REPORT INTO THE ENGLISH PLANNING SYSTEM

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Introduction

We set out to identify the changes needed for a functioning planning system / Joey Gardiner

It is hard to take an objective look at the English planning system and conclude that it is functioning successfully from the perspective of any of its key stakeholders.

For applicants and their teams, wait times to get determinations have rapidly expanded in recent years as local politics and resourcing issues have made decision-making more uncertain than ever. For local interest groups, the expansion of permitted development and imposition of top-down housing numbers have appeared to break the link with local democratic accountability without a clearly articulated justification.

And for local authority planning departments, expected to function on around half the level of public funding as a decade ago, the workload and ever-increasing complexity of the system appears to be making it simply impossible to operate properly.

In recent years, developer after developer has cited the problems the system is now causing, obstructing efforts to tackle a housing crisis which the government says requires 300,000 new homes to be built each year.

Taylor Wimpey boss Jennie Daly said this year that planning delays were the worst she had known them "for 30 years", as official data revealed that just 15% of major decisions are now approved within the requisite 13 weeks. The rest are either delayed or subject to performance agreements or time extensions.

Latest official figures (to March 2023) show that the number of homes being granted permission annually has now fallen for four consecutive years, and last year was almost a fifth below the 330,000-home per annum peak seen in 2017, at fewer than 270,000 permissions.

In the past few months this situation has been worsened by a local plan-making hiatus sparked by proposals to reform national policy in a way that will – by most testimony – make securing permissions harder. Redrow founder Steve Morgan has described the proposals – in characteristically un-PC terms – as amounting to "putting the loonies in charge of the asylum". Since 2020, nearly 60 planning authorities have paused or stopped plan-making.

> Developer after developer has cited the problems the system is causing, obstructing efforts to tackle a housing crisis which the government says requires 300,000 new homes a year

With the outcome of this consultation about the National Planning Policy Framework (NPPF) still in doubt, the Building the Future Commission decided to look into the functioning of the planning system in terms of how it delivers housing.

The purpose of our review was ostensibly to make recommendations for a system that will deliver the following:

A planning system that is able to allocate sufficient land to enable development to meet assessed housing need across England, while commanding the confidence of stakeholders and ensuring that development is socially, economically and environmentally sustainable, well-designed, and consistent with the government's climate change commitments.

Within this, the aim was not to conduct a blue-sky exercise and produce an idealised version of a planning system as it might be drawn up from a blank sheet of paper. Instead, the thinking was to find practical reforms and suggestions that might improve the functioning of the current system within a reasonable timeframe.

As such, and given time limitations, there was no attempt to be exhaustive. Many topics, not least permitted development, development corporations and compulsory purchase, were not considered in depth due to the desire to focus on issues most likely to address the current problems in delivering permissions.

In particular, the report does not relitigate the arguments around design and placemaking quality which fuelled the conclusions of the 2020 Building Better, Building Beautiful Commission. Nicholas Boys Smith, author of that report, told the expert panel advising this review that improving design quality remained essential to ensure that democratically elected politicians signed up to housing targets. "The challenge to the profession," he said, "is: how do we make new housing and existing places politically attractive?"

However, given the government has a live agenda through the formation of the Office for Place and mandating of design codes, and given that this issue does not directly touch on supply, it was not made a focus of this study.

The review was undertaken with the help of a wide range of planning experts from industry, local authorities and campaigning groups, but the final conclusions and recommendations represent the views of the Building the Future Commission and of Building magazine.

Joey Gardiner, Building the Future Commission

Executive summary

The English planning system is currently showing signs of substantial strain. By most measures, performance is decreasing, and stakeholders are reporting significant dissatisfaction.

Waiting times for decisions are increasing, even while the numbers of positive approvals and total decisions made are falling. The proportion of local authorities with up-to-date plans is decreasing too, with the rate of approval of plans in the system running near record lows.

The system, run by cash-strapped local authorities, is being asked to function on less than half of the public funding it received a decade ago, despite application numbers, until very recently, having risen.

Consequently, the Building the Future Commission (BFC) decided to undertake a review of the English planning system with the aim of forming recommendations to make it fit for purpose to deliver the homes the country needs.

In doing so, the commission was mindful that in 2020 Boris Johnson's government, also keen to tackle the housing crisis, attempted a major reform of the system, which the then prime minister characterised as "levelling the foundations and building, from the ground up, a whole new planning system". If enacted, the reforms would have presaged a planning system with similarities to Continental and US-style zonal systems.

But, rather than free up the planning system, the publication of the 2020 white paper, however well-intentioned, has proved counterproductive. A political backlash forced the government to backtrack on its proposals almost completely, although it has continued to bring in new reforms to replace those it has ditched.

The result has been three years of unprecedented policy uncertainty at the highest level, causing an extended planning system hiatus, demonstrated most clearly by the drop-off in local plan production.

With this in mind, the Building the Future Commission's report on the English planning system makes no attempt to describe the gleaming shape of an entirely new planning system, to be formed from the ground up.

Instead, the report outlines a series of reforms that are discrete but which the commission believes will ultimately give the current system a substantially better chance of working effectively. These reforms would build on the genuine progress of publishing the National Planning Policy Framework (NPPF) in 2012 but acknowledge the mistake of culling strategic planning in 2011.

“ A political backlash forced the government to backtrack on its proposals almost completely… The result has been three years of unprecedented policy uncertainty

The reforms outlined in the report sit within four key themes:

- Properly resourcing the planning system
- Ensuring that local plans are put in place
- Reinstating a strategic planning tier in order that key decisions, such as on housing numbers and green belt, are taken where it most makes sense
- Simplifying and standardising the system of planning contributions.

Resourcing

Central government funding for the planning system has seen cuts of nearly 60% on a per capita basis since 2010, the severest cuts of any local government service, while fee income has been constrained by statute. By the government's own admission, the planning fee increases confirmed in July 2023 will not raise enough money to fund core planning services, while the structure of this fee increase does nothing to address the shortfall in income received for many application types. Planning authority staff are depleted, and many are suffering from low morale and shockingly high workloads, with a quarter of public sector planners moving to the private sector since 2010.

In response, the government should give local authorities powers to further raise fees to a level that would allow for full recovery on the cost of processing the application, across all application types. Fees should be ring-fenced for planning departments and the cost of services benchmarked. Government should provide appropriate ongoing public funding for non-chargeable services such as enforcement and plan-making. More councils should share service provision with neighbours, to generate efficiencies, and the government should deliver the comprehensive skills strategy for the sector that it promised in 2020 but appears to have abandoned.

Local plans

Local plans are the bedrock of the English planning system, but just 35% of planning authorities have an up-to-date local plan in place. This figure will fall further to just 22% by 2025, due to a plan-making hiatus in the wake of the 2020 reforms and now deepened by last December's proposals to reform national planning policy. The policy uncertainty has been jumped on by local politicians who sense the national government's commitment to housebuilding is wavering, with nearly 60 plans put on hold. The absence of local plans both reduces housing development on average and deprives local communities of democratic control, by leaving authorities subject to planning by appeal.

To tackle this, the government should press ahead with reforms already in train to speed up the process of local plan-making, including by instituting a 30-month time limit, streamlining plan content and evidential requirements, and making other process improvements. It should also go further, by considering whether full examination is required for all plan elements, as well as by revisiting the formulation of the "presumption in favour of sustainable development" in national policy to give this back its prior force in incentivising local plan production. The government should continue with the proposal for national development management policies but make clear that local authorities can depart from them where evidence justifies it.

Strategic planning and housing numbers

The past few years have seen the system for allocating housing numbers at a local authority level slowly collapse in the face of local opposition, as councils in the highest-demand and most constrained areas have found it easier to stop bringing plans forward. The central algorithm determining housing need at a local level has lost credibility, particularly in areas where constraints on development such as the green belt make it all but impossible to deliver the numbers. Without a strategic planning tier, abolished in 2011, unmet housing need is not being picked up by neighbouring authorities, as there is no effective mechanism to force this to happen.

The way to address these issues is by reinstating a strategic planning tier to take decisions on key strategic (or larger than local) planning issues such as housing numbers and green belt. In order to hit the ground running, this tier should be based on existing sub-regional institutions such as metro mayor-led combined authorities, unitary or county authorities, or combinations of them: no attempt should be made to reform the regional spatial strategies. These institutions, working on a majority voting basis, should be charged with dividing up a sub-regional housing target among constituent authorities, acknowledging policy and other delivery constraints in their individual authorities. Where necessary to meet housing need, these sub-regions should be tasked with conducting green belt reviews.

Developer contributions

The system of gathering planning contributions from developers via section 106 (s106) agreements and the community infrastructure levy (CIL) has long been criticised but is more successful than commonly acknowledged: around £6bn is contributed each year, representing anything between 30% and 50% of the uplift in land value created upon receipt of a planning permission. Notwithstanding this, the system ties schemes up in protracted negotiations, is anecdotally widely understood to be burdensome and bureaucratic, and clearly requires significant streamlining and improvement. There is a widespread belief that the government's infrastructure levy proposal – which aims to sweep away and replace the current system – will make the situation worse, however, and it is not supported by many developers or planners or by most of those in the affordable housing sector.

The government should scrap its well-intentioned effort to bring forward the infrastructure levy before using up further precious resource on it, and instead focus on improving the functioning of section 106. Big improvements will come from proper resourcing of planning and putting local plans and policies in place; however, additional progress can be achieved through further standardising the s106 legal agreement.

Where agreement cannot be reached, a legal mechanism allowing a council to break the deadlock can be put in place, with recourse to appeal for the developer. Looking further ahead, the government should consult with the sector on the merits of a simple planning tariff, universally charged by all authorities at a de minimis level but levied locally.

It is the view of the commission that tackling these core blockages within the current system will go a significant distance towards creating a system that works to deliver enough permissions, in sustainable locations and within well-designed places, to start to address the UK's chronic housing crisis.

Methodology

A questionnaire on key topics was sent out to hundreds of planning experts, feedback from which was analysed, while a core group – the Building the Future Commission planning review expert panel – participated in two roundtable discussions to further develop themes and ideas in the report.

The feedback from both forums, plus a review of literature on the topic, contributed to the conclusions and recommendations ultimately arrived at. However, the views expressed in the report are those of the author and Building magazine alone, and participants cannot be assumed to have endorsed the final findings.

The Building the Future Commission planning review expert panel members were:

- Paul Barnard, service director planning and strategic infrastructure, Plymouth City Council; and chair of the planning working group at the Association of Directors of Environment Planning and Transport
- Philip Barnes, group land and planning director, Barratt Developments
- Nicholas Boys Smith, founding director, Create Streets; and commissioner, Building the Future Commission
- Paul Brocklehurst, chairman, Land Promoters and Developers Federation
- Nicola Gooch, planning partner, Irwin Mitchell
- Andy Hill, chief executive, Hill Group; and commissioner, Building the Future Commission
- Mike Kiely, chairman, Planning Officers Society
- Gillian Macinnes, director, Gilian Macinnes Associates
- Simon Marsh, planning consultant
- Paul Miner, head of policy and planning, Campaign to Protect Rural England
- Simon Ricketts, founding partner, Town Legal
- Catriona Riddell, director, Catriona Riddell Associates; and strategic planning subject specialist, Planning Officers Society
- Matthew Spry, senior director and head of London office, Lichfields
- Sam Stafford, planning director, Home Builders Federation

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Section 1: Resourcing

Local authorities have long complained about the resourcing available to carry out their planning functions, which has reduced sharply since the onset of government spending austerity from 2010 onwards. However, in recent years applicants using the system have echoed these complaints, arguing that the lack of resources is a barrier to the proper functioning of the system, thereby impeding development and economic activity overall. Developer Redrow recently described the system, which granted the lowest number of permissions for 10 years in the first quarter of 2023, as “broken”.

The Home Builders Federation (HBF), the British Property Federation and other groups representing applicants have for some time supported an increase in planning application fees, despite the costs to their members, in the hope that this will generate more resources for council planning teams to process applications.

But the scale of the cut in funding that needs to be made up is immense. The levelling up, housing and communities select committee said in a recent report that annual funding for council planning services fell by £1.3bn between 2010/11 and 2019/20 – a cut of 55%. Likewise, the Institute for Fiscal Studies said that per capita spending on planning services by local government dropped by 59% in the decade running up to 2020/21 – the biggest drop of any council service.

Funding cuts on that scale have had an inevitable impact on staffing, with the Royal Town Planning Institute (RTPI) recently reporting that a quarter of qualified planners working in the public sector left for the private sector between 2013 and 2020, while the private sector nearly doubled in size.

The RTPI said that, at the same time, at least four out of five local authorities had difficulty recruiting planners. The HBF said in a recent consultation response that its members “of all sizes and in every part of the country are experiencing significant delays in the planning process” and that the principal reason “is a lack of staff and resources” within local planning authorities”.

Funding

Amid these concerns, the government has recently confirmed that it will be raising fees for major applications by 35%, and for most other applications by 25%. Whereas council planning departments were historically majority taxpayer-funded, the government said in its consultation on the changes that it wanted the planning system to be “principally funded by the beneficiaries of planning gain – landowners and developers – rather than the taxpayer”.

“ In particular, planning authorities are concerned about the increasing time taken processing prior approval applications for permitted development

Both developers and planning groups welcomed the government’s proposal to increase fees, in particular the proposal – now also confirmed – that after the increase, fees be allowed to rise with inflation in future years, to avoid similar issues of stagnating income in planning departments. Despite this welcome, few believe that the confirmed increase will be sufficient to resolve the funding issues in local authority planning – and at best will return planning departments to where they were in 2018, the last time the government permitted councils to put application fees up.

The government said in its consultation that around £393m was currently received in fees annually, and that it believed there was an estimated £225m funding shortfall for the planning application service. Hence it is apparent that a rise of between 25% and 35% in fee income (dependent on the split between major and other types of applications received) will not be sufficient to close this shortfall, generating only between £98m and £138m in additional revenue.

It is also clear that this does not begin to address the broader funding cuts over a decade of more than 50%, which would require a more than doubling of local authority planning budgets from their current levels to remedy.

In particular, the sector is concerned that the decision on fee increases, by allowing lower fee rises for all bar major applications, compounds the existing failure of the system to reward local authorities for the cost of processing minor, householder and the many other application types. While there is no up-to-date data on the subject, work by the Planning Advisory Service (PAS) in the past decade showed that, while councils actually got their money back from the fees processing major applications, the much lower fees for minor and householder applications did not come anywhere close to covering the cost of handling them.

For example, the PAS Local Fees Project found that – at the time – householder applications cost on average £408 to process, three times the £131 fee, while minor applications each cost £783 to handle, nearly double the £410 charge. In addition, there is currently no fee chargeable for a whole range of applications that take time to process, from tree preservation orders and conservation area consents to section 73 applications removing conditions. All of this conspires to leave planning authorities further out of pocket.

In particular, planning authorities are concerned about the increasing time taken processing prior approval applications for permitted development, given the complex nature of the permitted development regime, and the growing amount of development that is able to go down the permitted development route. Prior approval applications currently only attract a nominal application fee. The recent changes will not amend any of this to a significant degree.

Beyond this, there is also anxiety about the increasing reliance of the whole system, not simply development management, upon the fees from applicants, given the reduction in central government grant to local authorities. This is exacerbated by the decision not to allow planning departments to ring-fence fee income, despite the RTPI, the Planning Officers Society and others making clear how vital this will be to prevent fee increases being taken by other arms of cash-strapped town halls.

Meanwhile, there is growing evidence that non-chargeable planning functions in town halls are falling by the wayside. These include vital services such as plan-making and enforcement, contributing to the serious decline in positive plan-making work explored in section 3 of this report. Alice Lester, director for regeneration, growth and employment at Brent council, recently told the RTPI that councils now dedicate much less of their own funding to planning services as a response to the growing reliance on fee income. She said: “This reduction in funding of planning policy runs directly contrary to government pronouncements regarding the importance of local plan-making.”

Members of the BFC expert panel advising on this report also raised concerns that applicant

funding was not appropriate in all areas of the planning system, given that the planning system acts to arbitrate between conflicting interests and needs to maintain both the fact and the appearance of impartiality.

It was suggested therefore that appropriate levels of public funding need to be maintained, even though the use of development management income in general to fund policy work would not appear to generate direct conflicts of interest. Nicola Gooch, partner at Irwin Mitchell, said: "Planning is a public good and there are some parts of the planning service which should not be developer funded. It could give rise to an appearance of bias if local plan-making or enforcement [for example] were developer funded."

> There is also anxiety about the increasing reliance of the whole system upon the fees from applicants, given the reduction in central government grant to local authorities

Planners and skills

During the early 2000s, prior to the coalition government coming to power in 2010, the split between qualified planners working in the public vs the private sector was about 70:30 in favour of the public sector. However, research by the RTPI in 2019 showed that of an estimated 22,000 qualified planners practising by that time, the public sector employed just 55% of them – a drop of around 21 percentage points in a decade. Updated data, released this year by the institute, suggested that this exodus from the public sector has deepened, with a quarter of qualified professionals now having left the public sector.

However, in the intervening period, the responsibilities on local authorities for plan-making, policymaking and development management have not commensurately diminished. In fact, many in the sector argue that they have increased. Government figures show the volume of planning applications to decide, for example, remained relatively steady throughout the 2010s until the onset of the covid pandemic, when it dipped, then spiked, and has recently dipped again. In the meantime, government requirements for local authorities to

maintain up-to-date plans have increased, just as many authorities have cut back local plan and policy teams.

There is particular concern over the impact of this on the ability of authorities – particularly smaller districts – to employ the specialist staff that are increasingly needed in many applications but may be hard to justify in terms of a full-time role, such as ecologists, heritage officers and urban designers. Nottingham council's director of planning and regeneration, Paul Seddon, a former president of the Planning Officers Society, said last year that "unless it is statutory, or it brings in income, or if you don't do it then the consequence is intervention, then it is being cut back".

As a consequence of falling employee numbers, remaining staff appear to be suffering in many cases from very high workloads, stress and low morale. Anonymous testimonies from council planners reported to the "Planning on the Front Line" blog regularly describe staff suffering with workloads of 100-plus cases to deal with at a time. The stress created by this caseload appears to have been compounded in many authorities by decisions to effectively force staff to continue working from home despite the ending of the pandemic, as part of efforts to reduce council office footprints, thereby isolating junior planning staff and cutting off avenues for them to learn from senior colleagues. Earlier this year, research by Planning found that 63% of council planners still work from home "most or all of the time" – twice the proportion in the private sector.

Nicholas Boys Smith, author of the government-commissioned Building Beautiful report and a member of the BFC's expert panel, said he sympathised with overworked planners, but it was hard to avoid the conclusion that "we can't make the current system keep working. We're trying to run a very nuanced, very subtle, incredibly ambitious and noble Rolls Royce system, and we are never going to have – under any government – the Rolls Royce resources that I think it requires."

Where local authorities do have the budget to recruit to replace departed staff, evidence suggests that they find it very hard to compete with private sector salaries, meaning many departments have vacant posts, putting extra stress on staff. A 2019 PAS survey of authorities found that planning authorities in London had an average of 16% of roles either unfilled or with staff otherwise not working, and found more than a quarter of attempts to recruit senior planners across English authorities failed. Four out of five local authorities this year told the RTPI they were having difficulty recruiting planners. Consequently, many authorities rely on temporary staff, reducing the quality of the service provided to applicants, particularly when officers change while an application is in train.

Despite all this, the levelling up, housing and communities select committee recently reported that the government has abandoned plans to publish a comprehensive skills and resourcing plan for the planning sector, as had been promised in 2020 at the launch of the Planning for the Future white paper.

There are also concerns that compounding the growing difficulties of the job, the regular denigration of the planning system – and by implication the profession – on social media and by parts of the media and the political class, has only served to further reduce the flow of new blood coming into the industry. Evidence from the Planning Officers Society to the recent consultation on fees increases said current low morale stemmed from the fact that "planners do not feel valued in their own authorities, nationally or by the public", with the body's chairman, Mike Kiely, a member of the BFC's expert panel, citing former prime minister Boris Johnson's foreword to the August 2020 planning reforms as a prime example of a politician undermining the sector.

Added to this, some members of the expert panel voiced concerns over the way some consultant firms have offered to outsource the provision of planning functions for local authorities, in a way that leaves them stripped of their planning skills and capacity at the point the contract ends.

Conclusions

The resourcing crisis in local authority planning is deep rooted and solutions will be hard to find, particularly given that both central and local authority spending is likely to remain severely constrained for the foreseeable future, whichever government is in power. Local authorities will understandably find it hard not to direct additional funding they receive towards high-profile and life-saving functions such as children's services and social care, so the high-profile championing of and political support for planning within authorities will – as ever – be vital.

> “ Many authorities rely on temporary staff, reducing the quality of the service provided to applicants, particularly when officers change while an application is in train

Given the challenges outlined above, the following actions are recommended:

1. Further to the recent decision to raise fees, the government needs to allow local authorities to increase application fees to a level that allows for "full cost recovery" of delivery of those services, based on a reliable, peer-reviewed and published benchmark of the cost of delivering development management. All applications, including – in particular – minor and householder applications and prior approval for Permitted Development, should be chargeable on a cost recovery basis.

2. If the government decides that, for policy reasons (ie to encourage SME developers or stimulate local building trades) it wants to keep certain application fees (ie householder or prior approval) at a rate below full cost recovery, it should commit to funding the shortfall, rather than expect local authorities to pay the cost.

3. Fee rates should continue to be allowed to rise in line with an agreed inflation measure.

4. Fee income should be legally ring-fenced for council planning departments, in a way that ensures both that planning departments get to keep additional income from fee rises, and also that increases are not taken away "in kind" via equivalent reductions in council spend on planning services.

5. The government should not attempt to fund other planning functions such as enforcement, local plan-making and other planning policy from applicants' fees. It should commit to appropriate funding of a core taxpayer-funded planning service to retain independence and avoid the perception of undue developer influence.

6. Councils should investigate – and central government should incentivise and promote – greater sharing of service delivery with neighbouring local authorities as a way of increasing efficiency while retaining vital skills and capacity within local authorities. This is particularly important if smaller authorities are to retain specialist expertise in vital skill-sets such as ecologists, urban designers and heritage.

7. The government should commit to developing and publishing the comprehensive skills strategy which was promised in 2020 and appears to have been abandoned by the current regime. A comprehensive strategy would include a long-term plan to increase the numbers of undergraduates taking up planning qualifications, an assessment of the reasons for the decline in local authority staffing and chronic difficulties recruiting, and a commitment to act to improve the situation. It would also include a commitment by the government to refrain from public statements undermining the profession or casting it as the enemy of progress.

Section 2: Housing numbers and strategic planning

It seems fair to say that delivery of housing numbers, following years of growth to the highest levels seen for decades, is now falling into crisis. While housing development was first hit by the pandemic and is now being crushed by soaring mortgage rates and the cost-of-living crisis, there is also a major planning element to recent drops in build rates.

The government's national target to build 300,000 homes a-year, in place since 2017, seems increasingly divorced from the planning policies operating the rest of the system. Local authorities are rejecting the "housing need" figure supplied to them from Whitehall under the "standard method" formula, on which they are supposed to base their plans.

The recent consultation on national planning policy has effectively told councils that in many areas they will be able to ignore or at least sidestep this number when the new policy comes into effect – exacerbating an already substantial hiatus in plan-making. For example, before this May's local elections the (then) leader of Windsor and Maidenhead council wrote to the government asking for permission to ignore the housing numbers in the very local plan it had itself just adopted.

But while it is easy for the development community to rail at local authorities failing to live up to their responsibilities to plan for the housing need in their areas, the political reality is that the system is set up to fail. It is unrealistic to expect elected local politicians to act directly against what they perceive to be the wishes of their voters, particularly given genuine constraints in many areas such as areas of outstanding natural beauty or green belt, by permitting large numbers of new homes. Furthermore, it is all but impossible to expect them to do so in a situation where the system (the standard method) generating the housing output required appears arbitrary and based on out-of-date information.

National housing target

The government has a target to be building 300,000 homes per year by the middle of the current decade. However, by its preferred measure of output – net additional dwellings – supply peaked in 2019/20 at 242,700. It reached 232,820 in 2021/22 and, while it may yet prove to have been resilient in the most recent year – to March 2023 – it is clear from a raft of indicators that supply is now heading south. While much of the current drop-off in build rates can be pinned on the economy, research by consultant Lichfields for the HBF makes clear that planning policy constraints are already impacting the sector's ability to hit the target by some 70,000 homes per year, with the proposed policy changes threatening to make this far worse.

> "The current government has got itself into a mess on housing numbers, with a laudable overall target increasingly not matched by policies adequate to meet it

The 300,000 homes-a-year target has offered a simple and clear ambition for the industry since being adopted by then housing secretary Sajid Javid as government policy following a 2016 recommendation from the House of Lords economic affairs committee. It was only later set in stone in 2019 as a pledge in Boris Johnson's election-winning manifesto. However, the government has never offered any technical justification or evidence to support the target, and critics have said that the lack of a clear evidential basis has often made it hard to defend ambitious housing plans from local critics.

Independent efforts to calibrate the number of homes needed per year in the UK have varied from the famous 240,000 per annum called for in 2004 by Kate Barker to a 2018 assessment by Heriot Watt University for the National Housing Federation, which found that 340,000 was the true number required. While technical assessments of social waiting lists, and "hidden households" – people stopped from moving into a new home because of lack of affordable options – are possible, it is arguably down to politicians to determine the extent to which society should be expected to tolerate such problems, and thus justifying why the national target might not simply be a process-based prediction of household formation.

BFC expert panel member Simon Ricketts said: "It's a political choice how many people you want to live on the streets, how many you want to have to stay with their families, how many people you want to live in shared accommodation. Those are political decisions."

Picking a number, as the government has done, has the benefit of consistency, while not picking a number – and indeed not setting a government position on a range of other national infrastructure priorities – could in this context be seen as a failure of leadership.

Local housing numbers

Since the 2011 Localism Act there has been no intermediate tier, in most parts of the country, looking at or assessing housing numbers between national level and local authorities. Currently the housing requirement in an authority's local plan determines the number of homes it is supposed to build each year. Where the national target is formed from a political judgment, local authorities' housing requirements are, by policy, supposed to be based upon the assessment of housing need in an authority produced by a relatively simple central government algorithm.

The Department for Levelling Up, Housing and Communities' "standard method" formula is based on household formation projections, and additionally attempts to factor in demand for housing in the form of affordability data. Planning authorities are not mandated to make the number their housing requirement, as they can make the case that constraints mean they are unable to deliver against the housing need identified, but departure from it must be justified. The algorithm was designed to stop local plan examinations being held up by endless discussions over what the correct housing requirement should be, and for a period it appeared to work well.

However, this simple formula, which is based on publicly available data that is produced on a per-authority basis by the Office for National Statistics, has nevertheless had several serious flaws exposed in recent years and the government has now promised to review it, after backtracking on previous attempts.

Part of the problem is that every time the base household projections which inform the formula change, the number of homes required in each area changes, sometimes quite dramatically. House price changes in particular can make big differences to the number via the affordability calculation, all of which means local authorities have to cope with the number bouncing around – very difficult when you are trying to plan and take decisions.

It also creates problems on a national level, as the changes in local need assessments potentially regularly reduce or increase the total number of homes the system says English councils – when

all totted up – should be planning for. Which does not make much sense when you have a 300,000-home housing target.

The government has responded to this problem by effectively freezing the algorithm in aspic – at first refusing to accept the latest data because it reduced the number of homes planned for. When more recent household projections were finally accepted, the 20 largest urban areas in England had a 35% uplift added to the assessment of their housing need, a figure the government said was designed to promote the regeneration of cities, but which was fairly transparently produced to make up the shortfall from the reduction in household projections, so the total still hit 300,000.

The fact that the government itself has been unwilling to accept the latest data into the standard method as it comes in – and has added arbitrary "fixes" to bring the total back up to near 300,000 – has added to a growing political credibility problem with the formula. The imposition of the algorithm was always a "least-worst" option designed to speed up the process rather than arrive at the most accurate, most precise outcome in every authority, but the growth of opposition to it has made it very hard for the government to admit this.

The government has now twice backed down on attempts to reform the formula more seriously in the face of backbench pressure, adding to a sense that the measure is too politically toxic to work effectively. Many of the delays to local plans seen in the past six months appear to have been as local politicians seek to get out of the need to meet the housing numbers expressed in the formula.

But, beyond political credibility, there is also a technical credibility point too. Household projection figures are not viewed by many as sufficiently accurate at the granularity of a local authority level to form a basis on which to base such an important number. And planners, too, question the relevance of generating a "policy off" number for a single authority – one that does not factor in either negative constraints like green belt or potential positive factors like economic growth plans. BFC expert panel member Mike Kiely says: "This kind of data works best at larger geographies and becomes less reliable and meaningful at the geography of a small district council."

Strategic or 'larger than local' planning

The Localism Act abolished the nine regional assemblies which had been charged with drawing up regional spatial strategies for their areas, looking at strategic cross-boundary issues in their regions and, among other things, arbitrating the setting of housing numbers for local authorities.

This issue is seen by many planners as crucial to resolving the debate over housing numbers, given how land-use constraints such as green belt or other protections genuinely restrict the ability of many authorities to meet the housing need within their local authority boundaries.

The duty to co-operate between authorities was put in place by the Localism Act as a way to replace this regional tier, in order to arbitrate between authorities over tricky cross-border issues such as how unmet housing need might be accepted by a neighbouring council.

However, the measure is widely seen to have failed to resolve the issue, and is due to be abolished by the forthcoming Levelling Up and Regeneration Bill, to be replaced by an as yet undefined alignment test. Nowhere is this failure better exemplified than Birmingham's City Council's inability over the best part of a decade to persuade its neighbouring authorities to take their share of the 38,000 homes it is assessed to need but cannot find space for in its city boundaries.

But the same issue applies almost anywhere there are green belt authorities, many of whom cannot meet their own need and require help from neighbours. Under the duty to co-operate, there simply has not been enough stick in the system to force other councils to take their share.

London retains a regional planning tier but, outside of the capital – and potentially Manchester which has a mayoral combined authority – other attempts since 2011 to look at housing numbers on a larger than local basis have so far foundered. However, contributors to

the review, including the BFC's expert panel, confirmed that there is now a widespread appetite for re-introducing a tier above the local authority level where decisions on a range of strategic planning issues, including housing, can be made.

This "larger than local" tier could potentially be handed a housing need number from the government, and then be put in charge of allocating that number between authorities in their area – mindful of constraints such as existing character, flood risk, sites of special scientific interest, areas of outstanding natural beauty and, of course, green belt. Bodies could also factor economic growth considerations into their deliberations.

However, any thoughts of reviving the regional spatial strategies, and the controversial regional assemblies, look unlikely to get far, given both the expense of creating a new bureaucratic tier and the legislative time needed to create the necessary powers. There appears to be little appetite either within the Westminster parties or the planning sector for the further planning hiatus that such a disruptive move would prompt.

However, existing larger than local structures do exist in England at a sub-regional level, in the form of combined authorities (some headed by directly elected mayors), unitary and county authorities, as well as other less formalised partnerships of local councils (for example, the Partnership for Urban South Hampshire grouping). The government has already effectively divided the whole of England into 48 sub-regional areas for the purposes of looking after local nature recovery strategies.

These sub-regional groupings could, therefore, be used for a rapid roll-out of strategic planning without the need to create a new institutional tier. However, most would require additional powers to work effectively, and would need to be able to demonstrate political accountability.

Recent attempts to deliver joint plans across local authority boundaries outside of London and Manchester have foundered – such as in Oxfordshire and the West of England – on the need for each individual authority to separately agree to the plan, a stipulation which effectively gives each constituent council in the group a veto. This has been a recipe for delay and confusion. Working together on a majority voting basis, however, offers an alternative way for a joint strategic vision – including over housing numbers – to be drawn up.

Metro mayor-led combined authorities, unitary and county authorities will all have direct democratic mandates from voters to form plans. However, in other areas, where local councils may have to work together, sub-regional groupings may not have a direct mandate from voters. While this situation ultimately left Labour's regional assemblies and their spatial plans unpopular with local authorities, BFC expert panel member Catriona Riddell points out that there are tactical benefits too, in councils being able to point the finger elsewhere in the face of local opposition to housing.

> Many of the delays to local plans seen in the past six months appear to have been as local politicians seek to get out of the need to meet the housing numbers expressed in the formula

She says: "The biggest mistake Eric Pickles made was to take away the blame game, because it worked. Local planning authorities got to blame somebody higher up, and they got to blame national government – but they all got on and did what they had to do."

Conclusions

The current government has got itself into a mess on housing numbers, with a laudable overall target increasingly not matched by policies adequate to meet it. The "standard method" algorithm has lost credibility at a local level as it has been seen to be cynically tweaked to match the national target.

Moreover, proposed changes in national policy (NPPF) will put the responsibility on local politicians to justify housebuilding – something it is very hard to imagine most doing. The inability of centrally devised formulas to take account of local constraints mean that a more nuanced approach has to be more appropriate at a local authority level.

1. The government should continue to set an overall ambition for the number of homes to be built each year. While this should, ideally, be more obviously couched in evidence than the 300,000 homes-per-year target currently is, it is appropriate at a national level to set an overall "political" target, which is not subject to frequent change in the way a direct "algorithmic" target would be (ie every time the evidence base was updated). While others have assessed the housing need as higher, 300,000 also does not seem an unreasonable figure to aim for. Whatever figure is chosen, it should ideally be contained within a brief national spatial strategy outlining, in addition to the housing need, the most important priority strategic infrastructure interventions in England, and their broad spatial locations. This could be drawn together quickly from existing national policy statements, to help inform the location of investment in housing and economic growth.

2. England should be divided up into sub-regions for the purposes of drawing up housing numbers. As part of this national spatial strategy, each sub-region should calculate a robust assessment of its housing need, in a way that broadly meets the overall national target. The assessment should primarily be informed by a stock-based formula – areas with the most homes would have to take the most homes – as the simplest way to allocate new housing growth. However, a proportion of the allocation should be reserved to be considered against the assessment of infrastructure investment contained in the spatial plan and thus likely sub-regional growth and demand. This assessment would be only of need – rather than the practicalities of delivery – and would thus be conducted without consideration of land-use constraints such as green belt or other policy considerations that might impinge upon delivery of the homes required.

3. The sub-regional groupings should then be given the job of dividing up the housing need that has been allocated to them between the individual authorities within the group. The sub-regions will use existing governance structures where possible and thus take different forms, including metro mayor-led combined authorities, unitary or county authorities, or combinations of them. Voters may not in all areas have direct representation at the sub-region but, in all cases, directly elected authorities will be represented in the sub-regional bodies deciding on the allocation of housing numbers.

4. The division by the sub-regional group of the housing number between authorities must acknowledge the policy and other delivery constraints in the sub-region. Thus, it gets round failure to cooperate which has held back the system since 2011, allocating housing to the areas that have capacity to take it. This allocation should include, where relevant and deemed necessary, an assessment of and review of green belt boundaries in the sub-region (see Section 3: Local plans and green belt).

5. The allocations should be decided by the constituent members of a sub-regional grouping on a majority rather than consensus basis, to ensure the system is not held up for years in deadlocked arguments with single councils holding a veto to progress. Once decided, councils should have a statutory duty to adopt a plan which meets the housing requirement, with government intervention a clear sanction if progress targets are not met.

Section 3: Local plans and green belt

Local plans are the bedrock of the English planning system. As paragraph two of the National Planning Policy Framework (NPPF) states, "Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise" – underlining the primacy of locally produced plans within the system.

However, the operation of the English "plan-led" system is seriously compromised at present by the failure of many local authorities to bring forward plans in a timely manner. Since the publication of the controversial "Planning for the Future" white paper in August 2020, which proposed ripping up the planning system, local plan production has slumped, and even more authorities have paused plan-making in recent months given deepening policy uncertainty following the pre-Christmas consultation on NPPF reforms. The HBF claims that 59 authorities have now paused or abandoned work on their local plans, with many apparently hoping that proposed policy changes will allow them to deliver lower housing numbers if and when NPPF changes are eventually confirmed.

According to recent research by consultant Lichfields, commissioned by the Land, Planning and Development Federation (LPDF), under a quarter of planning authorities will have up-to-date plans in place by 2025, on current trends.

At the same time as the planning system as a whole is being compromised by the lack of up-to-date locally-produced development plans, the process of development plan formation has been made more complex at a local level by environmental and other land-use constraints which make it nigh-on impossible in many areas for local authorities to locate enough land on which to site the homes needed. Environmental constraints include designations such as areas of outstanding natural beauty, sites of special scientific interest, special areas of conservation and special protection areas, among others.

In addition, the designation of green belt, a strategic planning tool designed to contain urban sprawl – albeit often perceived as an environmental designation – acts as a huge constraint on the allocation of housing sites in the areas where it operates. Developers argue that many green belt sites, particularly those around transport nodes, could be converted to housing without damaging the purpose of the green belt as a whole.

Furthermore, the existence of large tracts of green belt – given the priority status it has in national policy – can prevent the presumption in favour of sustainable development, also part of national policy, acting as it should to incentivise local planning authorities to bring forward development plans. This is because planning authorities can rely on green belt and other designations to stop developers from winning permissions, meaning they do not need to bring forward development plans that will force them to take difficult choices about where to locate new homes.

Local plans

Local plans are the principal documents by which planning authorities guide and manage development in their areas, and by law have pre-eminence in the English planning system. This means decisions on applications must have regard to local plans above all else – even national policy – where they are up to date. But plans are difficult and expensive for councils to prepare – as well as often being controversial locally – and, according to the government, currently take on average seven years from starting work to get adopted.

These practical difficulties have been compounded by local and national politics, with the changing government stance on planning rules for housing, in particular, leaving many authorities seeing little benefit in pushing forward with an expensive, difficult and potentially locally unpopular process. In green belt authorities (see below), many councils feel protected from speculative development by national policy, so forming a local plan does not necessarily feel like it offers more control.

Hence, the government said in its July consultation on reforming the local plan-making process that just 35% of councils had adopted a plan in the past five years (the period in which a plan is considered "up to date"), and few others were working on them. The LPDF research mentioned above found that just 22% of plans, on the current trajectory, will be in date by the end of 2025, by which time nearly two in five will be more than 10 years old. Put another way, the assessed need for around 220,000 homes per year will be contained in authorities with out-of-date plans.

> The operation of the English 'plan-led' system is seriously compromised at present by the failure of many local authorities to bring forward plans in a timely manner

Local plans are vital in tackling the housing crisis not just because they give local democratic control over where and how development happens in an area, thereby preventing the lottery of planning by appeal, but also because, as housing minister Rachel Maclean told the levelling up, housing and communities select committee this year, authorities with local plans in place see around 14% more homes built on average.

BFC expert panel member Philip Barnes, group land and planning director at Barratt, said that sorting the issue was central to all the other necessary reforms. "It's all about local plans. You can't have a plan-led system without local plans. Get local plans in place," he said.

The government has proposals in train, outlined in a recent consultation, to speed up the process of plan adoption by setting a 30-month time limit on plan formation and streamlining plan-making requirements. Partly this is around making the documents themselves shorter, with standardised formats, and more focused on where they can be locally distinctive, ensuring they avoid repetition of national policy, and removing some of the evidential burden previously required.

Much of this direction of travel is supported within the planning community. However, some members of the BFC expert panel said the government could go further. This could either be by allowing "non-strategic" policies in a plan to avoid full examination by an inspector, or by separating the agreement of housing numbers from the examination of the rest of the plan.

Notwithstanding these positive reforms, few anticipate they are likely to address the core problem, which derives from policy uncertainty colliding with tricky politics at local authority level. When the National Planning Policy Framework (NPPF) was published in 2012, a "presumption in favour of sustainable development" was put at the heart of the document which was designed, in part, to act as a stick to ensure councils fulfilled their plan-making duties. Create a local plan, the policy went, or else applications will be judged against the "tilted balance" in national policy. The result was a spike in plan-making as councils sought to avoid planning by appeal.

Since 2012, however, a series of court judgments and policy tweaks, including around green belt, have reduced the presumption in favour's effectiveness as a policy stick to prompt local plan adoption. BFC expert panel member Simon Ricketts, partner at law firm Town Legal, said addressing this issue would be the single biggest change that could be made to improve local plan take-up.

"The most important thing is the need to have consequences where there is not an up-to-date plan in place. [Which means] go back to a tilted balance that has some tilt in it."

As part of the government's bid to streamline local plans, it has proposed bringing in new national development management policies (NDMPs), via the levelling up and regeneration bill, which would cover areas of national interest, and which, crucially, are designed to trump local plan policies where they are in conflict. A majority of members of the BFC expert panel expressed support for the idea of clearly articulated national policies in areas of strategic importance. These should not be replicated in local plans, and thereby allow plans to be streamlined. However, most members were opposed to the idea of NDMPs trumping local plan policies in all circumstances and were concerned by the wide-ranging powers in the bill governing how the policies are to be drawn up.

As an alternative, local planning authorities could be assumed to adopt NDMPs as their policies, except where they can justify with evidence that it is necessary due to specific local circumstances for them to depart from it. In which circumstance they would then include a section in their local plan with their bespoke policy. Where such a local development management policy was in place it should trump the equivalent NDMP, thereby retaining the pre-eminence of the local plan.

“ Just over 4.9 million hectares of England, equivalent to 37% of the country, is taken up by green belt, national parks, areas of outstanding natural beauty and sites of special scientific interest

Green belt and environmental constraints

Just over 4.9 million hectares of England, equivalent to 37% of the country, is taken up by green belt, national parks, areas of outstanding natural beauty (AONBs) and sites of special scientific interest (SSSIs), according to the latest government data – all with strict rules preventing most forms of development,

particularly housing. Further land is covered by formerly EU-designated special areas of conservation (SACs) and special protection areas (SPAs), commonly known as "habitats" sites, as they are protected under the Conservation of Habitats and Species Regulations.

Given the scale, if even a small proportion of this land were opened up for development, it could provide millions of homes. In the absence of such a change, the existence of large constraints on land use acts, as described above, to prevent councils bringing forward local plans by frustrating the operation of the presumption in favour of development.

Despite this, there is widespread acceptance in the development industry (however grudging) of genuine environmental designations such as AONBs and SACs. Indeed, the government has committed to 30% of UK land being protected for nature by 2030 which – given green belt and many AONBs are unlikely to count in that definition due to intensive farming practices – implies more land being designated for protection in future, not less. Most BFC expert panel members, as well as others feeding into the review, agreed the system of environmental land-use designations in England was broadly fit for purpose.

But the same cannot be said of the green belt, a strategic planning tool designed to prevent urban sprawl, rather than an environmental designation, but which nevertheless has some of the strongest protections in the planning system. Individual applications have, in most cases, to demonstrate "very special circumstances" in order to justify development on the green belt. Last December's consultation on national policy proposed tightening green belt rules still further, making it far harder for councils to justify releasing land on the green belt for homes, even where housing need is not being met.

However, while few make the case for abolishing the green belt, many in the industry have suggested there is a need, given the scale of the housing crisis, and the high-demand locations of green belts around cities, for relaxing or at least re-examining the rules around releasing green belt land. Polling suggests that green belt does, however, remain a policy with widespread popular support, meaning a programme of widespread or radical green belt release would be unachievable in practical political terms even if desired.

Any change in policy to make green belt reviews easier would have to consider a number of factors, including which types of site and location would be viewed most favourably in policy, and who would be best placed to conduct green belt reviews. The Labour Party has suggested that it would consider building homes on "brownfield" sites in the green belt, in a bid to limit the impact of new development on green fields.

However, others have suggested locating green belt developments in close proximity to railway stations, to ensure sustainable travel patterns – whether the sites are brownfield or not – with one analysis suggesting three million homes could be built on land within a 10-minute walk of a train station on English green belt.

Given that the green belt is a strategic planning tool – it covers multiple authorities surrounding major cities – reviews of green belt designations would by definition be a regional or sub-regional task where possible, rather than an individual local authority job. While this has not been possible under the current system, the system envisaged under this report proposes sub-regional groupings in every tier of England, making this a possibility.

BFC expert panel member Mike Kiely said that any green belt releases should be determined at a sub-regional level, based primarily on the sustainability of the location of the site, rather than on its current use. "Green belt is a strategic planning policy […] and it can only really be effectively reviewed at that geography.

"I don't see that it's right to develop a remote piece of brownfield or despoiled land in the green belt. Because that is not a sustainable way to bring forward development, its harming the climate, and people remain reliant on private transport."

Conclusions and recommendations

Despite being vital to enable local strategic control over the planning system, and deliver homes to tackle the housing crisis, far too many planning authorities are not living up to their responsibilities to bring forward up-to-date plans. The reasons behind this are complex, a confluence of a lack of available staff and resources, the complexity of local plan formation itself, national policy uncertainty and local and national political pressures.

Separately, while systems of environmental protection are in broad terms working well, the land-use protections afforded to green belt land – land designated to prevent urban sprawl, rather than protect nature – are unnecessarily inflexible. In many cases the existence of green belt protections act as another disincentive to vital local authority plan-making efforts.

> Many have suggested there is a need, given the scale of the housing crisis, and the high-demand locations of green belts around cities, for relaxing or at least re-examining the rules

1. The government should press ahead with current welcome efforts to speed up local plan preparation, including through: digitisation and standardisation of local plans; streamlining of evidential requirements; efforts to avoid duplication of national with local policies; and imposition of a timeline for plan production. The government should also consider whether full public examination is necessary for proposed "non-strategic" policies within a plan, where there are no outstanding objections, as a further means of speeding up plan production.

2. The government should also press ahead with proposals to introduce national development management policies (NDMPs) within national policy. However, the current proposals should be amended to ensure that, where "necessary" for their local areas, local authorities can depart from the policies, so long as this necessity can be justified by appropriate evidence. Where this is not the case (in the majority of areas), it should be assumed that local areas will be bound by the NDMPs, and that local plans will not replicate NDMPs within the plan.

3. Process improvements to local plan formation are unlikely to be enough alone to prompt widespread uptake. Given concerns that the "tilted balance" has lost its force in incentivising plan-making, the government needs to consult on new wording in national policy that brings a renewed prospect of local authorities, including in green belt areas, regularly losing decisions on appeal, where up-to-date plans have not been brought forward.

4. Sub-regional authorities should be incentivised in national policy to conduct a strategic review of green belt allocations where it is clear that there is likely to be a shortfall of sites to deliver homes in a sub-region (see Section 2 Housing numbers and strategic planning). A review on a sub-regional level should be able to make better judgments about where homes are best located taking account of all constraints across a sub-region.

5. Such sub-regional reviews should prioritise areas for housing based first on their locational sustainability – in particular proximity to transport nodes such as railway stations – and only subsequently on the basis of site "quality" issues, such as whether a site is greenfield or brownfield.

6. While decisions on green belt should be undertaken as standard as part of the sub-regional planning effort, individual local authorities should retain the ability to conduct green belt reviews while forming their own plans, if they deem sub-regional allocations are likely to be insufficient to deliver the homes needed in an area and further release of green belt is needed.

Section 4: Affordable housing and developer contributions

The current government regularly cites its £12bn five-year affordable homes programme as proof of its commitment to housebuilding. However, government funding has for some time produced only around half of all the affordable homes built in England. The rest of the circa 40,000 to 60,000 affordable homes built each year, plus billions more in developer contributions, come courtesy of the planning system, either through section 106 agreements, or through the payment of the community infrastructure levy (CIL).

According to government statistics, 47% of the 52,100 affordable homes built in the 2021-22 financial year (the latest data available) were funded via section 106 (s106). And planning contributions do not just pay for affordable housing, of course, but also other necessary local infrastructure. A government-commissioned report issued this year said that, together, s106 and CIL raised £7bn in developer contributions for local infrastructure in 2018-19 (the most recent data), with £4.7bn of this going to pay for 44,500 new homes.

Despite this apparent success in capturing land value increases to subsidise affordable housing, there have long been concerns about the way s106 and CIL work. Section 106 has been blamed by both local authorities and developers as part of the reason for the often lengthy delays in developers getting on to site even after the local planning authority has resolved to grant permission, as the parties attempt to reach an outcome acceptable to both sides. Meanwhile, CIL, which is a locally set development tariff levied in around half of councils, has been criticised as overly complex, bureaucratic and riddled with exemptions that make it ineffective.

Given these concerns, since 2020 the government has been promising wholesale reform of the systems of developer contributions which would all but sweep away s106 and CIL and replace them with a universally levied tariff, known as the infrastructure levy. The idea is that increasing the level of certainty for applicants and planners over the level of contributions will make the system function more smoothly, particularly aiding SME developers.

BFC commissioner and expert panel member Nicholas Boys Smith said: “When taxation is unclear and is gameable and depends on how good your lawyers and advisers are, and depends on how deep your pockets are, then you set up a system which encourages the big guys and discourages market entrants and innovation.

“We need to get to a point where the tax the state imposes at the point of development has some certainty to it. A system where you need a KC and a few months to argue over it cannot be right.”

> Contributions valued at £6bn were committed to authorities in 2018/19, of which £4.3bn was for affordable housing

However, despite this ambition from the government, both planners and developers have in large part responded to its proposals by saying they believe they are likely to actually increase complexity and uncertainty, with many calling for the plans to be abandoned.

Section 106

The bulk of developer contributions secured through the planning system currently come via deals agreed under the terms of section 106 of the Town and Country Planning Act 1990. These are used to legally oblige an applicant to take actions to mitigate the negative impacts of a development.

In order to prevent local authorities stymying development by asking for too much from so-called s106 deals, regulations state that the obligations entered into must be used to make otherwise unacceptable development acceptable in planning terms; must be directly related to the development; and must be fairly and reasonably related in scale and kind to the development.

Where the system works well, the contributions that will be expected are defined clearly in council policies, allowing a developer to factor in accurately the financial implications of these contributions when coming to financial terms with the original landowner of any development site.

Contributions valued at £6bn were committed to authorities in 2018/19, of which £4.3bn was for affordable housing, according to a recent official assessment of the developer contributions system undertaken as part of the work for the infrastructure levy. The same study by University of Liverpool academics estimated that the system captured around 30% of the uplift in the value of land generated by the granting of planning permission, with a further 20% captured by capital gains and stamp duty taxes. However, a study by Savills this year said it believed that even more – 50% – of land value uplift was captured via developer contributions, “once the costs of site remediation and enabling are factored in” and that “by this measure, developer contributions are working”.

The widely accepted problem with section 106 is that because every single planning permission where contributions are levied requires its own bespoke agreement, the system takes up a huge amount of officer and particularly legal resource at local planning authorities. This, anecdotally, is seen as driving delays in getting schemes to site, with s106 deals not being tied down until some time after the planning authority has resolved to grant permission.

The Liverpool University study said: “The existing system involves significant and often complex, time-consuming and uncertain negotiations between local planning authorities and developers to ensure legally enforceable contributions that are both viable and policy compliant.”

However, the study also conceded that significant sums were raised and that there were other big benefits to s106 – such as the ensuring of mixed communities by the provision of on-site affordable housing. BFC expert panel member Nicola Gooch, planning partner at law firm Irwin Mitchell, said the system could be made to function relatively well if local planning authorities were properly resourced.

She said: “Many of the complaints cited in the government’s consultation, such as delay and a lack of transparency, could be more effectively resolved by better resourcing local planning authorities – both at officer level and within their legal teams – to allow applications to be dealt with, and s106 agreements negotiated, more rapidly.”

Negotiations of developer contributions are also greatly aided where local plans and clear local policies are in place, meaning that in most cases applicants should simply deliver policy-compliant levels of contributions.

Gooch and others have also suggested reforms to the existing s106 system to aid speedy processing and the conclusion of deals. Suggestions include work to standardise s106 legal agreements, in order that local government lawyers do not have to spend time negotiating contract terms with applicants, and can focus instead on the commercial terms generally contained in schedules.

BFC expert panel member Mike Kiely, chairman of the Planning Officers Society,

suggested this could take the form of putting the core s106 contract in legislation, and with councils able to consult on their own individual schedules which could then be adopted by the authority, reducing one-on-one negotiation over terms. Kiely also suggested there should be a means to break the deadlock where an applicant and planning authority are unable to reach a deal on an acceptable contribution, by the council deciding and concluding the s106 and the applicant having a right of appeal against the disputed clause.

Community infrastructure levy

The community infrastructure levy (CIL) was brought in early in 2010 as part of a bid by the then Labour government to tackle delays from the s106 agreements and increase the amount of land value captured at the point of grant of planning permission. The CIL powers enable councils to levy a charge per square metre on applicants for development, which must be justified against an assessment of local infrastructure needs and proof it will not make development generally unviable. The system was set up to work alongside s106, originally such that projects funded by CIL could not also receive s106 money.

Despite support from the coalition government, it has not lived up to hopes that it might simplify the system of developer contributions. As of last summer, still only just over 200 councils had even started the work necessary to set up a CIL, with around 180 – equivalent to around half of all planning authorities – having brought one in.

A government-commissioned review of CIL which reported in 2017 found that the system had unintentionally increased complexity in the securing of developer contributions, given successive changes to the CIL regulations and the patchwork of charging and non-charging authorities. In addition, it said that a series of exemptions combined with "lowest common denominator" rates meant developments were getting away with paying less than they might be, even where CIL is charged.

Despite all these problems, according to the Liverpool University study, the system reaped £1bn in developer contributions in 2018/19.

The group charged with reviewing CIL for the government recommended replacing the charge with a universal low-level tariff – set at around 1.5-2.5% of a development's value – with minimal exemptions. This would at a stroke remove the complexity of CIL, it said, raise a sizable amount of money and allow s106 to carry on working alongside it for larger schemes. However, the recommendation was never taken forward.

Infrastructure levy

The government has proposed replacing the current system of CIL and s106 with a brand-new system called the infrastructure levy (IL). Under this system, which would see applicants pay a proportion of the estimated gross development value (GDV) of a scheme around the point of receiving planning approval, CIL would be abolished and s106-negotiated developer contributions retained only for the largest projects, where a bespoke approach is likely to yield more.

> “There is widespread agreement across the sector that the current system of CIL and s106 is often frustrating and bureaucratic. Despite this, it does deliver around half of England's affordable homes

The IL is designed to avoid the need for endless negotiations between developers and planning authorities. Each local authority will be free to set its own rates for different types of development to suit their own economic circumstances, which developers are then bound to pay.

However, as the government's own consultation on the IL admits, the reality is much more complicated than the basic concept, with the different treatment of different types of development as well as demolition and redevelopment likely to see multiple rates charged on the same sites. All of which will require valuation estimates for the ultimate GDV of every scheme, given the initial levy payment is essentially provisional until the scheme is completed and sold, at which point a final adjustment is made.

Given the complexity of the IL, the government has proposed introducing it via a "test and learn" approach over the course of the next decade. Despite this gradualist approach, bodies representing private developers, affordable housing landlords and councils have all come out against the IL, with 30 representative groups uniting behind a letter calling on DLUHC to drop the proposal. The groups said the plans would deliver fewer affordable homes, create a lengthy hiatus, add complexity, put big financial burdens on councils and in any event fail to end the reliance of councils on s106.

BFC expert panel member Paul Brocklehurst said that – contrary to Nicholas Boys Smith's call for greater certainty – the infrastructure levy will deliver the opposite. "The infrastructure levy is the opposite of certainty for everyone in the process. It creates no certainty for the developer, no certainty for the local authority, and no certainty for the affordable housing provider," he said. "It is the worst of all worlds."

The Planning Officers Society has supported a variation of the CIL review group proposal as a way to reform the system, instead of introducing the IL. This would see a universal tariff set up but with the universal rate set even lower than proposed by the CIL review group – around 1% of development value.

Councils would be given the option to levy higher rates where they can justify it, utilising existing CIL regulations. The only exception from paying the levy would be for affordable housing. Like the existing CIL, and the CIL review group's proposal, it would work alongside s106 but not replace it.

Conclusions and recommendations

The securing of developer contributions for affordable housing in the planning system is a complex area and there is widespread agreement across the sector that the current system of CIL and s106 is often frustrating and bureaucratic. Despite this, it does deliver around half of England's affordable homes, around £7bn per annum in contributions, much local infrastructure and mixed communities.

There is also a high degree of consensus across local government, the affordable housing sector and the development industry that the government's proposals are likely to make the situation worse, and in any event will create a lengthy hiatus and uncertainty in a planning system which is already suffering from the impacts of other reform efforts. Hence efforts should be initially focused on improving the current system.

The evidence gathered by the BFC suggests that the biggest improvements will be seen from simply the proper resourcing of the current system (Section 1 Resourcing), and by local authorities producing up-to-date local plans and policies (Section 3 Local plans and green belt).

Further recommendations are:

1. The government should abandon efforts to introduce the proposed infrastructure levy which, despite having some merits, is not widely supported and has significant flaws.

2. The process for agreeing s106 deals should be streamlined as far as possible in order that local authority and developer team resource is not

wasted in fruitless negotiation. This could be achieved in part by putting the main body of s106 agreements into legislation so that the legal text does not have to be drafted every time. Further to this, local planning authorities should be able to consult on and then adopt common s106 clauses. With standardised contract texts, authorities and applicants should be able to concentrate on negotiating the specific numbers (such as the number of affordable homes to be provided in a development), rather than the legal text.

3. To resolve situations where negotiations between an applicant and the local authority over the s106 terms have stalled, the planning authority should be given the power to unilaterally issue an s106 agreement in order to break the deadlock. The applicant would have the right to appeal the determination to the planning inspectorate (PINS) to ensure fairness. To prevent this power giving the authority "leverage" over the developer in negotiations, there would be a clear expectation that, if a planning authority was deemed by PINS to have acted unfairly in the s106 it issued, the agreement would not only be struck down but the authority would also have punitive costs awarded against it.

> “ As the government's own consultation on the infrastructure levy admits, the reality is much more complicated than the basic concept, with the different treatment of different types of development

4. Once the functioning of s106 is improved, the department (DLUHC), should consult with the sector on replacing CIL with a new planning tariff, universally charged by all authorities but levied at a local level, set at a very low level which is not likely to render development unviable, but which is still able to raise a significant amount of revenue for local infrastructure. The only exemption would be for affordable housing. The idea behind such a charge, levied on a pounds per square metre basis, would be that, by not having the ambition to replace s106, it would be simpler and thereby escape the complexity that has beset both CIL and the proposed infrastructure levy. However, the history of policy efforts by successive governments in this area is full of bold measures resulting in unintended consequences, and the government must listen to sector advice on the detailed design of the scheme, and only proceed if support is secured.

Summary of detailed conclusions and recommendations

Section 1: The resourcing of the planning system

The resourcing crisis in local authority planning is deep rooted and solutions will be hard to find, particularly given that both central and local authority spending is likely to remain severely constrained for the foreseeable future, whichever government is in power. Local authorities will understandably find it hard not to direct additional funding they receive towards high-profile and life-saving functions such as children's services and social care, so the high-profile championing of and political support for planning within authorities will – as ever – be vital.

Given the challenges outlined above, the following actions are recommended:

1. Further to the recent decision to raise fees, the government needs to allow local authorities to increase application fees to a level that allows for "full cost recovery" of delivery of those services, based on a reliable, peer-reviewed and published benchmark of the cost of delivering development management. All applications, including – in particular – minor and householder applications and prior approval for Permitted Development, should be chargeable on a cost recovery basis.

2. If the government decides that, for policy reasons (ie to encourage SME developers or stimulate local building trades) it wants to keep certain application fees (ie householder or prior approval) at a rate that is below full cost recovery, then it should commit to funding the shortfall, rather than expect local authorities to pay the cost.

3. Fee rates should continue to be allowed to rise in line with an agreed inflation measure.

4. Fee income should be legally ring-fenced for council planning departments, in a way that ensures both that planning departments get to keep additional income from fee rises, and also that increases are not taken away "in kind" via equivalent reductions in council spend on planning services.

5. The government should not attempt to fund other planning functions such as enforcement, local plan-making and other planning policy from applicants' fees. It should commit to appropriate funding of a core taxpayer-funded planning service to retain independence and avoid the perception of undue developer influence.

6. Councils should investigate – and central government should incentivise and promote – greater sharing of service delivery with neighbouring local authorities as a way of increasing efficiency while retaining vital skills and capacity within local authorities. This is particularly important if smaller authorities are to retain specialist expertise in some vital skill-sets such as ecologists, urban designers and heritage.

7. The government should commit to developing and publishing the comprehensive skills strategy which was promised in 2020 and appears to have been abandoned by the current regime. A comprehensive strategy would include a long-term plan to increase the numbers of undergraduates taking up planning qualifications, an assessment of the reasons for the decline in local authority staffing and chronic difficulties recruiting, and a commitment to act to improve the situation. It would also include a commitment by the government to refrain from public statements undermining the profession or casting it as the enemy of progress.

Section 2: Housing numbers and the strategic planning question

The current government has got itself into a mess on housing numbers, with a laudable overall target increasingly not matched by policies adequate to meet it. The "standard method" algorithm has lost credibility at a local level as it has been seen to be cynically tweaked to match the national target.

Moreover, proposed changes in national policy (NPPF) will put the responsibility on local politicians to justify housebuilding – something it is very hard to imagine most doing. The inability of centrally devised formulas to take account of local constraints mean that a more nuanced approach has to be more appropriate at a local authority level.

1. The government should continue to set an overall ambition for the number of homes to be built each year. While this should, ideally, be more obviously couched in evidence than the 300,000 homes-per-year target currently is, it is appropriate at a national level to set an overall "political" target, which is not subject to frequent change in the way a direct "algorithmic" target would be (ie every time the evidence base was updated). While others have assessed the housing need as higher, 300,000 also does not seem an unreasonable figure to aim for. Whatever figure is chosen, it should ideally be contained within a brief national spatial strategy outlining, in addition to the housing need, the most important priority strategic infrastructure interventions in England, and their broad spatial locations. This could be drawn together quickly from existing national policy statements, to help inform the location of investment in housing and economic growth.

2. England should be divided up into sub-regions for the purposes of drawing up housing numbers. As part of this national spatial strategy, each sub-region should calculate a robust assessment of its housing need, in a way that broadly meets the overall national target. The assessment should primarily be informed by a stock-based formula – areas with the most homes would have to take the most homes – as the simplest way to allocate new housing growth. However, a proportion of the allocation should be reserved to be considered against the assessment of infrastructure investment contained in the spatial plan and thus likely sub-regional growth and demand. This assessment would be only of need – rather than the practicalities of delivery – and would thus be conducted without consideration of land-use constraints such as green belt or other policy considerations that might impinge upon delivery of the homes required.

3. The sub-regional groupings should then be given the job of dividing up the housing need that has been allocated to them between the individual authorities within the group. The sub-regions will use existing governance structures wherever possible and thus take different forms, including metro mayor-led combined authorities, unitary or county authorities, or combinations of them. Voters may not in all areas have direct representation at the sub-region but, in all cases, directly elected authorities will be represented in the sub-regional bodies deciding on the allocation of housing numbers.

4. The division by the sub-regional group of the housing number between authorities must acknowledge the policy and other delivery constraints in the sub-region. Thus, it gets round failure to cooperate which has held back the system since 2011, allocating housing to the areas that have capacity to take it. This allocation should include, where relevant and deemed necessary, an assessment of and review of green belt boundaries in the sub-region (see Section 3: Local plans and green belt).

5. The allocations should be decided by the constituent members of a sub-regional grouping

on a majority rather than consensus basis, to ensure the system is not held up for years in deadlocked arguments with single councils holding a veto to progress. Once decided, councils should have a statutory duty to adopt a plan which meets the housing requirement, with government intervention a clear sanction if progress targets are not met.

Section 3: Local plans and the green belt question

Despite being vital to enable local strategic control over the planning system, and deliver homes to tackle the housing crisis, far too many planning authorities are not living up to their responsibilities to bring forward up-to-date plans. The reasons behind this are complex, a confluence of a lack of available staff and resources, the complexity of local plan formation itself, national policy uncertainty and local and national political pressures.

Separately, while systems of environmental protection are in broad terms working well, the land-use protections afforded to green belt land – land designated to prevent urban sprawl, rather than protect nature – are unnecessarily inflexible. In many cases the existence of green belt protections act as another disincentive to vital local authority plan-making efforts.

1. The government should press ahead with current welcome efforts to speed up local plan preparation, including through: digitisation and standardisation of local plans; streamlining of evidential requirements; efforts to avoid duplication of national with local policies; and imposition of a timeline for plan production. The government should also consider whether full public examination is necessary for proposed "non-strategic" policies within a plan, where there are no outstanding objections, as a further means of speeding up plan production.

2. The government should also press ahead with proposals to introduce national development management policies (NDMPs) within national policy. However, the current proposals should be amended to ensure that, where "necessary" for their local areas, local authorities can depart from the policies, so long as this necessity can be justified by appropriate evidence. Where this is not the case (in the majority of areas), it should be assumed that local areas will be bound by the NDMPs, and that local plans will not replicate NDMPs within the plan.

3. Process improvements to local plan formation are unlikely to be enough alone to prompt widespread uptake. Given concerns that the "tilted balance" has lost its force in incentivising plan-making, the government needs to consult on new wording in national policy that brings a renewed prospect of local authorities, including in green belt areas, regularly losing decisions on appeal, where up-to-date plans have not been brought forward.

4. Sub-regional authorities should be incentivised in national policy to conduct a strategic review of green belt allocations where it is clear that there is likely to be a shortfall of sites to deliver homes in a sub-region (see Section 2 Housing numbers and strategic planning). A review on a sub-regional level should be able to make better judgments about where homes are best located taking account of all constraints across a sub-region.

5. Such sub-regional reviews should prioritise areas for housing based first on their locational sustainability – in particular proximity to transport nodes such as railway stations – and only subsequently on the basis of site "quality" issues, such as whether a site is greenfield or brownfield.

6. While decisions on green belt should be undertaken as standard as part of the sub-regional planning effort, individual local authorities should retain the ability to conduct green belt reviews while forming their own plans, if they deem sub-regional allocations are likely to be insufficient to deliver the homes needed in an area and further release of green belt is needed.

Section 4: Developer contributions and affordable housing

The securing of developer contributions for affordable housing in the planning system is a complex area and there is widespread agreement across the sector that the current system of CIL and s106 is often frustrating and bureaucratic. Despite this, it does deliver around half of England's affordable homes, around £7bn per annum in contributions, much local infrastructure and mixed communities.

There is also a high degree of consensus across local government, the affordable housing sector and the development industry that the government's proposals are likely to make the situation worse, and in any event will create a lengthy hiatus and uncertainty in a planning system which is already suffering from the impacts of other reform efforts. Hence efforts should be initially focused on improving the current system.

The evidence gathered by the BFC suggests that the biggest improvements will be seen from simply the proper resourcing of the current system (Section 1 Resourcing), and by local authorities producing up-to-date local plans and policies (Section 3 Local plans and green belt).

Further recommendations are:

1. The government should abandon efforts to introduce the proposed infrastructure levy which,

despite having some merits, is not widely supported and has significant flaws.

2. The process for agreeing s106 deals should be streamlined as far as possible in order that local authority and developer team resource is not wasted in fruitless negotiation. This could be achieved in part by putting the main body of s106 agreements into legislation so that the legal text does not have to be drafted every time. Further to this, local planning authorities should be able to consult on and then adopt common s106 clauses. With standardised contract texts, authorities and applicants should be able to concentrate on negotiating the specific numbers (such as the number of affordable homes to be provided in a development), rather than the legal text.

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4. Once the functioning of s106 is improved, the department (DLUHC), should consult with the sector on replacing CIL with a new planning tariff, universally charged by all authorities but levied at a local level, set at a very low level which is not likely to render development unviable, but which is still able to raise a significant amount of revenue for local infrastructure. The only exemption would be for affordable housing. The idea behind such a charge, levied on a pounds per square metre basis, would be that, by not having the ambition to replace s106, it would be simpler and thereby escape the complexity that has beset both CIL and the proposed infrastructure levy. However, the history of policy efforts by successive governments in this area is full of bold measures resulting in unintended consequences, and the government must listen to sector advice on the detailed design of the scheme, and only proceed if support is secured.

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