

29th October 2020

Rt Hon Robert Jenrick MP
Secretary of State
Ministry of Housing, Communities and Local Government
Fry Building
2 Marsham Street
London
SW1 4DF

Dear Secretary of State

PLANNING WHITE PAPER: RESPONSE FROM EAST MIDLANDS COUNCILS

Thank you once again for attending our recent AGM. Members from all parties valued your willingness to engage constructively on a wide range of important issues.

As you know, East Midlands Councils (EMC) is the collective voice for local government in the East Midlands and comprises all 45 District, Borough, City and County Councils in the region, plus the Peak District National Park Authority.

The EMC Executive Board met on the 25th September 2020 and resolved to make a response to the Government's Planning White Paper consultation. In doing so the Executive Board decided to focus on key issues of common concern across the local government family, rather than detailed points which are better addressed by individual local authorities.

The Case for Reform

The White Paper is based on the presumption that the planning system is primarily responsible for the undersupply of new housing and the enduring housing affordability crisis. However, there is little if any independent evidence that would support this. Successive reports from the MHCLG Select Committee and its predecessors have concluded that planning has limited impact on housing delivery or house prices, and that wider market and structural factors have far greater influence. The most recent independent examination of the planning system, the Raynesford Review¹, reached similar conclusions, as did Sir Oliver Letwin's Independent Review of Build-Out². Data from MHCLG confirms that local planning authorities consistently grant just under 90% of all planning applications³. In the year to June 2019 permission was given for 377,000 new homes in England⁴.

Despite this, Governments of all parties have introduced numerous planning reforms over the last 20 years with the pace of change accelerating rapidly over the last decade – with three new planning acts, numerous pieces of secondary legislation including a radical extension of permitted development, a Housing White Paper and a series of fundamental changes to national planning policy and guidance. Whilst these measures have done little to increase the pace of construction, their culminative impact has left the planning system in England overly complex, poorly resourced and lacking in public confidence.

There is therefore a need for reform to make the planning system simpler, more transparent, more effective in delivering public benefits and more responsive to the priorities of local people.

¹ <https://www.tcpa.org.uk/Handlers/Download.ashx?!DMF=30864427-d8dc-4b0b-88ed-c6e0f08c0edd>

² <https://www.gov.uk/government/publications/independent-review-of-build-out-final-report>

³ <https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>

⁴ https://www.savills.com/research_articles/255800/294152-0

Unfortunately, it is not clear to councils in the East Midlands that the Planning White Paper will achieve this.

Discretionary verses Zonal Planning

The core of the Government's approach is to provide greater certainty by moving towards a rules-based approach based on 'zonal planning'. Zonal planning is not intrinsically better or worse than the discretionary system that has been in place in the UK since 1947 – but is not necessarily less complex or quicker.

In places such as Germany and the Netherlands, zonal planning regimes have delivered high quality largescale development through very comprehensive design codes that have legal force – but which take time and resources to establish. However, in parts of north America, zonal planning has led to some very bad outcomes for people and places and in the worst cases has been used to re-enforce patterns of racial and social segregation.

Irrespective of the system in place, there is no short cut to good development. Time and resources are required to understand what is acceptable and appropriate in any given location before construction can commence. The rights of landowners, developers and local communities will still need to be balanced by public authorities, and conflicts resolved in a fair and transparent manner. The White Paper should have a clearer focus on addressing these fundamental issues.

Localism verses Central Control

The White Paper appears to represent a significant shift away from localism towards centralised control. In particular, the White Paper proposes:

- A nationally determined and binding housing requirement that local planning authorities would have to deliver through their Local Plans;
- A nationally determined set of Development Management policies for inclusion in all Local Plans;
- A single nationally determined Infrastructure Levy regime collected locally but at a rate set at a national level; and
- A nationally determined 'Design Code' which would form the sole basis for detailed decision making in the absence of any compliant local design code.

In combination, these measures could give Ministers and civil servants based in Whitehall an unprecedented level of control over the scale, location, and form of development across every part of England.

This approach appears at odds with the Government's stated desire to empower local communities and risks further undermining public trust in the planning system. Nor is it clear that a centralised system would deliver positive outcomes across a region as diverse as the East Midlands, which comprises urban, suburban, rural, and coastal localities with a range of different landscapes, habitats, and architectures. The need to make better use of brownfield land is a particular concern given the impact of Covid-19 on traditional city centre retail.

Plan-Making and Planning Decisions

The White Paper is proposing to limit local plans to zoning land into three categories: Protected, Renewal and Growth, and to focus public engagement at the plan making stage. Whilst in 'Protected Zones' national development management policies would apply, in 'Growth Zones' planning permission would be given automatically at the plan stage subject to a compliance with the national Design Code and where it exists, a local version.

As noted above, there is no short cut to good development. Before any building can commence, assessments will need to be made of matters such as flood risk, archaeology, biodiversity, infrastructure, and utilities. For this to be done at the plan making stage to a level sufficient for construction will require significant additional time and resources, particularly when the detail of what may be built will not be known.

From a strategic perspective, it is hard to understand how the proposed three zone approach could be applied to planning for minerals extraction and waste disposal. Nor is it clear how cross border impacts and relationships will be managed in the absence of the (albeit flawed) Duty to Cooperate.

There is general support the ‘front loading’ of public engagement at the plan making stage. However, this cannot obviate the need to engage with the public on the detail of development or the power of locally elected councillors to affect change. Removal of these rights will create a dangerous democratic deficit.

Funding Infrastructure and Affordable Housing

The White Paper proposes replacing the existing Community Infrastructure Levy and Section 106 Agreements with a single nationally set Infrastructure Levy. It is estimated that the current system delivers around £7 billion per annum to support infrastructure and other public benefits, including around half of the nations ‘affordable’ (i.e. discounted) housing supply. The Government has stated that the new system will generate at least as much if not more but has not made available any analysis to confirm this.

Given that land values vary to such a degree across England, there is a concern that a nationally set levy will generate little in less affluent areas where the need for investment in public assets may be greatest, undermining the Government’s ‘levelling up’ agenda. Nor will the rate of the new levy reflect the actual cost of delivering infrastructure (such as highways or flood risk mitigation) for any individual development. Because the new levy will be paid at the point at which development is occupied, local authorities may be forced to borrow against the levy income in order to fund essential infrastructure, using limited borrowing headroom which could be used for other purposes and exposing councils to further risk at a time when local finances are under immense strain.

The new levy will not be the only tax on land value uplift. The Treasury already sets and collects Capital Gains Tax and Stamp Duty Land Tax (which alone raised £12 billion in 2018/19⁵) on land transactions. In addition, the Environment Bill before Parliament introduces a statutory regime of biodiversity net gain on most development requiring planning permission, which includes provision for developers to purchase ‘biodiversity credits’ from Government.

All these tax regimes will be controlled by Government, but only the proposed Infrastructure Levy will accrue directly to local authorities. As a result, there is concern that if the Government believes viability is worsening due to wider economic conditions, it will be the local revenue stream that risks being squeezed first.

Digitalisation and New Technology

The White Paper places great emphasis on the use of new technology or ‘prop-tech’ for making planning information more accessible and consistent. There is clear scope to make much better use of digitalisation, but this will require significant investment in local authority IT systems. There is also great potential for digital consultation techniques to reach more and younger people, but this cannot be at the expense of the ‘digitally excluded’ including the elderly.

⁵ <https://www.statista.com/statistics/284328/stamp-duty-land-tax-united-kingdom-hmrc-tax-receipts>

However, it is very doubtful if complex planning decisions can be successfully reduced to a series of 'machine readable' binary choices. For instance, the White Paper makes numerous references to the importance of 'beauty', but this would not appear to be a quality that can be defined by algorithm.

Next Steps

The proposals set out in the White Paper are described often in only general terms with little supporting detail. As a result, it might more properly be described as a Green Paper. In taking forward the Government's thinking over the coming months, there is an important opportunity for Ministers and officials to work closely with local government at all levels.

In that spirit, EMC is willing and able to work with you to help develop a planning reform agenda that delivers the outcomes we all want for our communities. As a first step we would be happy to facilitate a structured discussion with your officials to explore the issues set out in this letter.

Yours sincerely,



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Chair of EMC
Leader of Lincolnshire CC



Cllr David Mellen
Vice Chair of EMC
Leader of Nottingham City



Cllr Jonathon Morgan
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