

The Growth Plan: Political upheaval and planning

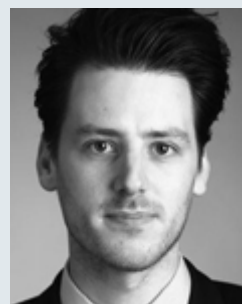
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Planning is a close relation of politics – and events in UK politics have been moving fast. An announcement on planning was due from the new Secretary of State for Levelling Up, Housing and Communities, Simon Clarke, on 19 October 2022, but this was overtaken first by the new Chancellor Jeremy Hunt rolling back most of the previous Chancellor's mini-budget of 23 September 2022, and then by the resignation of the Prime Minister Liz Truss. By the time that this article is published, we may well have yet another new Housing Secretary.

While it is not clear whether the next Prime Minister will pursue the remaining 'growth' elements of the Growth Plan 2022, there seems to be support for the principle that attention must be paid to how growth can be achieved. The Growth Plan proposed further changes to the planning system as a way to encourage growth, including the potential deregulation of planning in new investment zones, which we were told by the government had been very popular with many (although not all) local authorities. As we know, promising planning reform is not new to England – governments have scapegoated the planning system for holding back housing and economic growth for many years. However, unlike politics, actual planning reform seems to be moving very slowly indeed. Whichever Prime Minister is in charge, the underlying question of what is happening to planning reform remains. Just where are we now on reforms which have been promised since March 2019?

The Growth Plan 2022

Let's start with the most recent announcement on changes to the planning system, the Growth Plan of 23 September 2022.

Investment zones

The main thrusts of the Growth Plan were an energy support package, widespread tax cuts and incentives for economic growth – particularly in new investment zones (IZs) to be

established in quick time across the UK.

IZs would be designated development sites that will benefit from 'planning liberalisation' in addition to tax incentives and wider support for the local economy. Mayoral Combined Authorities, Upper Tier Local Authorities and Freeports were invited to submit an Expression of Interest (EOI) for one or more sites in their area to become IZs. These EOIs had to be submitted by 14 October 2022, a mere 12 days after the EOIs for England were issued on 2 October. We were told that the government will select potential IZ sites on the basis of specified criteria, with the aim of ensuring 'broad geographic distribution of investment zones, and/or a balance of urban and rural areas', a 'proportionate balance of housing and commercial sites' and a 'readiness to deliver'.

Although most of the tax cuts announced on 23 September 2022 have been rolled back to fill the budgetary black hole, as at the date of writing it is not clear whether proposed tax incentives for IZs will also disappear (or will possibly be significantly scaled back). In ministerial questions on 18 October 2022, the Secretary of State for Levelling Up, Simon Clarke, noted continued government support for bringing forward tax incentives for IZs, including:

... business rates relief, enhanced structures and buildings allowances, enhanced capital allowances and ... action on employer national insurance contributions, designed to ensure that there are incentives for new jobs in the zones.

If this is so, then IZs may not (yet at least) be dead in the water.

So, what is proposed for IZs from a planning point of view?

The Growth Plan says that a 'lighter-touch' planning regime will apply to these zones, and that the government will work to streamline planning applications. Unfortunately, little detail has been given on what 'planning liberalisation' will look like, either in the Growth Plan or in the factsheet on Investment Zones published with it. Little more can be gleaned from Investment Zones in England Guidance, published on 24 September, and the Investment Zones expression of interest form and Investment Zones expression of interest guidance for England published on 2 October 2022. Applicant authorities have been asked to confirm their support in principle to use a:

... new, faster, and more streamlined consent to grant planning permission ... for development on sites which do not have existing planning permission, or are not expected to have planning permission by Summer 2023.

However, no detail on this has yet been published.

The government also intends to disapply legacy EU 'red tape' in IZs. Although it is not yet clear exactly what this means, measures 'reducing the burden of environmental assessments' and 'reforming habitats and species regulations', which we have been told would include nutrient neutrality requirements, are proposed to be included in a new 'Planning and Infrastructure Bill'. In the ministerial questions on 18 October, the Secretary

of State confirmed that the government does not intend IZs to 'cut away' environmental protection, but the potential for such protections to be watered down has been a major cause for concern, particularly in light of the Retained EU (Revocation and Reform) Bill (known as the 'Brexit Freedoms Bill') introduced to Parliament on 22 September 2022. The government said that there had been great interest in IZs from local authorities, but some have openly refused the government's invitation, including Oxfordshire County Council, who said that 'deregulation within the zone is "incompatible" with the council's green goals' ([ENDS Report](#)).

Concerns were also expressed in the ministerial questions about the potential removal or reduction of the Environment Act 2021 mandatory biodiversity net gain requirement, which is due to come into force in November 2023 for Town and Country Planning Act development, and in 2025 for nationally significant infrastructure projects. Housing Minister Lee Rowley responded that the government is 'committed to strong environmental outcomes' but gave little comfort that the new biodiversity net gain requirement introduced in legislation, passed only one year ago following significant delay, is safe from reform. It is telling that local authorities are already adopting their own biodiversity net gain policies, somewhat overriding whatever delay to legal implementation the government may propose. It is also worth noting that we have yet to see the government's response to Defra's [Consultation on Biodiversity Net Gain Regulations and Implementation](#), which closed in April 2022.

Local consent

In his speech to the Conservative Party Conference in October 2022, the Secretary of State told us that:

[Investment Zones] must be led by the people who know best what their area needs and what it does not. There will be no top-down imposition of these arrangements on anywhere that does not want them ... ultimately if local people decide an investment zone isn't for them - then that will be the final word.

The term 'local consent' also appeared in the context of encouraging more brownfield housing development and has been used by the Business Secretary, Jacob Rees-Mogg, in the context of fracking, replacing the previously used 'local support'. Rees-Mogg has also referred to a right of local veto in relation to fracking.

We do not yet know what these terms actually mean in practice, nor how the government envisages local support and/or consent will be determined. However, there seems to be an implication that incentives for local communities to accept development on their doorstep may be involved, which it can only be assumed would be beyond the scope of developer contributions secured by planning obligations, given the long-established legal principles restricting the scope of planning conditions and obligations. The more general principle that planning permission should not be bought or sold may itself be coming under fire.

This contrasts with efforts being made through the Levelling Up and Regeneration Bill (the 'LURB') to involve local communities more in development in their area by plan and decision-making being made more accessible, by simplifying local plans and by digitising the planning process.

It begs the question – what of existing proposed planning reforms? Where have we got to with the changes which were first proposed in the Planning White Paper, and are they compatible with what is being proposed now? If not, where does that leave the planning system in England?

The Planning White Paper - Planning for the Future

First heralded in March 2019, the Planning White Paper was finally published in August 2020, in the thick of the Covid-19 pandemic. Among its wide-ranging fundamental proposals, aside from the Green Belt, very little in the planning system was out-of-scope.

At that time, planning reform was said to be necessary to tackle national challenges which included: the housing crisis; climate change; the environment and biodiversity; and the need for sustainable growth and rebalancing the economy – ie, the same challenges that face the UK today, now exacerbated following years of turbulence and uncertainty on policy and proposed legislative reform. The planning system was deemed outdated, complex, opaque, time-consuming and to have lost public trust. The solution proposed was a modern, streamlined, digitised process with more democracy, a focus on design and sustainability, improved infrastructure delivery, and more land for homes and development particularly in town and city centres.

Following the close of the White Paper consultation period in October 2020, we waited over 18 months to discover which of the proposals would make it through to draft primary legislation. By the time the LURB was published in May 2022, the Planning White Paper proposals had been watered down significantly, particularly with regard to nationally determined housing requirements. However, by then many of the proposals had been advanced through secondary legislation and changes to policy and guidance, sidestepping Parliamentary approval in the process.

Development planning

The White Paper announced that the development plan system would be replaced, streamlined and governed by national planning policies. This has been partially carried into the LURB, which introduces a new structure for development plans, simplified local plans and new national development management policies.

The Planning White Paper proposed that permitted development (PD) rights should continue alongside the new development plan system. Without question, the role of PD rights, particularly to convert to and construct new residential accommodation, has been strengthened since the Planning White Paper, but this has been achieved through secondary legislation, causing much controversy.

Design and sustainability

The White Paper proposed that new development should be ‘beautiful’ and create ‘net gain’ with a focus on placemaking. A new role in planning authorities of ‘Chief Officer for Design and Place’ was proposed, along with a new expert body. Communities were to be involved in establishing local design codes which would have ‘real bite’, and there would be a ‘fast-

track for beauty' which would automatically permit proposals for 'high-quality' developments reflecting local character and preferences. The environmental impact assessment ('EIA') framework would be simpler and quicker, with a focus on high environmental standards; historic areas and buildings would also be protected while ensuring that the framework was 'fit for the 21st century'.

Again, much of this has been achieved without primary legislation. The Office for Place was quickly established in interim form and then officially launched on 21 July 2021 alongside revisions to the National Planning Policy Framework ('NPPF') and a new National Model Design Code, purporting to introduce a requirement for 'beauty' into development - on which, we wrote more at the time [here](#). This will be supported in primary legislation by a requirement in the LURB on local planning authorities to produce a local design code as part of their local plan or as a supplementary plan.

The LURB also follows through White Paper proposals by providing for new environmental outcomes reports, potentially changing the form of environmental statements and the scope of plans and projects which will require an EIA. This is in addition to the measures in the recently proposed Planning and Infrastructure Bill aimed at 'reducing the burden of environmental assessments', as mentioned above.

Planning applications

In addition to changes to EIAs, the White Paper anticipated a separate application process for large sites, the use of development consent orders ('DCOs') for housing development, enforcement of statutory timescales and delegated decision-making.

Much of this aspect of the White Paper was not brought through into draft primary legislation or secondary legislation, although the LURB does contain enhanced planning enforcement provisions. However, if IZs survive, then possibly they will implement elements of the White Paper proposals for large sites. In the meantime, the LURB takes forward other proposals relating to planning applications that were not necessarily a focus of the White Paper - commencement notices, completion notices, potential 'street votes' and a new, welcome, procedure which would allow changes to the description of development by way of a minor variation to a planning permission.

Digital transformation

The White Paper wanted the planning system to be brought into the 21st century, aiming for a digitised planning process driven by data and automated where possible, with digital tools for 'civic engagement' and local plans which are standardised, visual and map based.

This ambition has been carried through into the LURB, which includes new powers to make regulations introducing new data standards and freely available, standardised planning information. Progress is already being made by the Planning Inspectorate ('PINS') on this, without the need for primary legislation. In October 2022, PINS launched the [National map of planning data](#), a new service which uses planning and housing data collected by the new Planning Data Platform from local planning authorities and displays it in an easy-to-read, map format, helping readers to see quickly whether a site is affected by any listings or

designations. PINS has also been leading various pilot studies across England which are looking at different ways to digitise plan-making and planning application processes. Clear benefits as regards user engagement and time efficiencies are already visible. What was needed to get this going was a governmental will for it to be done and, importantly, for resources to be made available.

Developer contributions and infrastructure

One of the most significant proposals in the Planning White Paper was the replacement of existing developer contributions, the Community Infrastructure Levy (CIL) and s106 obligations, with a single Infrastructure Levy (IL). Given the importance of this proposal, it was understandable that there were many questions about how the new system would work and whether it could achieve the desired result. Despite this, a power to introduce a new IL was included in the LURB. If implemented, CIL will be abolished, other than in London and Wales. Although the role of s106 agreements is still to be finally confirmed, it is anticipated they will be retained as an essential tool to coordinate the delivery of large and complex sites and the infrastructure needed to support them, in a manner which is clear and provides necessary certainty to developers, funders and communities. A new framework similar to that for CIL will be introduced following a 'test and learn' approach. While a certain amount of detail has been provided – IL will be paid on completion of the development and based on the final value of the project – there is much yet to be clarified, which is all proposed to be done through secondary legislation once the LURB is enacted and the relevant provisions come into force.

What next?

Significant proposals in the White Paper were abandoned when it became clear that they lacked political support. However, despite appearances, much of the wide-ranging reform proposed by the White Paper has either been carried through to the LURB, already been implemented through secondary legislation, policy or guidance, or is being implemented in parallel by PINS.

The main problem is, therefore, not whether reforms are being progressed, but whether there is clarity or certainty about what they are or what they will achieve. Even primary legislation such as the LURB and the Environment Act 2021 leave the detail to be clarified in secondary legislation which is not subject to Parliamentary scrutiny or public consultation. Piecemeal change is creating confusion rather clarity – exemplified by the latest announcement that, despite the Habitats Regulations Assessment (HRA) review pursuant to the Environment Act 2021, habitats regulations will also be reviewed under the new Planning and Infrastructure Bill. Rather than reform resulting in a streamlined, efficient and effective planning system which can help to achieve economic growth, we remain sunk in the depths of confusion and uncertainty, with layers of unimplemented reform and no clear path forward. Given this, ironically the previous Prime Minister could perhaps have been forgiven for naively concluding that the quickest way to achieve change would simply be to sweep away planning requirements altogether.

What is needed to get the planning system working again? There will be many views, but

as with all public services investment is key. In the ministerial questions on 18 October, the Secretary of State noted that IZs are (or were) to be financed by 'new money' from the Treasury, which would be confirmed in the Medium Term Fiscal Plan on 31 October 2022. It's hard to see where any additional spending for IZs could come from. If 'new money' is to be made available to the planning system, then attention should perhaps be focused instead on improving the current system, rather than spending limited resources pushing through relentless and questionable changes.

Increased resource will be incredibly important to address the deficiencies in a system which are unavoidable without it, but what is also really needed to address any of the previously highlighted national challenges is a government with a clear policy vision and the conviction to deliver that vision in a timely manner and for a significant period. Without this, there will remain a lack of certainty to provide the necessary foundation for investment in development in the UK, to drive forward the much-needed infrastructure to meet the current deficit and provide residual capacity, which is necessary to support economic growth and improve social outcomes across the UK in a sustainable way.

Although a planning system can be primed to facilitate measures to tackle the formidable challenges now facing us, it will never be the catalyst for them to be overcome. Nor has the planning system been the cause of those challenges or the reason why they continue to multiply. Instead of looking to the planning system, the government should look in the mirror...

Citation reference:

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