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The *Planning and Compulsory Purchase Bill*

Bill 12 of 2002-2003

This paper describes the Planning and Compulsory Purchase Bill, which relates to England and Wales. It shows how the proposals developed through the Planning Green Paper of December 2001 and the Deputy Prime Minister's Statement of July 2002. It takes account of comment on the proposals.

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Summary of main points

- The aim of the Planning and Compensation Bill is to speed up the planning system;
- The Planning Green Paper of December 2001 presented several proposals, including a radical change of the method of handling major infrastructure projects and the abolition of county structure plans;
- The Royal Commission on Environmental Pollution rejected the Government's approach, arguing instead for closer links between the planning system and other policies to protect the environment;
- The Select Committee on Transport, Local Government and the Regions criticised the Green Paper proposals, arguing that an incremental approach to change would bring greater advantages and be much easier to implement;
- The Deputy Prime Minister's statement in July 2002 announced that the ideas on major infrastructure projects would not be pursued;
- Comment on the Green Paper proposals for business planning zones is included in section VI;
- Comment on the Green Paper proposals for reform to the system of plan formation, including abolition of county structure plans, is discussed in section VII;
- Comment on the Green Paper Proposals for reform of the law on compulsory purchase, increasing home loss payments, is discussed in section VIII;
- The Bill is analysed in section IX.

CONTENTS

I Introduction to the Bill

A. An Overview of the Bill

The Bill would bring about a change in the structure of development plans, various changes to procedures, and a change to compulsory purchase law.

- Part 1, which applies only to England, covers the formation and revision of the Regional Spatial Strategy (RSS), which will replace the current Regional Planning Guidance.
- Part 2, which applies only to England, provides for the establishment of the Local Development Scheme (LDS), which will replace Local Development Plans.
- Part 3 brings the new set of plans into the plan-led system of planning law.
- Part 4 makes a few changes relating to the determination of planning applications, makes changes relating to the handling of major infrastructure projects, and provides for the formation of Simplified Planning Zones.
- Part 5 covers correction of errors in decisions made by the Secretary of State or an inspector under the Planning Acts.
- Part 6 provides for the system of plan formation in Wales.
- Part 7 covers compulsory purchase, mainly increasing loss payments.
- Part 8 is miscellaneous and general.

The Explanatory Notes state the aim of the Bill very plainly:

> The purpose of the Planning and Compulsory Purchase Bill is to speed up the planning system.[1]

B. Background to the Bill

Many people think that UK planning law should be reformed, but there are radically different views as to the desirable direction of change. On the one hand, there are supporters of fundamental changes to the law, including third party rights of appeal, to make it compatible with the European Convention on Human Rights. On the other hand, there are those who want to reform the law, so as to make it more efficient for business.

The argument for substantial reform of planning law to make it compatible with the European Convention on Human Rights was strong in 1999 and 2000. The *Human Rights Act 1998* had come into force, enabling actions relating to the Convention to be brought in UK courts. So far, only one such action in planning has made any progress, relating to the right of the Secretary of State to call in a planning application to determine it himself. The case - called *Alconbury v SSETR [2001] JPEL 291* - was heard in the House of Lords in early March 2001. Judgement was announced on 9 May 2001,

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[1] ODPM, *Planning and Compulsory Purchase Bill Explanatory Notes*, p 1

upholding the UK planning laws as being compatible with the European Convention on Human Rights on the issues raised.

That judgement has removed pressure for planning reform in the direction of greater consultation and third party rights to achieve compatibility with the European Convention. Other cases of this type might be brought, perhaps on the third party right of appeal issue.[2] However, that has not yet happened, and the Lords judgement has strengthened the confidence of those who argue that the UK planning system is compatible with the European Convention in all respects.

Soon after the *Alconbury* judgement, the Government started to prepare a very different reform of planning law, which was the origin of the current Bill. One strand of this reform is to make the planning system more efficient for business. To some extent, that aim also dates back to 1998, but to a report by US Management Consultants rather than to a European Convention. This is normally called the McKinsey Report.[3]

There have been many reports on the low productivity of the UK economy relative to other industrial nations, often blaming poor management, poor industrial relations or lack of training. McKinsey's conclusion was different, noting first the failure of UK management to adopt global best practices. The report concluded that the main explanation lay in the effect of regulations governing product markets and land use on competitive behaviour, investment and pricing. It continued:

> Our study also shows that the reasons most frequently invoked for the United Kingdom's economic underperformance – low capital investment, poor skills and sub-scale operations – are often the consequences of these market restrictions. As such, they are important secondary effects rather than primary root causes of economic problems. Low capital investment, for instance, is largely the result of the lack of opportunities for profitable investment: new retail or hotel formats, say, may suffer from a dearth of access to sites on which to build, as well as high construction costs when sites are available. Low skills have often been overcome by best-practice operators using tailored processes and intensive job-specific training programmes. And where low scale is a factor, it is often caused by regulatory restrictions on competition or land use rather than the limited demand of a relatively small national market.

The McKinsey view poses difficult problems for the planning system. Part of the report's objection is to the policy rather than to the legislation. There may be reasons in a relatively small country why there are more restrictions on building than in the USA. A separate possibility is not that the final decision is incorrect or unfair to business, but that the process of arriving at that decision is too long and costly.

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2 "Third Party Rights of Appeal in Planning", *Library Research Paper* 02/38, May 2002

3 McKinsey Global Institute, *Driving Productivity and Growth in the UK Economy*, October 1998

The Competition Commission investigated supermarkets and reported in 2000. Amongst other issues, it considered whether the supermarket sector suffered from restricted competition because planning restrictions - planning guidance on town centres and retail developments[4] - limited the availability of suitable sites for new entrants. The Commission concluded:

> We have found no reason to suggest any changes in the balance of interests now reflected in the planning system. However, the planning system is not designed to safeguard competition and consumer choice in multiple grocery retailing and we believe there is currently no way of addressing, through changes in the planning regime, the particular manifestations of lack of consumer choice that we have identified.[5]

In other words, there might be valid reasons for the existence of the planning guidance, even if it did have the effect of making it harder for new entrants to find suitable sites. That particular report did not lead to any changes in planning law, and the planning guidance on retail development remains unchanged. However, the current reform aims, amongst other things, to make the planning system more suited to business.

The Planning Green Paper of 2001 (discussed in detail in section II) lists several features of a successful planning system:

> 1.4 A successful planning system will promote economic prosperity by delivering land for development in the right place and at the right time. It will encourage urban regeneration by ensuring that new development is channelled towards existing town centres rather than adding to urban sprawl. It will help to conserve Greenfield land and re-use urban brownfield land. It will value the countryside and our heritage while recognising that times move on. It has a critical part to play in achieving the Government's commitment to sustainable development.

It goes on to emphasise the need to gain the confidence of many groups. The issues mentioned, however, relate mostly to business:

> 1.6 The customers of planning departments have a right to an efficient and user-friendly service. Business in particular, needs to know that their planning applications will be dealt with efficiently and predictably. Time delays caused by bureaucracy, lack of skilled staff or over-complex systems are bad for business and do little good for anyone else. Delays in receiving a planning decision can mean loss of competitiveness for business, something that we simply cannot afford in the modern global economy.

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4 DOE Planning Policy Guidance: *Town Centres and Retail Developments* PPG6, June 1996

5 Competition Commission, *Supermarkets*, Cm 4842, October 2000 Vol I p 7

> 1.7 Whilst some 90% of planning applications are eventually approved, we need to address the flaws and inefficiencies in the system that frustrate business and others seeking to develop land. Development for business, housing, services and infrastructure are all vital to the health of our economy. We need the planning system to ensure that it is delivered in a way that is sympathetic to our environment and that benefits the whole community. But we do need good development: planning must be about accommodating change not just resisting and stifling it.[6]

The following juxtaposition of the recommendation of the Select Committee on Transport and the response of the Government shows the two points of view:

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

> **Government Response**
> 48 We reject the Committee's suggestion that the Green Paper outlines a "business agenda". The planning system should not be subservient to the interests of *any* single interest group. Our proposals will build on the fundamentals of the planning system which have been built up over many years: the philosophy of the "plan-led" system; applying the principles of good regulation – consistency, proportionality, targeting, transparency and accountability; and promoting and facilitating effective public participation. As we made clear in the recent Planning Policy Paper, we believe that the planning system should deliver *Sustainable Communities: delivering through planning* in a sustainable way key Government objectives such as housing, economic development, transport infrastructure and rural regeneration while protecting the environment. Planning should: create and sustain mixed and inclusive communities; enable local communities to be involved much more positively than before and deliver a high quality and respected public service.[7]

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6 DTLR, *Planning: delivering a fundamental change*, December 2001

7 ODPM, *Response to the House of Commons Transport, Local Government and the Regions Select Committee Report on the Planning Green Paper*, November 2002

C. An Overview of the Current Planning System

The current planning system in England and Wales has developed over the period since 1947 with new Acts of Parliament, regulations and guidance, but maintaining many of the same principles. The most important source of current planning law is the *Town and Country Planning Act 1990*, including the following features of particular relevance to the Bill*:* The Act defines "development" (s.55) for which planning permission is required. Minor developments can be carried out under permitted development rights, without requiring explicit planning permission.[8] Applications for planning permission are determined by the local planning authority. If an application is rejected, then the disappointed applicant can appeal to a planning inspector, who will hear the appeal in the name of the Secretary of State. The system is often described as "plan-led", because the Act says that planning applications shall be determined in line with the development plan in force "unless material considerations indicate otherwise" (s.70 and s.54A).

The system of development plans has increased in importance since those provisions were introduced in 1992.[9] If a local development plan has zoned land for a particular use, then an individual planning application cannot be rejected on the grounds that the local planning authority does not want that land used in that way. If the local planning authority does reject the planning application for that reason, then the applicant can appeal to the planning inspector who will uphold the appeal.

The system of plan formation links central Government guidance to regional, county and local plans. The Government issues regional planning guidance for each region, after consultation with a regional body, and the opportunity for the public to make objections to draft guidance in public hearings. Until recently, the regional bodies were regional planning conferences, such as SERPLAN for the South East, composed mainly of representatives of the county councils. Over the past two years, however, each of the eight regions outside London has established a regional chamber, and each has adopted the title "Assembly". These assemblies have replaced the planning conferences. They are as follows:

North West Regional Assembly
North East Assembly
Yorkshire and Humberside Assembly
West Midlands regional Assembly
East Midlands Regional Assembly
East of England Regional Assembly
South East of England Regional Assembly
South West Regional Assembly

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8 *General Permitted Development Order 1995* (SI 418)
9 They were introduced in the *Planning and Compensation Bill 1991*

According to the Office of the Deputy Prime Minister (ODPM):

> Each chamber strives to be representative of the region it serves. Under guidance issued by the secretary of state, this representation comprises 70% local authority members and 30% drawn from other sectors, including higher and further education, the Confederation of British Industry, the Trades Union Congress, chambers of commerce, the small business sector, parish and town councils,. the National Health Service, voluntary organisations, Learning and Skills Councils, regional cultural consortia, rural and environmental groups and other regional stakeholders.[10]

If regions choose to have directly elected assemblies, as would be allowed under the *Regional Assemblies (Preparation) Bill 2002/03*, then those assemblies would take over the regional planning role.

The next stage down in the hierarchy of plans is the county structure plan, prepared by the county council, which goes into far more detail concerning land use and strategic development. The county structure plan must conform to the Regional Planning Guidance. Below that is the local development plan, which contains detailed maps zoning land for particular purposes. There is a detailed procedure for the approval of plans at each level.[11] Draft plans are prepared and deposited, followed by an opportunity for members of the public to make objections. The planning authority can negotiate with objectors and produce a revised plan. If the objections are not withdrawn, a public hearing before a planning inspector follows. The inspector's recommendations form the basis of the plan produced by the planning authority, which then requires the approval of the Secretary of State.

The whole process takes a long time. Initial plan formation in the 1990s took several years, with a few authorities still not having the correct structure of plans in force. If no plans have been adopted, or if the adopted plans are out of date, the certainty that should be provided by a plan-based system is greatly reduced. It may be unclear how much weight to give to draft proposals for a new development plan that have not yet been approved.

Planning policy guidance issued by the Government in February 1997 explains an issue that arises in the determination of an individual planning application, in those circumstances:

> Questions of prematurity may arise where a development plan is in preparation or under review, and proposals have been issued for consultation, but the plan has not yet been adopted or approved. In some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity. This may be appropriate

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10 www.regions.odpm.gov.uk/chambers

11 DETR, *Planning Policy Guidance Note 12: Development Plans*, 1999

> in respect of development proposals which are individually so substantial, or whose cumulative effect would be so significant, that to grant permission would prejudice the outcome of the plan process by predetermining decisions about the scale, location or phasing of new development which ought properly to be taken in the development plan context. A proposal for development which has an impact on only a small area would rarely come into this category; but a refusal might be justifiable where a proposal would have a significant impact on an important settlement, or a substantial area, with an identifiable character. Where there is a phasing policy in the development plan, it may be necessary to refuse planning permission on grounds of prematurity if the policy is to have effect.
>
> Other than in the circumstances described above, refusal of planning permission on grounds of prematurity will not usually be justified. Planning applications should continue to be considered in the light of current policies. However, account can also be taken of policies in emerging development plans which are going through the statutory procedures towards adoption (or approval). The weight to be attached to such policies depends upon the stage of plan preparation or review, increasing as successive stages are reached…[12]

That situation may persist for several years, until a new development plan is approved. There is inevitably a loss of certainty when account is taken of proposed plans, rather than there being one single plan, in accordance with which the application could be determined.

One important area of disagreement relates to household formation. The Government produces estimates of how many new households are likely to be formed over the next decade or two, breaking that down into housing targets for each region. The breakdown into targets for each county has been undertaken by the regional planning conferences, but would now be undertaken by the regional assemblies. It is often controversial, with several counties, particularly in the South East of England, wanting a much lower target for house building than is considered necessary by the Government. This Government has tried more consultation over these targets, so as to take more account of views coming from the counties. However, that has not resolved the fundamental disagreement. Once the counties accept the housing target, they have to set aside suitable land for the correct scale of housing. Local development plans have to zone the land in detail. Developers can then, if they choose, gain planning permission for housing developments.

The planning system in England and Wales, then, offers scope for a wide representation of views by individuals and democratic bodies. It also operates under the broad control of the Secretary of State.

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[12] DOE, *Planning Policy Guidance: General Policy and Principles PPG1*, February 1997

II The Planning Green Paper

a. An Overview of the Proposals

The term "planning green paper" covers a group of consultation documents produced by the Department of Transport, Local Government and the Regions in December 2001. The whole consultation package consisted of four papers from the Department of Transport, Local Government and the Regions. The main one was *Planning: delivering a fundamental change*. It was accompanied by a separate Regulatory Impact Assessment. There are also daughter documents on Compulsory Purchase (*Compulsory Purchase and Compensation: delivering a fundamental change*) Planning Obligations (*Planning Obligations: delivering a fundamental change*) and Major Infrastructure Projects (*Major Infrastructure projects: delivering a fundamental change*)[13]. A further document was published on Planning Fees. A consultation exercise on Use Classes and Temporary Uses of Land was not part of the Green Paper exercise.

Stephen Byers announced the main proposals on 12 December 2001:

> A faster, fairer planning system, with community interests at its heart, was unveiled today by Stephen Byers, Secretary of State at the Department for Transport, Local Government and the Regions. Revealing proposals for the biggest shake-up in the planning system in more than half a century Mr Byers said a new emphasis on engaging communities was at the centre of the reforms. Mr Byers said:
>
> "This is a radical change in the way we look at planning. Instead of being led by plans we will be led by people. We want a planning system in which the values of the whole community are allowed to prosper and develop. The current system does not allow that. It is slow, ponderous and uncertain. It benefits those with large cash and time resources and excludes those without. Our proposals have been characterised as being good for business. That is true. But they are good for the rest of the community, too."
>
> Key to the proposed changes outlined in the planning green paper is the introduction of new local planning frameworks, including neighbourhood and village plans. Covering communities down to the local level, these will set out how neighbourhoods can be preserved - and how they need to change. They will allow people to take part in decisions about the future of their community on an almost street by street basis. It will encourage local councils and developers to reach out to the community before seeking planning permission.
>
> "This is a new community-focused approach. It underlines our commitment to giving people a real voice in deciding the future of where they live," said Mr Byers. Other major changes proposed by the Planning Green Paper include faster

[13] Library Deposited Paper 01/1781

> processing of applications by separating householder and business plans and cutting in half the decision time on appeals to and call-ins by the Secretary of State. Simplifying the system by scrapping the confusing and often contradictory multi-layered plan hierarchy and replacing it with a clearer, simpler, two-level system of village or neighbourhood plans and regional plans, consistent with national planning policy. A further central proposal is new Business Zones to allow developers to build in designated areas without requiring specific planning approval. This applies only to low impact development where it doesn't put a strain on local services or create massive new housing demand. Business Zones would be restricted to specific types of business like clusters of hi-tech industry and these would have to fit in with the community strategy and the regional plan. Local authorities will have the power to reject repeated applications and twin tracking submitting the same application twice at the same time - will be banned. Time limits on planning consent will be cut from five to three years…[14]

The Green Paper proposed dropping county structure plans, so as to simplify the plan hierarchy. Instead of local plans, core statements of district planning policy would be set out in local development frameworks (LDFs). The green paper argued that LDFs would take less time to prepare and review. They would provide businesses with greater certainty and communities with a greater means of getting involved. The core policies in the LDF would have to be published each year and reviewed every three years. The higher level of plan would come from a Regional Spatial Strategy (RSS)

These proposals are retained in the Government's plans, although the terminology has changed slightly. The Local Development Framework has become the Local Development Scheme in the Bill. Business Zones (or Business Planning Zones) have become Simplified Planning Zones.

b. Compulsory Purchase

The consultation paper on compulsory purchase highlighted the following proposals, saying the Government would:

- provide powers which make it clear that authorities can purchase land compulsorily for the full range of planning and regeneration purposes;
- provide for greater flexibility in the ways by which authorities can demonstrate that their proposals are justified having regard to the public interest;
- speed up the procedural aspects of the confirmation and implementation phases of the compulsory purchase process;
- provide for a more attractive compensation package, including making "loss payments", as an addition to value based compensation, to reflect the compulsory nature of the acquisition.

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[14] DTLR Press Release 537, *Faster, Fairer Planning for All – Byers*, 12 December 2001

c. Planning Obligations

Another part of the Green Paper proposals related to planning obligations (often known as planning gain or planning agreements). Under section 106 of the *Town and Country Planning Act 1990* (as under earlier legislation) developers are allowed to make a deal to pay money to a local planning authority if a planning application is accepted. The idea is to prevent a legitimate application being refused because it would involve the local authority in increased costs, for example to provide some piece of public infrastructure. This is a useful way of conducting business, but it leads to concerns. Environmentalists fear that unsuitable applications are being accepted because local planning authorities cannot afford to refuse the money on offer. Developers fear they are being forced to pay too much in order to avoid applications being refused, with the consequent delay of a year or so before an appeal is settled.

The Government suggested the replacement of this system by a fixed fee to cover environmental costs, with the proceeds mostly going to the provision of affordable housing.

The proposal was dropped in the Deputy Prime Minister's statement of 18 July 2002. Instead, the Deputy Prime Minister announced:

> We will revise our policy guidance and work with all the relevant stakeholders to create a more streamlined system that will enable the community to share in the benefits arising from development. We will also carry forward the measures in the consultation paper for making the present system more transparent and predictable. For example, we have already required planning obligations to be entered on the planning register to ensure that they are open to public inspection.[15]

In other words, elements of the policy proposals are being preserved, but not in the form of primary legislation.

d. Major Infrastructure Projects

Much, perhaps most, of the publicity on the Green Paper related to the proposals on major infrastructure projects. This paper does not discuss those proposals or the criticisms of them, because they do not form part of the current Bill. Lord Falconer announced them in December 2001:

> Under new arrangements, Parliament will fully consider the merits of a scheme only after public consultation. The public inquiry system will remain in place to consider the detailed proposals. The Secretary of State will continue to make the final decision, as necessary. People will be involved at three key stages in the

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[15] ODPM, *Sustainable Communities – Delivering through Planning*, July 2002, paragraph 53

> process. Before the Parliamentary stage people would be involved in the development of Government policy, which would normally involve public consultation. They will have a right to object to a proposed project and for Parliament to have copies of all objections and representations. People will also be able to express their views at a subsequent public inquiry on the detailed aspects of the proposal.[16]

The proposal was dropped in the Deputy Prime Minister's Statement of 18 July 2002.

III The Royal Commission on Environmental Pollution

This Royal Commission produced its own report on planning in 2002, arguing that the town and country planning system needs to be updated to cope with the environmental challenges ahead. It welcomed the Government recognition that planning still has an important role, but continued:

> 7 Government policy towards local authorities, however, has given more emphasis to community strategies and local strategic partnerships, largely as a way of integrating a host of area-based initiatives previously launched for specific purposes. In policies for the regions there has been more emphasis on economic strategies than on regional planning guidance.
>
> 8 The Green Paper adopts a narrow focus on people's views about their immediate environment and the effects of new developments on "the surroundings in which they live and work". There is almost no reference to the wider environment or the value people attach to it. We are promised only that the planning system "will value the countryside and our heritage while recognising that times move on." There is no recognition of the severe economic and social implications of ignoring fundamental constraints such as those analysed in our report on energy and climate change.
>
> 9 The very few references to sustainable development do not acknowledge that it is an environmental concept. Where a decision involves striking a balance, the Green Paper sees it as lying between "our desire for economic development and for thriving communities"; environmental sustainability is not mentioned. Yet a system for planning and regulating land use has effects on the environment which are at least as direct, and ultimately as important, as its effects on the economy of the community.
>
> 10 Although we share many of the Green Paper's concerns, we approach the planning system from a different standpoint. We agree that "fundamental change" is necessary, but we believe it needs to go deeper and wider. We fear

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[16] DTLR Press Notice 549, *Faster, Fairer Decisions on National Projects*, 17 December 2001

> some of the proposals the government has put forward are unlikely to succeed because they proffer simplistic solutions to complex problems. Others may well lead to increased uncertainty, and therefore slow down the system by increasing the number of legal challenges to decisions, one of the major causes of delays. Our main difference with the Green Paper, however, is that we have addressed fundamental issues, which the Green Paper fails to acknowledge, about the purpose and nature of a land use planning system, and we have placed those issues in the wider context of achieving environmental sustainability.[17]

The Royal Commission argues that dramatic changes in land use will be required in the countryside, so as to achieve environmental sustainability. It sees a basic weakness in present procedures in the lack of strong connections between town and country planning and the work of the specialist agencies dealing with pollution and conservation.

> 14 Having looked in depth at the role of the planning system, we have concluded that, over and above the proposals in the Green Paper, and sometimes in conflict with them, action should be taken in six areas to increase efficiency and effectiveness. We see a pressing need for:
> - clearer policies and objectives for the environment;
> - statutory recognition of the central role of town and country planning in protecting and enhancing the environment;
> - rationalising the overall system for environmental planning by introducing integrated spatial strategies covering all aspects of sustainable development;
> - ensuring that strategies cover all forms of land use;
> - much improved availability of information about the environment;
> - further steps to engage a wider range of people in decisions about setting and achieving environmental goals.

IV The Report by the Select Committee on Transport, Local Government and the Regions

On 3 July 2002, the Select Committee on Transport, Local Government and the Regions published a report on the Planning Green Paper. It criticised almost all the major proposals in the Planning Green Paper, arguing that far more attention should have been given to modest evolutionary revision of planning rather than to radical proposals. Some of their criticisms related to the proposals on major infrastructure projects and planning obligations, which have since been dropped. However, many of the criticisms relate to the proposed reforms to the system of development plans:

> 205. The Planning Green Paper rightly identifies room for improvement in the way the town and country planning system operates. There is little dispute that

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[17] Royal Commission on Environmental Pollution, *Environmental Planning*, March 2002 , Cm5459

decisions on planning applications should often be reached more quickly and particularly that the time taken to prepare and revise plans in past years has been depressingly slow. Whether this amounts to a need for the radical reforms does, however, need to be questioned.

206. The alternative, of continuing an evolutionary process of revision to the planning system, has been contemplated only patchily in the Green Paper. It does propose many simple changes to the development control part of the system, which will continue the process of modernising planning rules. However, the proposals on forward planning pay far too little attention to modest, practical measures which could simplify the system and save time with few adverse side effects. These should be introduced and tested first before radical measures are introduced.

207. We conclude that the Government's proposals will not for the most part achieve their key objectives of introducing greater speed, simplicity and certainty to the system...

208. The Green Paper has been quick to spot, and in our view in some cases exaggerate, the problems with the current system, but it has played down the strengths of existing practices. By focusing on outputs and the mechanics of planning it has largely overlooked the central value of the planning process as a brokering mechanism between competing interests in deciding how land and buildings should be used. The means by which decisions are reached must be seen to be fair if participants are to accept the outcomes, especially the ones they do not like. The present system commands public confidence because it affords a fair hearing at all stages of the process. The Government ignores at its peril warnings of a perception that the proposed new system will constrain effective participation by those with real interests. The Government's radical reforms are in danger of spawning a new generation of Swampies.

209. It would take at least five years to establish the new system. The Government has been quick to complain about the length of time taken by local authorities to implement the unexceptional obligation of preparing an authority-wide plan, yet retains an incompatible belief in their ability to reinvent quickly the entire forward planning process at the local level. There are already indications of reluctance by local authorities to keep their policies up-to-date, and a hiatus is virtually inevitable as authorities make up the details of the Government's new system as they start to apply it. There is a substantial price to pay in the transition for any new procedures, only worth paying if the resulting framework is a substantial improvement over the existing one. We have found little evidence that it would be.

210. We conclude that the Government's proposals are unworkable as a whole. We share the Government's enthusiasm for clearing the stuffy air which surrounds planning. We wish to encourage innovation and enthusiasm for the immense positive contribution which planning can make to public life. Yet the Green Paper shows a lack of grasp of the real issues over outward appearances. For example:

- the important issue is how Government planning policy is implemented, not how many pages it is;
- the case for Business Planning Zones fundamentally misconceives planning as a drag on the economy rather than a contributor to securing high quality development in the right places;

- the length of the Heathrow Terminal 5 inquiry is legendary, but a poor basis for choosing a new system to decide major infrastructure projects;
- Local Plan Inquiries may seem ripe for abolition because of the time they take, but they are a significant contributory force in establishing quality in the planning process, where outcomes are seen as rational, democratic and driven by a commitment to the wise use of land in the public interest.

211. The Committee was astonished by the lack of attention to the most obvious problem facing the delivery of an effective planning service, namely its under-resourcing. There is a shortage of professional and experienced planning staff in most local authorities, low morale and a recruitment problem. Ministers' obsession with shaming authorities with poor performances, measured largely in terms of speed rather than quality of decisions, has no doubt contributed to this. Meanwhile, local authorities divert money away from planning to other more politically attractive uses.

212. The Government accepts that its proposed new system will take more planners to operate than the current one, but has no serious proposals in hand to train and attract staff even to fulfil current requirements. We have no hesitation in recommending that significantly more money and staff should be ploughed into planning long before any major revision of its practices is contemplated. We suspect that some at least of the problems identified would diminish or dissolve if more and better qualified staff were in post to address them.

213. We conclude that the requirement is for different priorities than the ones the Government has selected. The current system would benefit from gradual modernisation. There is widespread understanding of how the planning system works, in general, if not in detail. The Government will reach its objective much more effectively by working with the grain of over 50 years of experience rather than stubbornly discarding it.[18]

V The Deputy Prime Minister's Statement of 18 July 2002

On 18 July 2002, the Deputy Prime Minister announced that he would go ahead with the abolition of county structure plans and the introduction of legislation on Business Planning Zones. The procedure for planning obligations would be simplified, but there would be no move to a fixed fee. The major infrastructure proposals would be largely dropped. First, he announced an extra £350m for the planning system over three years:

> The extra money will be linked to reform. Today I am publishing three documents: our response to the recent planning Green Paper consultation and supporting papers on compulsory purchase and on our regional and local plans. Copies are available in the Library.
>
> The documents contain extensive reforms. Let me summarise some of the key points. First, we will give counties a new statutory role in underpinning the new

[18] Transport, Local Government and the Regions Committee, *Planning Green Paper*, May 2002, HC 476-I 2001-02

> regional planning system, but we will abolish the county structure plans themselves. Secondly, we will introduce business planning zones to deliver growth, jobs and productivity without sacrificing quality of development. Thirdly, I will speed up the planning of major infrastructure projects by setting out the Government's objectives in clear policy statements, and changing inquiry processes to make them more efficient. I have accepted the Select Committee's argument that the parliamentary procedures for major infrastructure projects are not the best way forward. Finally, I will not change the right for objectors to make their case to the inspector at inquiries into plans but I will take action to speed up the inquiry process.[19]

Three documents from the Office of the Deputy Prime Minister accompanied the statement:

- Sustainable Communities – Delivering through Planning;[20]
- Making the System Work Better – Planning at Regional and Local Levels;[21]
- Compulsory Purchase Powers, Procedures and Compensation: the way forward.[22]

The Key decisions of the Planning reform paper (*Sustainable Communities – Delivering through planning*) are as follows:

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

- We will review existing policy guidance over the course of the next three years to reduce the volume and increase its clarity.

- We will seek an enabling power in primary legislation for the Secretary of State to prescribe a timetable for called in and recovered appeal decisions.

- Major infrastructure projects – we will issue clear statements of national policy and implement ways to make public inquiries more efficient. We do not intend to pursue the proposal to introduce a parliamentary procedure.

- Regional Planning Guidance will be replaced by a statutory Regional Spatial Strategy.[23]

The second document (*Making the System Work Better – Planning at Regional and Local Levels*) explained the intention for the new system of development plans:

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19 HC Deb 18 July 2002 c 441
20 http://www.planning.odpm.gov.uk/consult/greenpap/scdtp/index.htm
21 http://www.planning.odpm.gov.uk/consult/greenpap/makebett/index.htm
22 http://www.planning.odpm.gov.uk/consult/greenpap/comppow/index.htm
23 ODPM Press Notice ODPM-039, *Planning to Drive Communities' Future*, 18 July 2002

7 Regional Planning Guidance will be replaced by Regional Spatial Strategies (RSS). The main purpose of the RSS will be to provide a spatial framework within which Local Development Frameworks and Local Transport Plans can be prepared. There should be a two-way relationship with the RSS informing as well as taking account of other strategies, including the Regional Development Agency's regional economic strategies and those on air quality, energy and climate change. The same should be true of the investment and operational plans of relevant infrastructure and public service providers. The RSS will provide a spatial framework for the region over a fifteen to twenty year period. The aim should be an integrated, strategic approach with regional and sub-regional priorities for housing being formulated together with priorities for environmental protection and improvement, transport, other infrastructure, economic development, agriculture, minerals and waste treatment and disposal.

9 Regional Spatial strategies will be given statutory status for the purposes of s54A of the Town and Country Planning Act. This is consistent with the enhanced role to be played by the Regional Spatial Strategy and will address a problem with the current arrangements in that in determining a planning application an out-of-date development plan can be given more weight, because of its s54A status, than an up-to-date Regional Planning Guidance. Where there is any conflict between the Regional Spatial Strategy and a Local Development Framework document the most recent will carry the greater weight.

10 In some areas there may be a need for separate sub-regional strategies such as the one for Thames Gateway which cuts across three regions. But in general we see sub-regional issues, including the distribution of housing provision figures down to district level, being dealt with in sub-regional sections of the RSS. In this way it will be possible to deal with issues such as the broad spatial balance between the provision of new housing and economic development as part of a sub-region that makes sense rather than related to historic county boundaries. This sub-regional detail will provide the bridge between the more general regional policies and the Local Development Frameworks. It is in the preparation of the sub-regional elements of the RSS that we see a continuing need for input from the county councils.

11 On commencement of the new arrangements following legislation all existing RPGs will be treated as Regional Spatial Strategies…

14 In providing the new sub-regional detail in the RSS, the Regional Planning Bodies (RPBs) will look to the county and unitary authorities to take the lead in convening the necessary sub-regional working groups with the districts and other stakeholders. RPBs will be able to appoint counties to act as agents in helping them to discharge in whole or in part one or more of their functions. We anticipate that in most regions the Regional Planning Bodies will want to do this in relation to:

- providing technical expertise to assist with the review of the Regional Spatial Strategy, including in the district distribution of housing figures where a county may lead the relevant sub-regional working group;

- taking the lead in the preparation of certain sub-regional strategies specified by the regional Planning Body;
- assisting the Regional Planning Body on general conformity issues; and
- monitoring and advising district authorities on Local Development Frameworks and planning applications where regional or sub-regional considerations are raised.

The document also explains the nature of the Local Development Frameworks, which are to replace local plans and county structure plans:

> 21 Central to our reforms are the principles that we need positive plans which effectively promote, guide and control development and which reflect the needs of the whole community (including business). We also need plans that provide certainty, but which are also responsive to changing circumstances.
>
> 24 The Local Development Framework will comprise a folder of documents for delivering the spatial strategy for the area consistent with the community strategy and in general conformity with the RSS. Some of these documents will be subject to statutory requirements as to consultation and formal testing through an independent procedure. The policies in such documents will be given primacy when decisions are taken on planning applications (ie Section 54a will apply). However, there will also be scope for the preparation of less formal non-statutory documents similar to the existing supplementary planning guidance. These should also go into the Local Development Framework folder. These might be generic design plans, site development briefs etc for a small local area or large development site. These non-statutory documents will be adopted by shorter, simpler procedures, but will be afforded less weight in the consideration of particular proposals for development (they will be capable of being a material consideration). It will be for the local planning authority to satisfy itself that these documents are in general conformity with the statutory parts of the LDF, and with the Regional Spatial Strategy (or Spatial Development Strategy in London).
>
> 25 There will be a statutory requirement for the LDF to have a contents page setting out the different documents which comprise the LDF and their status. Certain elements of the Local Development Framework will be required to achieve s54A status and we will specify these in regulations.
>
> 26 It would be open to a local authority to integrate the various elements of the LDF into one document prepared at one time if it wishes, though this may reduce some of the flexibility we are seeking to create. The main components of the LDF will be;
>
> **(i) the core strategy**
>
> This will be a written statement of the core policies for delivering a spatial strategy and vision for the area, supported by a reasoned justification and including a statement of community involvement…
>
> **(ii) a proposals section, with a proposals map**
>
> We propose that this section should set out details of any site-specific policies outside of the area action plans…We propose that there should be, as now, a

> proposals map which would show existing and revised designations of areas of land such as conservation areas and green belt. It would also define the sites for particular future land uses or developments and the areas to which specific policies applied. The map should also show the locations of any proposed or actual area action plans…
>
> **(iii) area action plans for key areas of change or conservation**
>
> However, we still consider it desirable to produce more detailed area action plans, in particular for areas where there is a concentration of proposals for change…All site-specific area action plans which are designed to carry weight in taking decisions in the planning system (ie to which s54A applies) should be statutory and be subject to independent testing.

The Statement of Community Involvement

> 31 We propose that LDFs must include a Statement of Community Involvement, either as part of the statement of core policies or accompanying it, clearly setting out:
>
> - the arrangements, and standards to be achieved, in involving the community in the continuing review of all parts of the LDF and in significant development control decisions;
> - the standards for good practice in engaging those with an interest in proposed development;
> - simple and clear guidelines that will enable the community to know with confidence when and how it will be consulted, by the developer at pre-application stage and the LPA in relation to planning applications; and
> - a benchmark for applicants for planning permission about what is expected of them.

VI Comment on the Proposed Business/Simplified Planning Zones

a. Business Planning Zones and Simplified Planning Zones

The terminology is confusing. The *Town and Country Planning Act 1990* contains provision for simplified planning zones (SPZ). The Planning Green Paper proposed a new type of zone called a business planning zone (BPZ). Comment on the Green Paper, of course, used the term business planning zone, sometimes contrasting it with the existing simplified planning zones. In the event, the Government decided that the problem was the reluctance of local planning authorities to create simplified planning zones. The Bill would introduce changes by amending the 1990 Act, so as to change the way in which simplified planning zones can be created.

b. Enterprise Zones

The idea of zones in which only limited planning regulations apply is not a new one. In the early 1980s, Enterprise Zones were created in several areas. Companies were freed from planning restrictions and from business rates. Most types of development were allowed without explicit planning consent. The Department of the Environment commissioned the Final Evaluation of Enterprise Zones from PA Cambridge Economic Consultants.[24] The report considered the effects of the relaxed planning regime on Enterprise Zones, and surveyed companies on and off the zones, and concluded:

> 6.1.15 For those companies which had invested on-Zones, the availability of the relaxed planning regime was felt to be beneficial. Around a third of companies who made investments felt that these would have been discouraged or delayed had a normal planning scheme been in place.
>
> 6.1.16 Relaxed planning regulations do not appear to have had negative consequences resulting from lower quality buildings or inappropriate uses. The appearance of buildings on the Zones was not felt to be markedly different from that on similar industrial/commercial developments. This is in part a reflection of the lower commercial value of unattractive, badly developed sites, and partly of the fact that basic building/fire regulations still remained in force.

c. Simplified Planning Zones (SPZ)

Already by 1984, the Government felt that the relaxed planning regime in Enterprise Zones had been successful, and legislated, with the *Housing and Planning Act 1986*, to provide for Simplified Planning Zones in areas that were not Enterprise Zones. The Enterprise Zone experiment eventually came to an end because of stricter enforcement by the European Commission of rules on state aids. Simplified Planning Zones, however, have continued, and the legislation now forms part of the *Town and Country Planning Act 1990*.

A local planning authority may grant a general planning permission for some part of its area, in a similar way to a special or general development order made by the Secretary of State. Developers are then able to undertake development as of right, up to tolerances specified by the SPZ scheme, and without requiring further planning permission. The Planning Policy Guidance lists several types of site in which an SPZ might be appropriate:

- Large old industrial areas or estates
- New employment areas (Areas suitable for mixed industrial warehousing, commercial and retailing development)
- Urban areas

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[24] PA Cambridge Economic Consultants, *Final Evaluation of Enterprise Zones*, 1995

- New residential areas
- Large single ownership sites
- Redevelopment sites
- Land requiring provision of services etc by the public sector.[25]

d. Difference between SPZ and BPZ

The then Planning Minister explained in evidence to the Transport, Local Government and the Regions Select Committee the problems with Simplified Planning Zones and why Business Planning Zones would be different:

> 159. Well, we have the Simplified Planning Zones. How many of those have actually operated?
> (*Lord Falconer of Thoroton*) Very, very, very few indeed.
> 160. Why not?
> (*Lord Falconer of Thoroton*) I do not know why not. Local authorities have been very `unkeen' to use them. I have been told that in the few cases where they have used Simplified Planning Zones, the development of the Simplified Planning Zone has not been particularly sustainable, but the difference between a Simplified Planning Zone on the one hand and the Business Planning Zone on the other is the Business Planning Zone, unlike the Simplified Planning Zone, will have tight criteria about such things as quality, nature of development, precise location and development, et cetera.
> 161. So who decides whether those criteria are met?
> (*Lord Falconer of Thoroton*) The local authority.
> 162. So actually they are back there, are they not, because they are planning by the back door because when you come along and say, "Am I to do this?", you actually have to say, "Yes, but is it within the criteria that the local authority has laid down?"
> (*Lord Falconer of Thoroton*) The way it will work is that if the criteria are satisfied, the development can go ahead. There would have to be some notification procedure, but instead of having to wait for a yes, the local authority only intervenes when they think the criteria are not satisfied.
> 163. Why do you want these Business Planning Zones? Your own paper tells us that in fact there is not the evidence from the case studies that business has been hampered by the planning system.
> (*Lord Falconer of Thoroton*) Well, when you speak to business, they say that they have been considerably hampered in many cases by the process slowing things down.[26]

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[25] DOE, *Planning Policy Guidance: Simplified Planning Zones PPG5*, November 1992

[26] Evidence from Lord Falconer to the *Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 2

Perhaps this passage shows that the difference from the Government's point of view between SPZs and BPZs was that they wanted a system of simplified planning zone that was more likely to be used than SPZs. In the Bill, they concentrated on that aspect, merely changing the procedure for initiating an SPZ, rather than changing the nature of the SPZ itself.

e. Comment on the Green Paper Proposals on BPZs

Memoranda submitted to the Transport Committee showed several critics of the BPZ proposal, but there was more support among those involved in business and development.

The Local Government Information Unit criticised the proposals:

> There have been numerous attempts to introduce speedy planning consent areas for business and all have failed for good reason. Developers require certainty and guarantees of quality development around them if they are going to invest. Such regimes are therefore time consuming to set up. The Green Paper states such zones should have a low impact on the surrounding area and "not add significantly to high local housing demand, have large infrastructure requirements or require special environmental precautions to be taken" (paragraph 5.37). This reveals the contradictions in the policy, as only developments with minimal labour demands would have such low impacts. There have been major problems around green belt proposals in over developed areas like Reading and Cambridge and certainly any business zone in these areas would not be low impact. The LGIU cannot see the need for this proposal. A DETR report by ECOTEC in June 2000 found the current system does not constrain cluster development.[27]

Friends of the Earth noted that Simplified Planning Zones already existed, and had demonstrated shortcomings. The Memorandum criticised the proposed extension of the zones:

> We are concerned at the scale of these sites and the removal of democratic accountability and rights of scrutiny over industrial developments inside these zones. The designation of these zones may also remove the ability of a local authority to control important issues such as car parking standards and other policy requirements which contribute to sustainable development. Enough scope already exists inside the planning system to designate sites for industrial and commercial development inside the plan-led system. It is important to note that there is little evidence that planning control is a major factor in deterring inward investment. The limited success which some claim for Enterprise Zones was largely the result of fiscal incentives not primarily planning de-regulation.[28]

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[27] *Memorandum by the Local Government Information Unit laid before the Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 2

[28] *Memorandum by Friends of the Earth laid before the Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 45

English Nature would strongly oppose any Business Planning Zones that included land with national or local nature conservation, heritage or landscape designations. [29] The County Surveyors Society (CSS) was unenthusiastic.[30] The Town and Country Planning Association considered the proposal irrelevant.[31]

The Commission for Architecture and the Built Environment mentioned some dangers:

> 18. CABE considers that developers committed to high quality developments should be rewarded with quicker and less encumbered permissions. Nevertheless, we do not consider that the concept of Business Planning Zones, as currently defined in the Green Paper, is likely to achieve that objective. There is a danger that, as presented in the Green Paper, the Business Planning Zones could become a successor to Enterprise Zones and Simplified Planning Zones, where the dearth of quality of development actually detracted not only from the physical environment but also the ability to attract blue-chip investors to the areas. They also suggest that the Government does not have sufficient confidence that the rest of the Green Paper package will work, because if it does work, the Business Planning Zone concept should be unnecessary.
>
> 19. If they are adopted, we would suggest that the Business Zones should resemble the US "as of right" system. An action plan would be drawn up setting out criteria for development on the site, including design standards. Any potential developer would need to demonstrate to the local authority's satisfaction that those standards had been met in which case the need for consent would be waived. If, however, at any stage, the local authority considered that the standards had not been met, it should be able to demand a full planning application.
>
> 20. We would further suggest that Business Planning Zones should be restricted to brownfield sites to help further the urban renaissance.[32]

The Council for the Protection of Rural England (CPRE) opposed the proposal:

> CPRE believes that the arguments presented to support BPZs in the Green Paper are fundamentally flawed. In 2001, according to the Government's own figure, 87 per cent of all planning applications were approved, and 35 per cent of all appeals against refusal were allowed. These figures do not point to a major problem for business in gaining permission for reasonable applications. We oppose the proposals because:
>
> — A direct consequence of the relaxation of planning controls is that business lose confidence in the future quality of their immediate environment—developers lack the reassurance that neighbouring business will be restrained and standards maintained to the benefit of the whole area.
>
> — BPZs would suffer from a lack of public legitimacy and be likely to provoke fierce anti-business feeling within affected communities.

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29 *Memorandum by English Nature laid before the Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 50

30 *Memorandum by the County Surveyors Society laid before the Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 52

31 *Memorandum by The Town and Country Planning Association laid before the Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 95

32 *Memorandum by CABE laid before the Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 58-9

> — BPZs would undermine the Government's welcome approach to planning for communities which puts the emphasis on mixed use development to deliver the urban renaissance and reduce car dependency.
> — If designated on Greenfield sites BPZs would undermine the sequential approach to the allocation of land for development.
> — Large areas of potentially productive land could be effectively sterilised by zoning—a 1989 report in Property Journal showed that only 45 per cent of the land in Enterprise Zones had been developed in the eight years since they had been established.
> — Areas where "leading edge technology companies" tend to congregate (eg Cambridgeshire) tend also to already have serious problems of environmental capacity and high local housing demand, so such zones would add to the problem of over-heating.
> It appears that Business Planning Zones would offer no greater advantages—either to businesses or to the communities in which they operate—they are available through the development plan and development control mechanisms of the existing planning system.
> Furthermore, there are distinct disadvantages to both business and community interests in the proposed approach.
> CPRE believes that the proposal for Business Planning Zones would be a wholly retrograde step, likely to encourage greenfield sprawl, undermine the quality of the built environment and spark public outrage. We therefore strongly recommend that it be withdrawn.[33]

The National Trust was another critic, arguing that land use policies are not an obstacle to necessary growth and development.[34]

England's Regional Development Agencies, on the other hand supported the idea:

> We welcome the principle of Business Planning Zones as a means of promoting sustainable economic development and regeneration provided they add value. The proposed limitation to high tech industries, and the proposed restrictive criteria, will potentially limit their benefits and, as a consequence, their application.
> With regard to the types of use, given the rationale for BPZs they should be potentially open to any of the key clusters and target sectors identified in the Regional Strategies and regionally strategically significant investment sites. The process for their designation should be part of the preparation of the Regional Spatial Strategy, the arrangements for which must include a formal link to the Regional Economic Strategy i.e. it would be for the Regional Planning body, including the RDA, to decide. They should not dogmatically be limited to one per region but applied where they will demonstrably assist the RSS and RES proposals.

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[33] *Memorandum by the CPRE laid before the Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 103-4

[34] *Memorandum by the National Trust laid before the Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 84

> With regard to the criteria that should apply to BPZs, these should be as flexible as possible to facilitate the desired developments, whilst having the minimum safeguards to address environmental and sustainability issues. For example, if the detailed criteria are agreed at the regional level, this could enable clarity on issues such as ensuring contributions directly related to infrastructure and transport impacts being incorporated in the BPZ criteria.
> This approach would avoid the pitfalls associated with many Enterprise Zone developments which, whilst they encouraged enterprise, often achieved this at the expense of environmental and design considerations, the costly rectification of which was usually picked up by the public purse.[35]

The CBI was a strong supporter:

> 15. The concept behind Business Planning Zones is strongly supported by the CBI. The notion of BPZs is of course experimental, but the principle is sound and it should be trailed as soon as possible.
> 16. Planning has been particularly poor at dealing with fast-moving, globally mobile, highly demanding, high tech companies. There is great potential to make science or business parks more attractive to such companies by ensuring investment there is not held back by planning. Greater freedom for the site owner will enable them to be far more responsive to the needs of their customers.
> 17. Previous attempts to create "Simplified Planning Areas" foundered partly because they were too often designated in regeneration areas which were not attractive to investment even without planning restrictions. For Business Planning Zones to succeed they must be allocated sites that are attractive, prestigious and suitable for development in order to encourage the high-quality investment needed to attract international firms who might otherwise go elsewhere.[36]

The British Property Federation was also in favour:

> Business Planning Zones would have application in business parks, the completion of development and occupancy of which can take a number of years. In these circumstances it would be very helpful not to be tied to a vision for the overall development that had become out of step with occupier preference or other issues. However one problem associated with their application in this area is the requirement to conduct a detailed environmental impact assessment of the development which presents practical difficulty, as for the reasons mentioned it can be difficult to strictly define at the outset.
> They would also have merit in bringing forward large regeneration sites. The biggest issue with business planning zones is to encourage councils to actually

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35 *Memorandum by England's Regional Development Agencies laid before the Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 81

36 *Memorandum by the CBI laid before the Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 120

> experiment with them. We are aware of only two Simplified Planning Zones ever being tried.[37]

The County Councils Network did not come down strongly either way, though noting that there would be no scope for using planning obligations to finance infrastructure if planning permission were not required. It concluded:

> 4.5 If BPZs were linked to regeneration initiatives they may be worthy of further consideration, but they are likely to be few in number and offer only marginal advantages over the mainstream planning process.[38]

f. The Select Committee and the Government's Conclusion

The Select Committee conclusion on BPZs and the Government's response were as follows:

> **45. Recommendation (u) said:**
> **The proposal for Business Planning Zones appears to be based on the misconceived idea that the planning system is stopping desirable development rather than helping to enable it. There is no evidence of this. The zones are unlikely to encourage significant amounts of development, but there is a serious danger that the development which they will attract, will be car-based and of a lower standard than if they had been subject to normal planning controls. The best means of promoting sites for high technology development is using the existing planning system.**
> **(Paragraph 97 of the Committee's report).**
> **46.** We intend to proceed with the proposals in the Planning Green Paper for Business Planning Zones (BPZs). Some high-tech companies working on the leading edge of technologies operate in an environment that is extremely fast moving and where businesses start up and either expand or fail quickly. We want to enable such companies to operate in an equally flexible planning regime. Similarly, we want areas of low growth or high unemployment to be able to stimulate new jobs with improved planning for business. BPZs will need to be planned in the regional strategic interest but will be designated by individual local authorities. Development within BPZs will be of high quality and of low environmental impact, and we will set the parameters of development tightly to ensure that good quality environments are created. An environmental impact assessment will be required before a BPZ can be designated. We would not intend them to include activities that are major employment generators or that have high infrastructure requirements, or that require special environmental requirements, such as generating noxious substances. We will be issuing guidelines on how the new Zones will work.[39]

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[37] *Memorandum by the British Property Federation laid before the Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 131

[38] *Memorandum by the County Councils Network laid before the Transport, Local Government and the Regions Committee*, May 2002, HC 476 – II 2001-02 Ev 91

[39] *Government Response to the House of Commons Transport, Local Government and the Regions Select Committee Report on the Planning Green Paper*, 6 November 2002

VII Comment on the Proposed System of Plan Formation

a. The Proposals

The proposed changes in the system of plan formation remain controversial. The Government proposes a change in the system described in section I (C). Regional Planning Guidance would be replaced by a Regional Spatial Strategy (RSS). The county structure plans will be abolished. The Green Paper proposed that the next level down would be the local development framework (LDF). There was some concern that some areas might not be covered by an LDF. The Government then elaborated the proposals, including the need for treatment of some sub-regional issues and for everywhere to be covered by an LDF. However, the changes did not alter the fundamental point. The county structure plans would be abolished.

The RSS will be prepared by the Regional Planning Body (RPB). This will be the Regional Chamber provided certain criteria, to be specified in regulations, are met. RPBs will be able to use the county and unitary authorities to help produce the RSS. The statement by the Deputy Prime Minister in July 2002 makes it clear that the RPBs will be in charge:

> RPBs will be able to appoint counties to act as agents in helping them to discharge in whole or in part one or more of their functions. We anticipate that in most regions the Regional Planning Bodies will want to do this in relation to:
>
> - providing technical expertise to assist with the review of the RSS, including in the district distribution of housing figures where a county may lead the relevant sub-regional working group;
> - taking the lead in the preparation of certain sub-regional strategies specified by the RPB;
> - assisting the RPB on general conformity issues; and
> - monitoring and advising district authorities on Local Development Frameworks and planning applications where regional or sub-regional considerations are raised.[40]

b. Comment on the proposal to abolish County Structure Plans

Friends of the Earth criticised the proposals as undemocratic:

> 1.18 Friends of the Earth believes that no more weight should be attached to regional spatial strategies until they are the responsibility of an elected, accountable regional body. It is not enough to suggest that regional planning bodies should involve and consult a wide range of stakeholders. The decision-making body at a regional level has to be accountable to the regional electorate

http://www.planning.odpm.gov.uk/consult/greenpap/response/index.htm

[40] ODPM, *Making the System Work Better – Planning at Regional and Local Levels*, July 2002 paragraph 14

> and there must be a right to participate in the regional strategy-making process. Friends of the Earth believes that the public examination of regional spatial strategies must, in addition to enabling all interested parties to participate, examine all of their constituent parts. This would be a change from the current system that enables the regional planning body to decide which parts it wishes to open up to discussion.
>
> 1.19 Friends of the Earth believes that sub-regional planning should remain the responsibility of elected, accountable bodies and should not be a part of the unaccountable regional planning machinery. Existing county councils and metropolitan authorities should be required to work together where the need for functional sub-regional planning means that one or more administrative areas will be covered. This system works successfully at present in parts of the UK and these successes should be built upon so that existing skills, resources and relationships are effectively utilised...[41]

The County Councils Network disapproved of the proposed changes to the plan framework:

> 1.1 The present system of district-wide local plans prepared by 262 Councils (District and Unitary) has not been effective. The Green Paper is right to portray this element of the planning system as painfully slow. It is an indictment that 20 years after the introduction of these plans and 10 years after the plan-led system became mandatory 13 per cent of the plans have still to be put in place. Because of the cumbersome nature and turgid pace of the local plan process the intention to set out a land use pattern looking 10 years ahead has not been realised. At the stage of their final adoption, few plans provide guidance beyond five years.
>
> 1.2 So the case for change in plan-making is clear—but the Green Paper's proposals are not the right answer. By transferring responsibility for strategic land use planning from the 34 County Councils to the 238 District Councils and eight Regional bodies in England and leaving Districts to prepare both Local Development Frameworks (LDF's) and Action Area Plans the system would become more complex and less democratic.
>
> 1.3 It is difficult to see how the Government's aim of reducing the number of tiers of plans will be achieved by these proposals. The system of Regional Planning Guidance—Structure Plan—Local Plan will be replaced by Regional Spatial Strategy—Sub-regional Plan—Local Development Framework—Action Plan. Given the experience of district-wide local plans is no guarantee that District-based LDF's would be prepared with sufficient speed to make a real improvement to the planning system.[42]

The proposals have supporters, however. The House Builders Federation did not object to the abolition of county structure plans, but had doubts over the proposed structure in terms of housing allocation numbers.

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[41] *Memorandum by Friends of the Earth to the Transport, Local Government and the Regions Committee,* 2002 HC 476 – II 2001-2 Ev 44

[42] *Memorandum by The County Councils Network to the Transport, Local Government and the Regions Committee,* 2002 HC 476 – II 2001-2 pp 90-1

> However, there is great concern within the house building industry that the gap between RSSs and Local Development Frameworks (LDFs) is too great to ensure that housing numbers, set at the regional level, are accepted by local planning authorities as legitimate and appropriate sites are identified. Put simply, it is unclear how the new system will distribute regional housing requirements to individual local authorities and ensure they are enforced.
> In the absence of elected regional assemblies it is vital that Government provides a strong steer to regions on the required level of housing provision. This will ensure that new housing has both political legitimacy and is seen as vital in achieving national policy objectives. The regional planning body must in turn distribute housing provision figures for sub-regions (based either on county or urban catchment areas). It is at this level where sub-regional strategies will be essential in ensuring that responsibility for housing provision is not lost in the new system. Stronger guidance from Government is essential.[43]

The Commission for Architecture and the Built Environment supported the proposed changes to the system of plan making:

> 14. We agree with the conclusions of the Green Paper that the current plan-making system is overly complex, unresponsive, and slow and cumbersome to implement. This is having a direct impact on the speed and effectiveness of the renewal of the built environment. Planning departments' limited resources are too often focused on developing rather than implementing plans, while project proposers are uncertain about the relevance of local plans whose polices are often out of date.
> 15. We agree with the proposed new framework, including the abolition of county structure plans, subject to the creation of adequate and flexible sub-regional planning arrangements across local authority boundaries.
> 16. Where more detailed planning needs to be undertaken, it makes sense for relevant policies, including design policies, to be undertaken as part of the neighbourhood regeneration process. This includes the incorporation of spatial masterplans. The benefits of this approach include greater speed and flexibility in adopting and amending planning principles, and the opportunity for more meaningful community participation than that offered by the current plan inquiry process.
> 17. CABE therefore welcomes the introduction of action plans. It is, however, important that these action plans have sufficient legal status. We hope that they will be stronger in their standing as a material consideration than the current status of supplementary planning guidance. It is also important that these action plans are kept up-to-date, or there could be a proliferation of out-of-date local policy statements. We would suggest that where action plan policies depart from national or regional planning guidance, then they should not be regarded as

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[43] *Memorandum by the House Builders Federation to the Transport, Local Government and the Regions Committee*, 2002 HC 476 – II 2001-2 Ev 39

> having the status of a material consideration. This will concentrate local planning authority minds in withdrawing action plans on a timely basis.[44]

England's Regional Development Agencies also supported the proposed changes, including the abolition of county structure plans:

> We welcome the simplification of the planning hierarchy with the abolition of Structure Plans and Unitary Development Plans as we believe it will enable a more responsive and up to date planning system to be put in place. However, this new simplified hierarchy will only work if there is a strong relationship between local Development Frameworks (LDFs) and the proposed Regional Spatial Strategies (RSSs), given the higher number of LDFs which will exist in the absence of Structure Plans. It is proposed that each RSS contains a sub-regional dimension (in the form of a statement) to narrow the gap between the Regional and Local levels without creating another tier in the hierarchy of plans. This statement would clarify specific issues, which needed to be addressed in each sub-region's LDFs to reflect the RSS objectives. This could be reinforced by the proposed sub-regional strategies (where relevant), but it could also involve a new role for the counties i.e. freeing county planning from the constraints of the structure plan process could strengthen its relevance and coherence with other county-level statutory policy work. The counties could also have an informal role in using their expertise to assist the district and unitary authorities in preparing their plans and should be part of the Regional Planning Body preparing Regional Spatial Strategies. [45]

c. Comment on Local Development Frameworks (LDFs)

The Green Paper proposals for LDFs stated that they would not be based on a map, as are the current local plans, but only on criteria for appropriate development. That particular proposal, which attracted criticism, has been dropped.

The House Builders Federation (HBF) said that the LDF must provide certainty for both developers and communities about what is planned for a particular area:

> HBF is concerned that an LDF that does not specifically identify land for development, and is subject to constant review, will be unable to provide this level of certainty. House builders are particularly concerned that the proposed planning system will fail to deliver enough land for development, and will be less comprehensible to those wishing to develop and for local communities who rightly want to know where development and change will occur. A constantly changing strategy will fail to deliver the certainty that developers need…If LDFs

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[44] *Memorandum by CABE to the Transport, Local Government and the Regions Committee*, 2002 HC 476 – II 2001-2 Ev 58

[45] *Memorandum by England's Regional Development Agencies to the Transport, Local Government and the Regions Committee*, 2002 HC 476 – II 2001-2 Ev 79-80

> are to be successful they must establish the long-term vision for an area and should be adopted for a minimum of three years. If action plans are to provide the same level of certainty and clarity as the current system of local plans then action plans must be produced speedily and in conjunction with LDFs.[46]

The CPRE, coming from a very different position, stated that LDFs should "look at least 10 years, and preferably further, ahead – the period covered should change automatically with each review.[47]

d. Public Participation

Much of the criticism of the Green Paper related to suggestions that it would reduce public participation. That partly related to the proposal for major infrastructure development, but there was also concern over the new method of devising development plans. Pressure groups and parish councils feared that they would lose their right to present evidence to a public inquiry over a development plan and to question council witnesses. Instead, they would only be allowed to participate as part of a focus group. They feared that such a change would mean that their contribution could more easily be simply ignored.

The new local development scheme will have to include a Statement of Community Involvement, but it is difficult to know whether that would be enough to remove such fears, partly because we do not know how strict and detailed a statement of that kind would have to be. There is, in addition, always a problem with consultation that the views of the consultees may be rejected by those who are carrying out the consultation. The current arrangements for plan formation offer considerable scope for public participation but also make it clear that the views of the Secretary of State must prevail, since his agreement is needed for the plan to be confirmed. It is common for both those giving evidence and the council to agree on a level of housebuilding, but for the Secretary of State to overrule that in favour of a higher figure.

There was also concern about participation in development control decisions, in view of the proposals on the role of statutory consultees. The Planning Green Paper saw the number of statutory consultees as a source of delay, while local planning authorities waited for a response. It suggested a reduction in their number, along with a time limit for responses. In addition, the statutory consultees were to be allowed to charge for their responses. The July document, *Making the System Work Better*, drops the idea of charging, but retains the statutory time-limit of 21 days. The number of statutory consultees is to be reviewed, with no presumption that the list be reduced. Some smaller

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46 *Memorandum by The House Builders Federation to the Transport, Local Government and the Regions Committee*, 2002 HC 476 – II 2001-2 Ev 39

47 *Memorandum by the CPRE to the Transport, Local Government and the Regions Committee*, 2002 HC 476 – II 2001-2 Ev 102

statutory consultees fear that they might be unable to react quickly enough to proposed developments, and therefore miss their opportunity to comment.

VIII Comment on the Proposed Changes to Compulsory Purchase

a. Comment

There was far less comment on the proposals relating to Compulsory Purchase Orders (CPOs), summarised in section II (b) of this paper, than on other aspects of the Planning Green Paper. What comment there was tended to be considerably more favourable. England's Regional Development Agencies referred to these "much needed reforms".[48] The National Trust broadly welcomed "the approach to making compulsory purchase a more positive and practical instrument in managing land use change and promoting regeneration."[49] The Planning Officers Society supported the proposals:

> 8.6 As regards the proposals for CPOs and compensation these are welcomed especially following on from the recently published Compulsory Purchase Procedure Manual. The Society considers that the right balance has been struck between the needs of the community and the rights of the individual and concludes that:
> — the overhaul of procedures and how they are applied is long overdue and the Green Paper comprehensively tackles this, broadly in line with what local authorities have been asking for over a long period;
> — it is eminently sensible that the justification for acquisition is much more closely related to the development plan system as proposed in the parallel Green Paper;
> — the simplification and consolidation of the legislation should encourage wider use of the available powers; and
> — new compensation arrangements should be more fairly applied to, and understood by, those affected by compulsory acquisition although there may well be increased financial obligations on Local Councils or those providing the funding.[50]

From a very different perspective, J Sainsbury PLC supported the proposals but urged simplification:

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[48] *Memorandum by England's Regional Development Agencies to the Transport, Local Government and the Regions Committee*, 2002 HC 476 – II 2001-2 Ev 82

[49] *Memorandum by the National Trust to the Transport, Local Government and the Regions Committee*, 2002 HC 476 – II 2001-2 Ev 85

[50] *Memorandum by The Planning Officers Society to the Transport, Local Government and the Regions Committee*, 2002 HC 476 – III 2001-2 Ev 142

> On the whole, Sainsbury's is supportive of the proposed changes, but urges a simplification of the system. Where schemes have been approved which are considered to benefit communities, the system should not prevent those schemes coming forward because the use of CPO powers is perceived as risky or too expensive to use.
> In relation to the particular changes proposed:
> — If confidence in the system is to be restored, the legal powers must be simplified and clarified. It would seem sensible to consider consolidating legislation.
> — In relation to the power given to local authorities in Section 226 of the Town and Country Planning Act 1990, the power should include positive, as well as negative, aims.
> — We particularly welcome the proposed changes to allow acquiring authorities to confirm compulsory purchase orders where there are no (sustained) statutory obligations, to allow acquiring authorities greater flexibility to amend orders and to confirm CPOs in stages. Such changes enable the use of CPOs to be a dynamic process.
> — Sainsbury's deplores the uncertainty which is caused by the current arrangements for compensation. The changes proposed do not propose, however, radical amendment to the fundamental principles of compensation. For example, we would have liked to have seen some discussion of how the role which the private sector often plays in CPO (eg by offering alternative accommodation, or guaranteeing space in redevelopments) might be formalised.
> — Nevertheless, we support the proposal to provide a single statutory Compensation Code. The entitlement to, and amount of, compensation must be reasonably ascertainable at the outset of any process if the system is to work efficiently and dynamically.
> — We would encourage further review of the principle of open market value as the normal basis for determining the compensation payable for land taken as result of compulsory purchase. Anecdotal evidence from other systems suggests that a guaranteed right to a specified premium above market value can dramatically reduce the delay (and cost) associated with contentious CPOs.[51]

The Commission for Architecture and the Built Environment also favoured the proposals:

> 29. CABE's limited interest in this consultation process is the urgent need to allow public authorities to create meaningful development sites within urban locations to foster urban regeneration against masterplanning principles agreed with the local community. The availability of strengthened CPO powers is essential to achieving this objective. CABE therefore welcomes the general direction of the consultation paper.
> 30. We fully agree that section 226 of the TCPA 1990 is unduly restrictive, placing as it does a burden on acquiring authorities to have fully worked-up

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[51] *Memorandum by J Sainsbury PLC to the Transport, Local Government and the Regions Committee*, 2002 HC 476 – III 2001-2 Ev 147-8

> schemes. We welcome the approach of introducing new legislation to replace section 226 with a new provision for CPOs for a range of planning and regeneration purposes, including halting the physical economic and/or social deterioration of an area. We believe that any wording should also recognise the need for CPOs to contribute towards the delivery of a co-ordinated, sustainable renewal of an area, against an agreed masterplan and set of adopted design principles.[52]

b. The July Statement

A compulsory purchase document accompanied the July statement by the Deputy Prime Minister.[53] It welcomed the positive response to the consultation exercise.

It noted that the technical issues related to compulsory purchase have also been considered by the Law Commission, which reported in 2002.[54] Some of those measures may be implemented in other legislation at a later date, if the consultation is not complete.

The following passage covered the proposal to offer an additional "loss payment" in recognition of the compulsory nature of the acquisition:

> This proposal has been widely welcomed, although some concerns have been expressed about the additional costs which it would add to schemes. There have also been some suggestions that a substantial uplift should be payable in order to make compulsory purchase less unpalatable to those directly affected and so help to speed up the acquisition process. Clearly a balance will need to be struck in specifying actual thresholds, which will then need to be adjustable by means of secondary legislation. Our aim will be to provide appropriate recompense for the impact of losing assets at a time not of their owner or occupier's choosing, while attempting to offset the costs involved by the benefits of speedy implementation achieved through creating greater good-will amongst those whose properties are directly affected.
>
> We therefore envisage devising a scheme to provide generally for "loss" payments for the owners and occupiers of land acquired under compulsory purchase powers. It would run in parallel to the existing home loss payment arrangements, but would replace the existing farm loss payments. We envisage that it could take the form of a basic loss payment for each owner, based on a percentage of the value of his interest in the property but subject to a maximum ceiling. On top of that, we envisage that each occupier would receive an additional loss payment. In order to ensure that the amount of the loss payment is

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52 *Memorandum by CABE to the Transport, Local Government and the Regions Committee*, 2002 HC 476 – III 2001-2 Ev 59

53 ODPM, *Compulsory Purchase Powers, Procedures and Compensation: The Way Forward*, July 2002

54 Law Commission Consultation Paper No 165, *Towards a Compulsory Purchase Code: (1) Compensation*

> set at an appropriate level having regard to the amount of land or floorspace taken as well as the value of any interest which the occupier may have in it.
> Although we anticipate that the owners of residential property which they do not occupy would be included in this scheme, in the light of responses received to the consultation paper we would propose the specific exclusion of those whose property needed to be acquired because they had deliberately allowed it to deteriorate to the point of requiring statutory remedial action.[55]

IX The Bill

The comments on the individual clauses are intended to complement those in the Explanatory Notes to the Bill, not to duplicate them. The comments refer back to the current planning system, summarised briefly in section 1 (C) of this paper. In several cases, it is not possible to make a definite comment on how the proposed system would operate. Government guidance on details will be required before we really know what will be in the Regional Spatial Strategy or the local development scheme.

A. Part 1 – Regional Functions

As already noted, the replacement of Regional Planning Guidance by the Regional Spatial Strategy (RSS) is an important change, involving the abolition of county structure plans.

Clause 1 describes the RSS
The RSS must set out the Secretary of State's policies. Perhaps surprisingly, the Clause does not state any other requirements of the RSS. ODPM say that Government guidance will be published on what other topics should be covered in the RSS. It is worth noting that the Regional Planning Guidance that the RSS will replace is entirely composed of Government policies, adopted after consultation.

Clause 2 Regional Planning Bodies
This clause provides that the Secretary of State may recognise a body as a regional planning body (RPB). That would mean the current regional assemblies in the first instance, perhaps to be followed by directly elected assemblies, if referendums decide in favour of them.

Clause 3 General Functions
The RPB must keep the RSS under review and monitor its implementation.

Clause 4 Assistance from Certain Local Authorities
This clause would enable the RPB to request assistance from another authority and then reimburse it. This Clause would allow the RPB to use its county councils for assistance in formulating the sub-regional strategy.

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[55] ODPM, *Compulsory Purchase Powers, Procedures and Compensation: The Way Forward*, July 2002 paragraph 12

Clause 5 RSS Revision
The RPB must prepare a draft revision of the RSS from time to time.

Clauses 6, 7 and 8
After receiving the draft revision of the RSS, the Secretary of State may provide for an examination in public. Clause 7 would empower the Secretary of State to make regulations to lay down the procedure. Clause 8 would provide for the Secretary of State to consider representations and then to "publish the revision of the RSS incorporating such changes as he thinks fit".

Clause 9 Additional Powers of Secretary of State
This clause would give the Secretary of State additional powers, for example to revoke an RSS, or part of an RSS, "at any time he thinks fit". The Secretary of State is very much in control of the process of plan formation. However, that is already the case under the current system, so he would not be granted more powers in this area by the new legislation.

One issue that regularly provokes disagreement between regions, counties, districts and central government is household formation targets. Central Government selects household formation targets for the region, which the regional assembly divides between the counties. There have been several cases of counties in the south east of England wishing to accept only a much smaller household formation target. Once the targets enter the structure plan, then land has to be made available for the houses in the local development plans. Individual planning applications for housing in those areas cannot, in general, then be refused.

The new system will remove the scope for the counties to object to household formation targets. However, that is already a very limited scope, since the county structure plans can be overruled by the Secretary of State.

B. Part 2 - Local Development

This part of the Bill covers the replacement of local development plans by the Local Development Scheme, also to be produced by the Local Planning Authority.

Clauses 12 and 13 Survey of Area
Clauses 12 and 13 provide for the local planning authority and the county council to survey their areas. County councils are to keep matters relating to minerals and waste development under review. These are matters for which the county council is the planning authority.

Clause 14 Local Development Scheme
This is an important clause since it provides for what will replace the local development plan. The Secretary of State remains in control of the process, as is the case with current procedures. Clause 14 makes clear that the local development scheme should contain a

collection of documents. The scheme must specify the scope and nature of these documents.

The Planning Green Paper proposed that the local development framework should be criteria-based, rather than map-based, arguing that such a scheme could be produced more quickly. However, that proposal was criticised by the Select Committee.[56] The Government has accepted the need for a proposals map to be included in the local development documents. Amongst other things, it would show the sites for particular future land uses or developments and the areas to which specific policies applied. The map should also show the locations of any proposed or actual area action plans.[57] However, if the map is the same as under current arrangements, it is unclear why the local development scheme should be quicker to prepare than the current local development plan.

Clause 15 Minerals and Waste Development Scheme

This clause requires county councils to prepare and maintain a minerals and waste development scheme for any part of their area for which there is a district council. This is one important responsibility left with county councils, which are losing other responsibilities with the abolition of county structure plans.

Clauses 16 and 17

Clause 16 states that documents will have to be included in the local development scheme, but does not detail what they will be, apart from the local planning authority's statement of community involvement. Clause 17 requires the local planning authority to prepare such a document. That is an important document forming the main opportunity for popular involvement in the local development scheme.

Clause 18

This Clause requires that the local development documents are prepared in accordance with national policies, with the RSS and so on.

Clause 19 Independent Examination

This lays down the procedure for independent examination of the local development documents. The documents must be submitted by local planning authorities for examination by a person appointed by the Secretary of State. 19 (6) states that:

> Any person who makes representations seeking to change a development plan document must (if he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination.

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[56] Transport, Local Government and the Regions Committee, *Planning Green Paper*, May 2002, HC 476-I 2001-02 paragraph 207

[57] ODPM, *Making the System Work Better – Planning at Regional and Local Levels*, paragraph 26

Clauses 20, 21, 22 and 23
This clause allows for intervention by the Secretary of State to modify a local development document. Clause 21 allows a local planning authority to withdraw a local document before adoption either before submission for independent examination or after such submission if told to do so by the Secretary of State or the person carrying out the examination. Clause 22 provides for the adoption of local development documents, either as originally prepared or modified. Clause 23 provides that local development documents should be in general conformity with the RSS or (in the case of a London borough) the spatial development strategy.

Clauses 24, 25 and 26
Clause 24 allows the Secretary of State to revoke a local development document at the request of the local planning authority. Clause 25 lays down the procedure for revision of local development documents. Clause 26 requires the Secretary of State to intervene if a local planning authority is failing or omitting to do anything necessary in connection with the preparation, revision or adoption of a local development plan. Basically the Secretary of State must hold an independent examination, and may then approve the document, after revision if necessary.

Clauses 27, 28, 29 and 30 Joint Action by Local Planning Authorities
These clauses provide for collaboration between local planning authorities to produce local development documents. Since there will be no county structure plans, there will be a large gap between the RSS and the local development schemes. Clause 27 will offer one way to provide a planning framework for issues that do not fit neatly within the boundaries of an individual local planning authority. It would complement the use by the RPB of the county council as its agent for sub-regional strategy.

Clause 35
This empowers the Secretary of State to make regulations for the procedure to be followed by a local planning authority in preparing local development documents.

C. Part 3 - Development

Clause 37 Development Plan
This clause defines what is meant by the term "development plan". The importance of the definition derives from the statutory basis for the plan-based system under s.54A of the *Town and Country Planning Act 1990*, explained in section I (C) of this paper.

Clause 38 Sustainable Development
This is a more important clause than might appear. The main document accompanying the statement of July 2002 by the Deputy Prime Minister listed his key decisions, starting with the decision to:

- Include a statutory purpose for planning in any proposals for legislation that are brought forward, subject to ensuring that this is done in a way that does not create additional complications for the way that the system operates.[58]

The current Bill does not contain any statutory purpose as such for planning, but the idea has developed into clause 38. The formation of RSS or local development documents must be carried out "with a view to contributing to the achievement of sustainable development".[59] That duty raises a host of questions, particularly since the concept of sustainability is so difficult to define. However, 38(3) states that regard must be paid to national policies and to guidance from the Secretary of State (or the National Assembly for Wales in the case of Wales).

D. Part 4 – Development Control

Clause 39 – Local Development Orders

This is another important clause. The basis of planning law is that development, as defined by s.55 of the *Town and Country Planning Act 1990*, requires planning permission. However, minor development can be undertaken under permitted development rights by the *General Permitted Development Order 1995* (SI 418). Clause 39 would allow that to be supplemented by local development orders.

If a local planning authority has a policy, in their local development documents, then they could support it by a local development order, provided that it is approved by the Secretary of State. For example, a local planning authority might be happy to see changes of use for property in circumstances that would normally require planning permission, such as allowing a shop to sell hot food. Instead of having to grant explicit planning permission on each occasion, it could have a local development order granting such changes under permitted development rights. According to the ODPM, the powers would not allow local planning authorities to impose controls to require explicit planning permission for activities that would be allowed by permitted development rights under the General Permitted Development Order.

Clause 40

This clause would require a local development authority to give an indication to an applicant for planning permission as to whether a proposed development would be acceptable in principle. It would fit in with a general Government aim to make the planning system more certain and predictable.

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58 ODPM, *Sustainable Communities – Delivering through Planning*, July 2002

59 The issue of sustainable development is covered in Library Research Paper 02/55, *Sustainable Development and the 2002 World Summit*, October 2002

Clause 42
This would give a local planning authority the power to decline to determine planning applications. It is aimed to allow local planning authorities to protect themselves from what are considered unfair tactics used by developers. The Planning Green Paper highlighted two abuses: repeated applications to wear down opposition to undesirable developments; and "twin tracking" where two identical applications are submitted. Once the statutory period for determination of an application has been passed, one application can be submitted for appeal. That puts pressure on the local planning authority to approve the other application, so as to avoid the cost of an appeal.

Clause 43 Major Infrastructure Projects
It is widely argued that lengthy planning inquiries are unsatisfactory methods of handling major infrastructure projects, mainly because of the time taken. The final decision, of course, remains with the Secretary of State. The Planning Green Paper contained the proposal that the main decision should be taken by Parliament, leaving the public inquiry to handle details. That proposal has been dropped, and clause 43 provides for a revised procedure, aimed at speeding up the process.

The first part of the clause allows the Secretary to call in particular developments of national or regional importance. At first sight, that part of the clause is unnecessary since the Secretary of State already has very general powers to call in planning applications to be determined by him. However, the point of the clause is that when a planning application is called in under the terms of this clause (but not if it is called in under s.77 of the *Town and Country Planning Act 1990*) then the Secretary of State may appoint several inspectors, rather than just one allowed under existing legislation. For a major infrastructure project, that might allow faster working. It is possible that there might be hearings on two separate aspects of the inquiry at the same time, although that might put a strain on objectors with limited resources.

Clause 44 Simplified Planning Zones
As noted in section VI of this paper, the proposals on planning zones formed an important part of the Planning Green Paper. The original idea was to provide a new type of area called a Business Planning Zone. However, the Government considers that the main problem with the existing Simplified Planning Zones is that local planning authorities hardly ever choose to make use of them. Therefore, it seemed better to amend the provisions for the existing zones to make them easier to use, rather than to develop a new category of restricted planning zone to operate in parallel.

Under s.83 (1) of the 1990 Act, local planning authorities have to consider for which part or parts of their areas a simplified planning zone is desirable. Clause 44 would amend this, so that the Regional Planning Body would make the initial consideration whether such a zone is desirable. The local planning authority would then consider the matter, but could be directed to adopt such a zone by the Secretary of State (or the National Assembly for Wales).

Clause 46 Duration of Planning Consent
This clause would shorten the period of validity of a planning permission, a listed building consent and a conservation area consent from five to three years. Within that period, the development has to be started or the permission lapses. There is no requirement, in either current law or the new clause, that the development should be completed within that, or any other, period.

Clause 48 Duty to respond to consultation
This clause requires that statutory consultees have to respond within a certain period, to be fixed by secondary legislation. The proposal was in the Planning Green Paper, to help speed up the determination of planning applications. Currently, delays may result if the statutory consultees are slow to respond and the local planning authority considers that it has to await their reply before going ahead. The proposal is moderately controversial, depending on the length of time allowed for response. Official bodies, such as the Environment Agency, are probably well able to reply within a tight deadline. However, some statutory consultees are small bodies with limited resources like the Victorian Society. One danger is that if several major developments came up at the same time, they might lack the resources to respond adequately in the time allowed.

Clause 49 Time in which Secretary of State to take decisions
This clause would require the Secretary of State to set a timetable for his own decisions on "called in" planning applications and other similar decisions. The planning inspector is already allowed to set a timetable for the duration of a public inquiry. Several respondents to the consultation exercise commented that a significant part of the delay in major projects came from the time taken for the Secretary of State to take decisions. For example, in the Heathrow Terminal 5 case, the public inquiry opened in May 1995 and closed in March 1999. The inspector's report went to the Government in December 2000, but the decision was announced only on 20 November 2001.[60] Admittedly in that case BAA made a revision to their application after the report went to the Government.

E. Part 6 – Wales

Wales has the same primary legislation on planning as England, but a completely different set of guidance notes. In view of the importance of guidance, that makes a considerable difference. The Planning Green Paper applied to England only. Part 6 of the Bill would apply to Wales a similar structure of regional plan formation to that proposed for England.

Clause 54 Wales Spatial Plan
The National Assembly for Wales would prepare and publish a spatial plan for Wales (WSP). One major difference from England, of course, is that the Welsh Assembly

[60] DTLR Press Notice 498, *Terminal 5 gets the Green Light*, 20 November 2001

already provides a directly elected body at the spatial plan level. The WSP will set out policies decided by the assembly, rather than by the Government in Westminster.

Clause 56 Local Development Plan
This clause provides for the formation of local development plans. That term, of course, is already in use, suggesting that the Welsh local plans will be more like the current ones than will be the case in England with the new local development schemes.

Clauses 57 and 58 Preparation Requirements and Independent Examination
Clause 57 requires local development plans to be prepared in accordance with a community involvement scheme and a timetable. Clause 58 provides for an independent examination. Thus, the Welsh local development plans will be produced by a process similar to that in England.

Clause 59 Intervention by the Assembly
This clause grants the Assembly powers similar to those of the Secretary of State in England. Although Wales has the same primary legislation for planning as does England, there is a considerable degree of devolution, partly because of Assembly powers such as these and partly because the Welsh planning policy guidance differs from the English guidance.

Clauses 60 – 65 Local Development Plans
These clauses make provisions for local development plans. The Assembly remains in control of the process.

Clause 66 Joint Local Development Plan
This clause would allow for collaboration between local planning authorities to prepare a joint local development plan. That would enable a development plan to cover an area greater than that of a local planning authority. In England, there is also a clause that would allow an RPB to request assistance from another authority and then reimburse it (clause 4). There is no analogous clause in the Welsh part of the Bill.

F. Part 7 – Compulsory Purchase

As noted in Section VIII of this paper, the Government intends a further reform and consolidation of compulsory purchase law, but some of it will await consultation on proposals by the Law Commission.

Clause 73 Compulsory Acquisition of Land for Development
This clause would amend s.226 of the Town and Country Planning Act 1990. S.226 contains eight sub-sections. Clause 73 would rewrite the opening two sub-sections. Currently, that part of s.226 reads as follows:

(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area which –

(a) is suitable for and required in order to secure the carrying out of development, re-development or improvement;

(b) is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

(2) A local authority and the Secretary of State in considering for the purpose of subsection (1) (a) whether land is suitable for development, redevelopment or improvement shall have regard –

(a) to the provisions of the development plan, so far as material;

(b) to whether planning permission for any development on the land is in force; and

(c) to any other considerations which would be material for the purpose of determining an application for planning permission for development on the land.

The revised part of s.226 would read:

(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area -

(a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land;

(b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects –

(a) the promotion or improvement of the economic well-being of their area;

(b) the promotion or improvement of the social well-being of their area;

(c) the promotion or improvement of the environmental well-being of their area.

It is very difficult to judge the effect of a change in general wording of that type. However, the new wording does seem to facilitate the use of compulsory purchase, since a less strict test is applied. First, the acquisition only has to "facilitate the carrying out of development, re-development or improvement" rather than having to be "required" for it. Second, the power must not be exercised unless it contributes to the well-being of the area.

Clauses 74-77 Loss Payments

These clauses extend the scheme for loss payments in the *Land Compensation Act 1973*. The basis of law on compulsory purchase is that compensation is paid at the open market value. However, it has been accepted for some time that additional payments should be made in some cases, notably when somebody loses a home. Therefore home loss payments were introduced, and were greatly increased in the *Planning and Compensation Act 1991*. The new Bill would allow higher loss payments in some cases.

Under the current system (*Land Compensation Act 1973* s.30) home loss payments, for an owner and occupier, would be 10% of the market value of a house, up to a maximum of £15,000. Clauses 74 and 75 of the new Bill would offer a different system. Clause 74 would offer a basic loss payment at 7.5% of the value of the property, up to a maximum of £75,000. Clause 75 would offer – in addition - an occupier's loss payment of 2.5% of the value of the land up to a maximum of £25,000. The possible maximum of the two payments taken together would therefore be £100,000. Clause 76 lists exclusions from the payments.

The higher payments are intended to encourage the co-operation of owners and occupiers in land assembly projects. However, in some circumstances, particularly in London where property prices are so high, the higher payments would also increase the cost of compensation by a noticeable amount.