

PROPOSED CHANGES TO PLANNING

CLIENT BRIEFING NOTE THREE

DRAGONS

AUGUST 2020

The government published its White Paper, *'Planning For The Future'*, on 6th August. The White Paper was accompanied by a consultation document, *'Changes to the current planning system'*. Together, these documents propose radical reforms to the planning system – long and short term. Key changes include zoning of land in local plans into three types of area – Growth, Renewal and Protection and replacing the current system of planning obligations and CIL with a single development levy to fund local infrastructure. Our briefing note provides a review of the key proposals that affect delivery of development and the implications for the work we have been undertaking for our clients. Later in the consultation process, we will provide a more wide-ranging review of other aspects of *'Planning For The Future'*.

Affordable housing

The White Paper and the consultation document envisage major changes to the way affordable housing is provided. In both cases there are proposals to set aside 25% of affordable housing for provision as **First Homes** with a minimum discount of 30% on open market value and the option to increase the discount to 40-50% based on local evidence. Our researches show that *the typical shared ownership property currently being sought has a GDV of 40-65% of market value so local authorities may wish to make the case for a higher discount.*

First Homes will be subject to a price cap of £250,00 in England and £420,000 in London. Our analysis suggests that **local authorities in high value areas, particularly in the South East, will likely fall outside the price cap and will need to seek to vary it.**

First Homes will also be **exempt from CIL** as affordable housing is now.

Scheme size and affordable housing threshold – the consultation document proposes an

immediate time limited exemption from affordable housing provision for sites of up to **40 or 50 dwellings** (yet to be determined). The site size threshold will be increased proportionately. Local authorities will be able to seek an equivalent financial contribution where it is apparent that a larger site is being brought forward in sections with a number of units below the affordable housing threshold.

It seems probable that developers of schemes close to the 40/50 unit threshold will be minded to increase the proportion of larger dwellings in order to minimise exposure to affordable housing requirements (including First Homes). This has potential to reduce the supply of smaller units, particularly flats. It will also make it harder for specialist retirement housing providers, whose schemes are usually 60-80 units, to compete in the land market against a smaller number of general needs houses on the same site.

The changes in the site threshold will only apply to *affordable housing*, rather than the range of s106 requirements that the current 10 dwelling threshold excludes. CIL liabilities will be deferred but are ultimately payable.

'Planning For The Future' proposes that in the longer-term affordable housing contributions, although still sought on site, will be brought within a nationally set flat rate infrastructure levy – and will be kept *"at least at current levels"*

In designated rural areas, including national parks, planning authorities can continue to set a lower threshold of 5 units or fewer in their plans.

The end of s106 and CIL?

'Planning For The Future' proposes a radical change in planning obligations, with s106 and CIL replaced with a single levy calculated as a set percentage of development value. Without local or site-specific flexibility there is the **potential for sites** with higher existing use value or greater than average constraints **to remain undeveloped**, and the application to all use classes may stall some non-residential development. In addition, the proposals for extensive local design and site-specific requirements may result in **additional costs not factored into the national reckoning** about a

suitable levy rate. Local authorities may still be required to understand the deliverability of these local aspirations.

As with the current arrangements, lower value locations may not be able to raise sufficient funding for infrastructure through a new levy as while prices may vary considerably, infrastructure costs generally vary much less. This will affect individual local authorities in low value areas but if there is no flexibility to vary affordable housing requirements then lower value locations within individual local authority areas may also struggle to deliver. All in all, while the government wants to “**sweep away**” the need for testing **site viability**, the White Paper introduces a range of new development economic considerations that will impact on the ability of plans to pass the new “*sustainable development*” test.

Housing choice, variety and quality

‘*Planning For The Future*’ promotes mixed communities in the context of delivering affordable housing, “*We will ensure that affordable housing...is still delivered on-site to ensure that new development continues to support mixed communities*” But there is little else (other than a reference to the density and height of buildings in Growth and Renewal Areas) to ensure that a variety of housing types are provided in new residential developments and as, for instance, identified in today’s Housing Needs Assessments. **No provision is made for groups with specific needs, including older persons, families and students.**

A greater emphasis on delivering mixed housing in new developments may flow from the national set of DM policies or be left to local authorities in their design guides and codes but this is not clear and, as things stand, the type of housing to be built is left to the market. This will have implications for the range of housing that is delivered in the future as well as the economics of development of that housing.

For custom and self-build housing, local authorities, as now, need to identify enough land to meet the requirements identified in their self-build and custom housebuilding registers. The White Paper also sets out a **new way of planning for custom and self-build** with sub-

areas created specifically for self and custom-build homes and community-led housing developments. There is no further guidance about the scale of the sub-areas or how they are to be identified and delivered.

Two specific aspects of housing quality are highlighted in ‘*Planning For The Future*’ – **those of carbon reduction and biodiversity**. Government proposals for both have already been published (in Future Homes Standards and the Environment Bill respectively) and the White Paper simply re-iterates their importance. The government is to respond to the consultation on the Future Homes Standards proposals in the autumn with the expectation that the standards set out there will be adopted, with higher requirements post 2025, all of which have costs for development and **will need to be taken into account in current local plans**. Similarly, the Environment Bill, currently before Parliament, will legislate for mandatory net gains for biodiversity which will impact on development densities as well as incurring direct development costs.

Neither the White Paper nor the consultation on changes to the current planning system say anything about accessibility or dwelling sizes. These issues, along with other standards for newbuild housing, may be included in national DM standards or left to local authorities to establish in their design guides/codes. Again, these are issues that local plans going through the system now will need to reflect.

The zonal system and housing requirements

The White Paper suggest three zones of land use. However, at this stage it is hard to comprehend what the significant differences are between the proposed zonal system and what a local plan already strives to do in identifying areas for growth to meet identified need and areas of restraint? It is also unclear how the link is to be made between the standard method for housing requirements and how these requirements will be met in areas of constraint, including that of the housing market itself.

Transitional arrangements

Decisions around whether **to start, pause or abandon plan making** rest on how long any changes to guidance and primary legislation will take and what happens in the interim. Our initial view is that the proposals within '*Changes to the planning system*' should not cause any delay in plan making and that it is too early to determine the impacts of '*Planning For The Future*' due to a lack of detail and therefore at the moment this should not cause any delay either.

'*Changes to the Planning System*' proposals can take place relatively quickly with amendment to existing legislation and guidance. The transitional arrangements for this vary for each strand:

Revised standard methodology – from the date (currently not known) of publication of revised guidance, if *at* Reg 19 there are 6 months to submit and if *approaching* Reg 19 there are 3 months to get to that stage and a further 6 months then to submit, then the examination will be on the basis of current guidance.

Delivering First Homes – the arrangements are less clear, but it is suggested that if local plans are submitted within 6 months of the new policy be enacted then they will not need to reflect the First Homes policy requirements. Plans prepared after this period would be expected to set out clear policy towards First Homes, subject to any future changes to the planning system. Beyond this the government is clearly signalling that it expects national guidance to be used as soon as it comes in but this would be guidance rather than regulation and the primacy of the plan should in our opinion still take precedence.

It should also be noted that **under current regulation First Homes would still be CIL liable** and whilst the government intends to lay down new regulation this will take time and therefore any exemption would have to rely on a local discretionary relief.

Threshold for s106 – this appears to relate to the affordable housing element only and there is no transitional arrangement set out, so the expectation is that this can come into force at any time, as government guidance. The 18-month

duration and relation to economic recovery linked to covid19 also suggests that it will be implemented as soon as possible. However, it can only ever be a material consideration in decision making, unless policies are contained within local plans, which is unlikely given the duration. Whilst wording in the proposals strongly sets out this is time limited, a subsequent paragraph references review, suggesting it could be extended – the proposal clearly contradicts itself.

Permission in principle has no transitional arrangements, as the government will enable the wider application of the current arrangements through regulation change, which will take effect immediately upon publication.

'*Planning For The Future*' contains very little detail regarding transitional arrangements, only commenting that recently approved plans and existing permissions can continue to be used and implemented as intended. Clearly proposals that require radical overhaul of the planning system will require primary legislation, rather than amendment to existing regulation and therefore any change is likely to come with extensive transitional periods as a result of a parallel system which will need to run its course through development and plan cycles. We await the detail on this and until this is made significantly clearer it is recommended to adopt a business as usual approach to provide certainty and clarity to both local communities and the development industry

Some other points...

'*Planning For The Future*' is about simplifying the planning process and increasing the supply of land available for development. The White Paper is entirely silent on any mechanisms to ensure that permissions, once granted, are built out and that land in new Growth and Renewal Zones is brought forward for development. Perhaps the government will have more to say on this in the future?

It is also noticeable that other forms of development such as renewables are not mentioned and there is very little detail on infrastructure delivery to support the growth aspirations