Belt boundary, strategic housing and employment sites etc)

The reason for "Topic Action Plans" was that it was realised that if the "Core Strategy" was to remain non-site specific (criteria based policies etc), and area based Action Plans were to focus only on key areas of change, there would be nowhere in the plan in which to define some authority wide site specific policies. These might include the location of green belt boundaries, or housing sites not in action areas but which needed to be shown in order to make the "sequential approach" in PPG3 work.

This approach was heavily criticised in the consultation response, by business as well as others, for being too fragmented and un-joined up, and for making the plan difficult to understand and thus creating uncertainty. The solution proposed is to draw together what would have been in the topic action plans into an integrated set of site specific proposals, shown on a proposals map covering the whole of the authority's area. The map would also show the locations of proposed Area Action Plans. In regulations/guidance we will need to ensure that the proposals section focuses on those land designations necessary to deliver the broad strategy for the area and does not become too detailed. It would remain the case that all the main development locations would be covered by Action Plans and would not feature on the proposals map (other than by having the AP area defined).

It is possible that the core strategy, core proposals and detailed action area plans would be subject to different approaches as to testing (public examination, hearing etc), and they could be done at different times so avoiding the need for a "monolithic" approach to plan review (though, initially at least, we would expect the first two to go together).

The slightly revised approach we propose preserves the Green Paper objective of a central set of policies which form the basis for development control outside action plan areas, with detailed site planning being done within the latter. However, I hope you will accept that it would be incorrect to describe the proposals section as "not a tool of active planning" - it will be that for those site specific proposals not included in area Action Plans.

(2) Again we agree with much of what you say. It is certainly the intention to make the Inspector's report binding and to do away with the modifications stage. The reservation I have is about pre-deposit consultation. The Green Paper does not propose that this is done away with, rather that it should be done better. To do away with it would run counter to the whole approach of the Government's local government modernisation programme (including the creation of Community Strategies). It is also a requirement of the EC Directive on Strategic Environmental Assessment. One of the key themes of the Green Paper (both for plans and development control) is that it is best to involve the community early on, before statutory processes begin. Seeking wide participation in the process promotes greater ownership, and can significantly reduce the number of objections. If we leave everything until objections/inquiry stage it will serve to increase the number of objections and consequently delay the plan.

The Green Paper proposes that the plan should contain a Statement of Community Involvement, setting out how the community is to be engaged in the plan preparation process. We will need to produce regulations on this and issue guidance. We are about to let a research contract; a copy of the specification is attached. To ensure that such processes are not drawn out the "LDF scheme" - as proposed above - would cover the pre-deposit consultation stage.

(3) and (4) We agree.

Some of these issues may be touched on at the meeting which John Kingman and Simon Ridley are attending on Friday. However, I am happy to have a more detailed discussion with you and I will be in touch to make arrangements.

Yours sincerely

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9 May 2002

Dear Mike

LOCAL DEVELOPMENT FRAMEWORKS

Following our discussion on the green paper proposals for Local Development Frameworks, I thought it would be helpful to set out our thinking in more detail.

I am encouraged that we appear to be thinking very much along the same lines. In particular, I agree that it is at the pre-deposit and modifications stages that current local development plans are subject to the greatest delays. Addressing these delays will be vital to ensuring a more effective approval procedure for LDFs.

There are a number of specific points that I think it is worth registering at this stage.

(1) I agree that there is an issue around ensuring that LDFs are sufficiently coherent and joined-up. This may necessitate some form of overall proposals document pulling together housing, employment, transport etc, along the lines we discussed. The clear danger, however, is recreating local development plans by another name, but with an added level of planning – action plans – below them. To avoid this, and to ensure that LDFs deliver real efficiency gains it will be vital to ensure that (a) all components of the LDF function as a single coherent tier of planning, and (b) it is possible to update action plans and themes (e.g. housing land allocations) within the framework of the overall proposals document, without a wholesale review of the entire plan. National guidance would need to be very clear that the overall proposals document should be extremely minimalist in comparison to current local development plans. This may suggest that the overall proposals document should be thought of more as a summary of local authority proposals – the point at which action themes (housing, employment etc) and action areas are brought together – rather itself being a tool for active planning. I would welcome your thoughts on the options for the format of LDFs.

(2) It is clear that the key delays to current procedures for approving local development plans arise at the pre-deposit and modifications stages. Across the case studies analysed as part of the RTPI's 1997 report on local plans – in which I understand you were involved – pre-deposit consultation procedures added an average of 10-11 months to the overall plan preparation process. The

modifications stage took between 7 and 19 months, with the majority of local authorities towards the upper end of this range.[1] DTLR data on the state of local plan preparation as at 31 December 2000 suggest a similar conclusion. We would therefore strongly support your current assumption that there will be no pre-deposit consultation procedures for LDFs and that modifications procedures will be effectively abolished by (a) making post-inquiry reports binding on local authorities and (b) ensuring that local authorities update plans far more frequently than at present. In a world of regular updates and revisions, it should not be open to local authorities to make post-inquiry changes to their LDFs. The summer policy document should announce these changes.

(3) Public inquiry procedures, although often lengthy, do not appear to be nearly as significant as pre-deposit and modification procedures in delaying the adoption of local development plans. In addition, inquiry procedures play an important role in ensuring that plans have the clear mandate required to facilitate speedy development control decisions. We are therefore comfortable with the summer policy document proposing to retain the possibility of public inquiry procedures for certain types of site-specific action plans. Your suggestion of considering statements of core policies through an Examination in Public, while at the same time creating greater flexibility for Planning Inspectors to handle objections to site-specific action plans in whatever way they feel is most appropriate – whether through round table discussion, informal hearing or full public inquiry – appears to strike the right balance. The key is to ensure that we do not duplicate the public consultation and scrutiny function provided by the Examination in Public / Inquiry stage at both the pre-deposit and post-inquiry stages.

(4) It will clearly be important to ensure that the LDF is properly related to the Community Strategy and to any Local Neighbourhood Renewal Strategy. For example, current local development plans often identify deprived areas as 'priority zones for regeneration' or similar. It would clearly be desirable for such designations (which might become action plan areas) to line up with proposals in any LNRS.

Obviously, I would be more than happy to meet to discuss these points in more detail if you feel that it would be useful.

I am copying this letter to Jeff Channing, Mike Emmerich, John Kingman, Martin Wheatley, Simon Ridley and Miles Gibson.

Yours sincerely,

Tony Foot
PROD

[1] *Slimmer and Swifter: a Critical Examination of District Wide Local Plans and UDPs,* RTPI, November 1997

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10 April 2002

Dear Lord Falconer

PLANNING GREEN PAPER AND DAUGHTER DOCUMENTS

I am pleased to enclose The National Trust's responses to the Planning Green Paper and the proposals for handling major infrastructure projects through new Parliamentary Procedures. Our submission explains the Trust's wide ranging interest in the planning system as both a major landowner and developer. Our role as a steward of places of historic or natural value for the nation is well known and our power to declare land inalienable acts in many ways as a complement to the planning system beyond our properties. Less well known is the fact that we can be a significant developer. The Trust's portfolio stretches from farm shops and visitor facilities to developing hundreds of houses at Cliveden and Dunham Massey and a headquarters office in Swindon. Our response includes a 15 point summary of how we believe your reforms might best be taken forward and I hope it is helpful to expand on some of them.

As we discussed in the run up to the Green Paper, there is widespread agreement about the need for reform but very different views about how it might best be achieved. The debate triggered by the Green Paper has confirmed this and points strongly, in our view, to an evolutionary approach to change. We believe there is much to commend in the proposals for improving development control and welcome the moves to increase public involvement in the system. The most serious problems relate to a lack of skills and resources rather than failures in process or policy. We are also concerned by the risk of further diminishing skilled input to the process by reducing the role of statutory consultees. The Trust would willingly contribute to an initiative to help identify barriers to progress on developing the skills and resources needed. We hope these are the areas that will be given greatest priority in taking the Green Paper forward.

The proposals for major reforms in forward planning are much more controversial. We fear they will not achieve the clarity and consensus you seek, especially if they are taken forward in a climate of public concern about the loss of rights to test emerging policies through a public inquiry. There is a real danger that Local Development Frameworks will not provide the land use leadership that is sought by all users of the system. In the hands of a disinterested local planning authority only the sketchiest criteria might be provided, creating problems for both business and communities. We believe the more evolutionary approach being put forward for the planning system in Wales has much to commend it, retaining proposals maps and a right to be heard. This could be complemented by Action Plans and a more positive approach to masterplanning.

We have discussed the importance of sub-regional planning on a number of occasions. As expected it has proven to be a particularly difficult area. There is a growing danger of the proposals for planning getting out of step with the development of the Government's broader approach to regional governance. This is in addition to the concern about gaps in sub-regional planning if County Structure Plans are abolished. We would suggest maintaining a commitment to sub-regional planning in all areas and a statutory role for county councils in forward planning at all levels, at least until any changes are made in governance at a regional level as a result of the forthcoming White Paper.

We greatly welcome your announcement on the need for a statutory purpose for planning. This needs to cover not only the contribution to sustainable development but also the purpose of planning in managing land use change and development *in the public interest*. It should also recognise the purpose of planning in engaging communities and securing public support for, often controversial, land use change. It is this purpose that has been most overlooked throughout the Green Paper.

The forthcoming review of national planning guidance will also be critical to both the success of the planning system and to public confidence in the process of the planning reforms. It should be an opportunity to move policy forward and gear it more effectively to planning practice. We would commend a participative and transparent approach that seeks to bring consensus to the role of PPGs and the priorities for refreshing them and which helps establish clear land use objectives and targets.

Finally, I should stress our continuing deep concern about the proposals for major infrastructure projects. We recognise the need for a national perspective on major development but do not believe the proposal for Parliament to approve the principle of a project is the right way forward. It would be preferable for Parliament to debate a national policy statement and the key issue of "need" but not location. We have a particular concern that the proposals do not impact on the provisions for Special Parliamentary Procedures in relation to the Trust's statutory powers to declare land as inalienable. The Trust views this as essential protection for the assets it holds for charitable purposes "*for the benefit of the nation*". Indeed, land is often given by donors precisely because of these powers. The system allows for inalienable land to be compulsorily acquired but ensures this can happen only after the most careful scrutiny. There is no indication that the implications for inalienable land have been considered and the consultation paper proposes to repeal Section 9 of the *Transport and Works Act 1992* and replace it with procedures that would apply to a very much wider range of proposals. We would strongly and publicly resist a parallel extension of Section 12(2) of the 1992 Act. This would preclude the Trust from opposing the

proposals of an Order deemed to be of national significance and result in judgements over the need to acquire inalienable land being taken at an inappropriate time before all the necessary information was available.

The National Trust is keen to work with the Government where we can help improve the quality of the planning system and its outcomes. I would welcome the opportunity of a meeting to discuss our ideas on the way forward and where we might be able to contribute if you would find that helpful.

Best wishes.

Yours sincerely,

Tony Burton
Director of Policy and Strategy