

## PLANNING REFORM: A NEW ERA?

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In Spring 2020, Housing Secretary Robert Jenrick MP outlined proposals to reform the planning system in a paper called [Planning for the Future](#). A more detailed Planning White Paper is expected shortly.

Recent reports suggest the Government intends to re-think the planning system “*from first principles*”. The aim being to speed up and simplify the existing planning system. The Government’s desire to push forward with development in order to help the country to recover from the Coronavirus pandemic has been a common theme of recent planning announcements. Our other recent articles on this topic can be found [here](#).

### First Principles

Re-thinking the planning system from first principles will be no mean feat. Planning law is vast and varied yet flexible. The primary source of legislation, the Town and Country Planning Act 1990, is lengthy and its predecessors date back to the 1930s.

In terms of the first principles most relevant to the recent reports, it is well known that:

1. Planning permission is generally required for the carrying out of any development of land (s.57, 1990 Act).
2. There are two kinds of development: **operational** (i.e. building, engineering, mining or other operations in, on, over or under land) and **change of use** (i.e. a material change in the use of any buildings or other land) (s.55, 1990 Act).
3. There is a presumption that applications for planning permission will be determined in accordance with the Development Plan for the area (s.38(6) Planning and Compulsory Purchase Act 2004) unless material considerations indicate otherwise. There is therefore a balancing of relevant factors that has to be undertaken.
4. Elected councillors may determine planning applications on proper planning grounds in accordance with all relevant factors.

## Prioritising development

The existing planning system allows certain developments to be prioritised through the use of, e.g.

- **Development orders** under Part III, 1990 Act:

These allow the Government and LPAs (amongst others) to grant planning permission for either a particular development or a class of development. These have been used to streamline the process for key, strategic developments such as airports.
- **Permitted developments** under the Town and Country Planning (General Permitted Development) (England) Order 2015/596:

This is a type of development order granting planning permission under Part III, 1990 Act. The Order is wide-ranging and has been used to facilitate swift development in accordance with Government aims. E.g. the conversion of eating and drinking establishments to takeaways during the Coronavirus pandemic (class DA), and the conversion of office space to dwelling houses (class O).
- **Simplified planning zones** under Part III, 1990 Act:

SPZs can allow certain developments to go ahead without the need for individual planning permission. They are often used in areas where there is desire to encourage development and investment, e.g. Birmingham's Kings Norton Business Centre.
- **The presumption in favour of sustainable development** under para.11 of the National Planning Policy Framework:

Amongst other things, this provides for a presumption in favour of granting planning permission for housing developments in circumstances where the LPA cannot demonstrate an adequate housing supply, e.g. a five-year supply of deliverable housing sites or the Housing Delivery Test indicates that the delivery of housing was less than 75% of the housing requirement over the previous three years.

## Proposals for the future

It is not yet clear what the Government will suggest. However, its housing advisor, Jack Airey, has previously [suggested](#) the following reforms:

- **Ending detailed land use allocations:**

The paper expresses concerns that allocating uses for land has become an exercise in micro-management; ineffective and inefficient.

- **Introducing a binary zonal land use planning system:**

This would mean zoning land as either development or non-development land. In the former, there would be a presumption in favour of new development. In the latter, there would be no such presumption and minor development would be possible only in more restricted circumstances.

- **Redefining what a local plan should be:**

The local emphasis on planning would remain; development plans would continue to set out what development is and is not acceptable within a certain area. However, it is proposed to make these shorter, clearer, more limited, and non-negotiable; although that was also the intention underlying the previous change to the drafting of and contents of Development Plans.

- **Streamlining the role of local politicians:**

Elected representatives would continue to vote on the rules in local development plans. The Planning Inspectorate should also monitor whether local and community rules conform to national planning policy and intervene where necessary.

- **Rules-based development control:**

Applications for planning permission should be granted provided they comply with the development control rules in the local plan, meet building regulations and are not in a protected area. It is proposed that this would ensure greater certainty, allowing development “by-right”. LPAs would be only administrators; checking whether criteria are met rather than exercising judgement over the proposal itself.

### Considerations for the future

The proposals seek to boost development and innovation by providing a quicker system with greater certainty as to which planning applications will be permitted and which will be refused. There is also a desire to build more beautiful homes and places.

Many developers would be pleased to see a system that is less subjective and dependent on local councillors' views. There will be arguments that the proposals are less likely to result in an "unjustified" refusal of planning permission that necessitates the time and cost of an appeal and/or a re-design of the proposal.

However, many would see it as a detriment to lose the flexibility inherent in the existing system and to lose an element of democracy (that currently allows locally elected and accountable politicians to make individual planning determinations). Some aspects of development (especially beauty) are inherently subjective. For example, an important consideration for many local residents will be whether a new building is in-keeping with the local area. It may be difficult to make hard and fast "tick-boxes" for such new buildings whilst also allowing for innovative design. Therefore, it is not easy to see how the role of Neighbourhood Plans sits within such a system. Would one of the changes actually mean the end of localism as currently seen?

It will also be important to remember that there are other battlegrounds for planning, such as the usual grounds for judicial review and matters such as the public sector equality duty.

The White Paper is expected shortly. Watch this space.

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