



## BRIEFING PAPER

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# Planning for the Future: planning policy changes in England in 2020 and future reforms

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## Summary

There have already been several waves of changes to rules on change of use and permitted development rights (PDRs) during the Covid-19 pandemic, with more planning policy changes to come.

For some time, the Government has been signalling its intention to make radical changes to the planning system in England. The Covid-19 pandemic brought about some immediate changes to certain aspects of planning policy – such as enabling pubs to offer hot food takeaway services – while other, substantial changes to the planning system, aimed (the Government says) at creating a new system suitable for the 21<sup>st</sup> century, are the subject of consultation through the [white paper \*Planning for the Future\*](#). The Government also intends to make some changes to the current planning system and has launched a [concurrent consultation](#) about that.

### Consultations launched in August 2020

#### ***Planning for the Future* white paper**

This briefing seeks to highlight key points within *Planning for the Future* – those which are perhaps most likely to be of interest to Members and those which have attracted most comment. Readers should refer to the white paper for the detail of the Government's proposals.

In his [speech on the economy on 30 June 2020](#), the Prime Minister, Boris Johnson, argued that “newt-counting delays” slowed down house building. He said that, in the recovery from the Covid-19 pandemic, we would “build better and build greener but we will also build faster”.

A planning White Paper had been expected for some time; the long-awaited [Planning for the Future white paper](#) was launched on 6 August 2020, with an [accompanying press release](#). The press release sets out in the Government's words what the changes will mean:

- Local communities will be consulted from the very beginning of the planning process. By harnessing the latest technology through online maps and data, the whole system will be made more accessible
- Valued green spaces will be protected for future generations by allowing for more building on brownfield land and all new streets to be tree lined
- Much-needed homes will be built quicker by ensuring local housing plans are developed and agreed in 30 months – down from the current 7 years
- Every area to have a local plan in place – currently only 50% of local areas has a plan to build more homes
- The planning process to be overhauled and replaced with a clearer, rules based system. Currently around a third of planning cases that go to appeal are overturned at appeal
- A new simpler national levy to replace the current system of developer contributions which often causes delay
- The creation of a fast-track system for beautiful buildings and establishing local design guidance for developers to build and preserve beautiful communities
- All new homes to be ‘zero carbon ready’, with no new homes delivered under the new system needed to be retrofitted as we achieve our commitment to net zero carbon emissions by 2050

## 4 Planning for the Future: planning policy changes in England in 2020 and future reforms

The consultation on *Planning for the Future's* proposed changes opened on 6 August 2020 and [closes at 11.45pm on 29 October 2020](#).

Section 5 of the March 2020 Commons Library [debate pack on housing and planning in England](#) discusses the history and background to this white paper.

[Launching the white paper](#), the Housing Secretary, Robert Jenrick, set out how the reforms would simplify the system, while giving more emphasis to quality, design and the environment, and would support recovery from the pandemic.

### Reactions to *Planning for the Future's* proposals

The proposed reforms have, though, received a mixed response and have attracted some controversy.

Some have welcomed the proposed changes. In the [press release accompanying the white paper](#), the CEO of Gleeson Homes, James Thomson, offered strong support for the proposals and particularly the commitment to build 300,000 new homes a year. In the same press release, the chief UK policy director of the Confederation of British Industry, Matthew Fell, was quoted as saying that the proposed reforms would allow housebuilders to get to work and good quality homes could help meet climate targets. The Chief Executive of Network Homes, Helen Evans, welcomed the proposals which would (she said) help increase the delivery of affordable homes.

There has, though, been some fierce criticism. In an [open letter](#) issued shortly after the Prime Minister's *build, build, build* speech, the chief executive of the Royal Town Planning Institute (RTPI), Victoria Hills, voiced concern about the approach that the white paper was expected to take and the "planner bashing rhetoric" and argued that sweeping away the planning system was not the right response. The President of the Royal Institute of British Architects, Alan Jones, agreed that the planning system needed to be reformed but [branded the white paper's proposals](#) as "shameful".

The [Campaign to Protect Rural England](#) voiced concerns about how community involvement would work within a zoning system and "missed chances" around carbon-neutral, affordable housing. The [housing charity, Shelter](#), expressed concern at the reforms' potential impact on social housing. The [Mayor of London, Sadiq Khan, argued](#) that the changes would be a "disaster for London" and a "nakedly ideological assault on local democracy". In a [preliminary response to the white paper](#), the Local Government Association said it was vital that new homes should be delivered through a locally-led planning system and communities should retain the right to shape the areas in which they live.

### Review of the current planning system

Also on 6 August 2020, the Government launched a [consultation on changes to the current planning system](#). The consultation closes at 11.45pm on 1 October 2020.

The [August 2020 newsletter](#) from the chief planner at the Ministry of Housing, Communities and Local Government (MHCLG) summarises the proposed changes, which cover four main areas of policy:

- **Standard method for calculating housing need:** The consultation proposes to amend the standard method, which must be used unless "exceptional circumstances" justify another approach. As the debate pack published in March 2020 for a Westminster Hall [debate on the Greater Manchester Spatial Framework and the Green Belt](#) mentions, Robert Jenrick had promised a review, to encourage more building in urban areas and on brownfield sites. In that [Westminster Hall](#)



[debate](#), the housing minister, Christopher Pincher, confirmed that the formula would be reviewed.

The standard method currently comprises three steps (setting the baseline, affordability adjustment and capping the level of increase). The consultation document sets out how it would be amended, to include as a new element a percentage of housing stock levels and an affordability adjustment. The consultation document then sets out the detail of the two, amended steps – step 1 is setting the baseline and step 2 is adjusting for market signals – and provides the results of the new standard method, which is a national housing need of 337,000 on the basis of currently available data. An [analysis by property consultants Lichfields](#) sets out how the revised standard method might change the housing requirement in each local planning authority (LPA).

- **Delivering First Homes: planning issues:** First Homes are one form of affordable housing. Under [Delivering a sufficient supply of homes](#), the National Planning Policy Framework (NPPF) sets out how LPAs should assess the size, type and tenure of housing needed, including affordable housing, and says that major development (defined as ten or more houses) should normally (but with certain exceptions) provide at least 10% of the homes for affordable home ownership.

Here, the consultation document sets out proposals for setting developer contributions for First Homes. The consultation document suggests that planning applications should seek to capture the same amount of value as would be captured under the LPA's existing published affordable housing policy within its Local Plan. A quarter of affordable housing on site should be First Homes and the consultation document offers two options for the remaining three quarters.

- **Threshold for developer contributions:** As the Commons Library briefing [Planning Obligations \(Section 106 Agreements\)](#) explains in more detail, planning obligations - sometimes known as section 106 agreements or "affordable housing levies" - are legally enforceable obligations entered into under section 106 of the [Town and Country Planning Act 1990](#) (as amended) to mitigate the impacts of a development proposal. The obligations may be provided by the developers "in kind" – by the developer building or providing directly the matters necessary to fulfil the obligation, for example by building a number of affordable homes for an area - or in the form of financial payments. (In some cases, it can be a combination of both). The [Planning Practice Guidance \(PPG\) on planning obligations](#) states that contributions should be sought from only for major developments, which for residential development means 10 or more homes or a site with an area of 0.5 hectares or more.

Under the heading of *supporting small and medium-sized developers*, the consultation document remarks that SME builders build the majority of smaller sites, which tend to build out more quickly. It proposes to go beyond the current power to defer Community Infrastructure Levy payments and extend the support given to SMEs in economic recovery by raising to 40 or 50 homes the threshold at which developer contributions would be sought, for a time-limited period which would end "as the economy recovers from the impact of Covid-19". The consultation document acknowledges that there will be a "trade-off between introducing measures to increase the number of developable small sites and the importance of securing section 106 planning obligations to deliver affordable housing including First Homes". The Government also proposes to scale up the site size threshold at the same proportion as the increase in the number of homes threshold.

- **Permission in principle:** One of the key planning changes from the *Housing and Planning Act 2016* was a new system of allowing the Secretary of State to grant planning “permission in principle”. Planning “permission in principle” is therefore a relatively new process (deriving from the *Housing and Planning Act 2016*) which grants planning permission for housing-led development. It separates the decision about the principle of whether housing development should be approved from a later technical details consent process. The in-principle matters relate to the location, use, and amount of development on a site. It is expected that everything else will be reserved for the technical details consent stage. Planning permission in principle would then have to be combined with a new “technical details consent” granted by the local authority before development could go ahead. The [Planning Practice Guidance on permission in principle](#) identifies the types of development to which LPAs cannot grant permission in principle; major development is outside the scope of permission in principle, unless the site is entered in Part 2 of a brownfield land register.

The consultation document seeks views on extending permission in principle to cover major development. The Government argues here that this change too would benefit small and medium sized building businesses (SMEs). The existing restrictions in the Permission in Principle Regulations relating to environmental impact assessments and habitats requirements would not change.

## Changes already made

The Government has recently made various changes to planning rules, some of them in response to the Covid-19 pandemic. Others – such as those relating to upward extensions – enact changes that the Government has long advocated.

Some of these changes relate to permitted development rights (PDRs), under which development may take place under a general permission granted by Parliament without requiring an application to the LPA for planning permission.

The Commons Library briefings [Planning: change of use](#) and [Permitted development rights](#) offer detailed analysis of change of use and PDRs.

The UK Government has published a [compendium of guidance to local government on coronavirus](#), including on planning and building safety. The [July 2020 update from the chief planner](#) at the Ministry of Housing, Communities and Local Government (MHCLG) outlines the recent changes. Property consultants Lichfields have also published an [overview of the recent changes](#), with links to articles offering further commentary.

## Changes already in train

### Business and Planning Act 2020

More changes will be introduced through the [Business and Planning Act 2020](#), which received Royal Assent on 22 July 2020.

The [Commons Library briefing on the Bill](#) outlines the changes, which will cover:

- a fast track process for varying planning conditions relating to working hours on construction sites
- time limits for development (extending the dates on which planning permission, outline planning permission and listed building consents might otherwise expire)
- planning proceedings (giving the Planning Inspectorate more flexibility in deciding whether certain local planning appeals should be heard by way of written representations, a hearing or a local inquiry) and

- arrangements for the electronic inspection of the Mayor of London's spatial development strategy.

MHCLG has published [planning guidance to accompany the \*Business and Planning Act 2020\*](#), covering construction working hours, extension of certain planning permissions, making current spatial development strategies available digitally and pavement licences.

[The Town and Country Planning \(Spatial Development Strategy\) \(Coronavirus\) \(Amendment\) Regulations 2020](#) were laid on 21 July and come into force on 12 August 2020. They make amendments to the [Town and Country \(London Spatial Development Strategy\) Regulations 2000](#) and the [Combined Authorities \(Spatial Development Strategy\) Regulations 2018](#) relating to how documents are made available for inspection between 12 August 2020 and 31 December 2020.

### **A new approach to Environmental Impact Assessments in planning?**

In response to a [PQ in July 2020](#), the planning minister, Christopher Pincher, said that the Government wanted to see "better planning for nature".

Also in July 2020, in a [speech on environmental recovery](#), the Environment Secretary, George Eustice, announced a consultation on changing the approach to environmental assessment and mitigation within the planning system, to (he said) "protect more of what is precious":

Later this autumn we will be launching a new consultation on changing our approach to environmental assessment and mitigation in the planning system. If we can front-load ecological considerations in the planning development process, we can protect more of what is precious.

(...)

Delivering this change is what lies at the heart of our approach to future farming policy, our approach to biodiversity net gain in the planning system, and also behind other initiatives like highly protected marine areas that we intend to pilot. Building back greener means what it says, and I want to work with all of you to make that happen.

[Media coverage of the speech](#) suggested that some wildlife groups were offering a cautious welcome:

But green groups are concerned the reforms could lead to weaker protections for rare habitats and species. Many are mistrustful of ministers' intentions, following a speech by the Prime Minister earlier this month [in which he appeared to blame slow housebuilding rates in England on environmental protections for rare newts](#).

Dr Jeremy Biggs, co-founder and director of the Freshwater Habitats Trust, told [i](#): "If the agenda is less box ticking and better science-based conservation action, then that is welcome. But if we hastily ditch protection of threatened species and habitats in the name of planning reform, that will make it difficult to stop the decline of nature, never mind reversing it."

Other briefings on various matters to do with planning are available on the [topic page for housing and planning](#).

# 1. August 2020 White Paper: *Planning for the Future*

## Box 1: Housing need and supply

The Government's stated target is for there to be an annual supply of **300,000 new homes by the mid-2020s**, and for one million homes to be supplied by the end of the current parliament.

Estimates of housing need are based on projections of growth in the number of households, but it is understood that other factors also affect housing need. The Government has stated that supplying 300,000 new homes per year will reduce affordability pressures,<sup>1</sup> although other commentators have questioned the extent to which new supply can directly affect house prices.<sup>2</sup>

Other commentators have focused on the backlog of existing need amongst people who are homeless or living in unsuitable accommodation. Research commissioned by the National Housing Federation (NHF) and Crisis identified a need for 340,000 new homes each year over a 15-year period, including a need for 145,000 affordable homes.<sup>3</sup>

New supply of housing has been increasing in recent years, but has not yet reached the Government's target level. A total of 241,000 new homes were supplied in 2018/19, an increase of 9% on the year before and 93% on a low point of 125,000 in 2012-13.<sup>4</sup>

The Library briefing [Tackling the under-supply of housing \(England\)](#) has a more detailed summary of housing need and supply in its first two chapters.<sup>5</sup>

A Planning White Paper had been expected for some time; The *build, build, build* announcement promised a planning policy paper in July 2020.<sup>6</sup>

The long-awaited [Planning for the Future white paper](#)<sup>7</sup> was launched on 6 August 2020, with an [accompanying press release](#).<sup>8</sup> The press release sets out in the Government's words what the changes will mean:

<sup>1</sup> [Oral Evidence: MHCLG Housing Priorities, HC 830 Q3](#), 12 March 2018

<sup>2</sup> E.g. Wilcox, Perry and Williams, [2017 UK Housing Review Briefing Paper](#), page 8

<sup>3</sup> Bramley, G. for Crisis, [Housing supply requirements across Great Britain: for low-income households and homeless people](#), December 2018, page 10

<sup>4</sup> MHCLG, [Live tables on housing supply: net additional dwellings](#), Table 120

<sup>5</sup> CBP 7671, 9 March 2020

<sup>6</sup> PM's Office and 10 Downing Street, [Press release: PM: Build, build, build](#), 30 June 2020

<sup>7</sup> MHCLG, [White paper: Planning for the Future](#), August 2020

<sup>8</sup> MHCLG, [Press release: Launch of Planning for the Future consultation to reform the planning system](#), 6 August 2020



- Local communities will be consulted from the very beginning of the planning process. By harnessing the latest technology through online maps and data, the whole system will be made more accessible
- Valued green spaces will be protected for future generations by allowing for more building on brownfield land and all new streets to be tree lined
- Much-needed homes will be built quicker by ensuring local housing plans are developed and agreed in 30 months – down from the current 7 years
- Every area to have a local plan in place – currently only 50% of local areas has a plan to build more homes
- The planning process to be overhauled and replaced with a clearer, rules based system. Currently around a third of planning cases that go to appeal are overturned at appeal
- A new simpler national levy to replace the current system of developer contributions which often causes delay
- The creation of a fast-track system for beautiful buildings and establishing local design guidance for developers to build and preserve beautiful communities
- All new homes to be 'zero carbon ready', with no new homes delivered under the new system needed to be retrofitted as we achieve our commitment to net zero carbon emissions by 2050<sup>9</sup>

This briefing seeks to highlight key points within *Planning for the Future* – those which are perhaps most likely to be of interest to Members and those which have attracted most comment. Readers should refer to the white paper for the detail of the Government's proposals.

Launching the white paper, the Housing Secretary, Robert Jenrick, set out how the reforms would simplify the system, while giving more emphasis to quality, design and the environment, and would support recovery from the pandemic:

These once in a generation reforms will lay the foundations for a brighter future, providing more homes for young people and creating better quality neighbourhoods and homes across the country. We will cut red tape, but not standards, placing a higher regard on quality, design and the environment than ever before. Planning decisions will be simple and transparent, with local democracy at the heart of the process.

As we face the economic effects of the pandemic, now is the time for decisive action and a clear plan for jobs and growth. Our reforms will create thousands of jobs, lessen the dominance of big builders in the system, providing a major boost for small building companies across the country.<sup>10</sup>

In the foreword to the white paper, the Prime Minister argued that the time had come to tear down the current planning system and start again:

But as we approach the second decade of the 21st century that potential is being artificially constrained by a relic from the middle of the 20th – our outdated and ineffective planning system. Designed and built in 1947 it has, like any building of that age, been patched up here and there over the decades.

<sup>9</sup> MHCLG, [Press release: Launch of Planning for the Future consultation to reform the planning system](#), 6 August 2020

<sup>10</sup> As above

(...)

Thanks to our planning system, we have nowhere near enough homes in the right places. People cannot afford to move to where their talents can be matched with opportunity. Businesses cannot afford to grow and create jobs. The whole thing is beginning to crumble and the time has come to do what too many have for too long lacked the courage to do – tear it down and start again.<sup>11</sup>

### Box 2: Statistics on the current planning system

MHCLG publishes statistics on planning applications. In 2018/19, decisions were taken on 406,000 planning applications and 88% of these were approved: a total of around 358,000 applications granted.<sup>12</sup>

The number of applications that concern new residential developments is considerably smaller. A total of 7,709 decisions made in 2018/19 concerned major residential developments (of over 10 residential units), while 54,704 were for minor residential developments (of under 10 units).

82% of decisions made on major developments resulted in the application being granted, and 86% of decisions were made within 13 weeks, or within the agreed time period. Minor development applications were less likely to be granted, although the majority were (74%). 82% of decisions on minor developments were made within 8 weeks or the agreed time period.<sup>13</sup>

The official statistics on planning applications don't include information about the total number of residential dwellings that have received planning permission. However, MHCLG publishes some data from a contractor, Glenigan. According to Glenigan's estimates, permission was given for around 371,000 homes over the course of 2019. Glenigan estimates that there has been an increase in the number of homes given planning permission from a low point of around 161,900 during 2009.<sup>14</sup>

An [article on the BBC News website](#) on the day of the white paper's launch quoted both Boris Johnson and Robert Jenrick defending the Government's proposals against criticism from Conservative MPs and others:

Boris Johnson said the plans, which aim [to] stop local opponents blocking development in designated growth zones, were "long overdue".

Critics say the changes could lead to "bad-quality housing" and loss of local control.

The BBC's Jessica Parker said the plans had prompted disquiet among Tory MPs.

Mr Johnson said the changes would help developers complete projects in a "more timely way" and help young people onto the housing ladder.

(...)

<sup>11</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 6

<sup>12</sup> MHCLG, [Live tables on planning applications](#), Table P120

<sup>13</sup> MHCLG, [Live tables on planning applications](#), Table P120A

<sup>14</sup> MHCLG, [Planning applications in England: October to December 2019](#)

Housing Secretary Robert Jenrick said local people would get a "meaningful say" at the start of the planning process, when local plans are drawn up, but will not be able to block new schemes after that.

He claimed local people "did not have a great deal of influence" over the current planning system and that few people engaged with it.<sup>15</sup>

The consultation on *Planning for the Future's* proposed changes opened on 6 August 2020 and [closes at 11.45pm on 29 October 2020](#).

According to the [August 2020 newsletter](#) from the chief planner at MHCLG, the proposals have "important implications" for the work of LPAs as well as other interests in the planning process.<sup>16</sup>

For some earlier discussion of the history and background to this white paper, see Section 5 of the March 2020 Commons Library [debate pack on housing and planning in England](#).<sup>17</sup>

## 1.1 New, rules-based system for planning Background

The Government's thinking on planning is said to have been influenced by (amongst other things) the work of the think tank Policy Exchange. In its collection of essays [Planning Anew: A collection of essays on reforming the planning system for the 21st century](#), the Housing Secretary, Robert Jenrick, said that the Government was rethinking planning from first principles, and commended Policy Exchange's contribution:

As Housing Secretary, I want everyone, no matter where in the country they live, to have access to affordable, safe, and high-quality housing, and to live in communities with a real sense of place. It's time to re-think planning from first principles. High quality design and sensitivity to the local vernacular must be at the very heart of the process. The time has come to speed up and simplify this country's overly bureaucratic planning process. We'll do that with a focus on creating beautiful, environmentally friendly places, building homes of all tenures and helping more young people onto the ladder. This Government is thinking boldly and creatively about the planning system to make it fit for the future. I commend Policy Exchange's contribution in ensuring that we act ambitiously when it comes to reforming our planning system and making it fit for our future generations."<sup>18</sup>

An [earlier report by the Policy Exchange](#) in January 2020 had examined the current planning system and concluded that it was no longer fit for purpose, with its costs outweighing its benefits:

These principles are wholly out of sync with the needs and desires of people, businesses and wider society. They have resulted in

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<sup>15</sup> "[Boris Johnson defends overhaul of England's 'outdated' planning system](#)", *BBC News*, 6 August 2020

<sup>16</sup> MHCLG, [Planning update newsletter](#), August 2020

<sup>17</sup> CDP 2020-041

<sup>18</sup> Bridget Rosewell CBE, Professor Robert Adam, Charles Dugdale, Warwick Lightfoot, David Rudlin, John Myers, Jamie Ratcliff, Reuben Young, Dr Sue Chadwick, William Nicolle and Benedict McAleenan, [Planning Anew: A collection of essays on reforming the planning system for the 21st century](#), Policy Exchange, 2020

unnecessary costs and administration, leading to higher costs of housing, living and doing business. In short, the costs of the planning system far outweigh its benefits.<sup>19</sup>

### What does *Planning for the Future* say?

*Planning for the Future* argues that the current planning process is overly complex, inefficient and opaque and that one of its flaws is that decisions are discretionary and not rules-based:

- It is too complex: The planning system we have today was shaped by the Town and Country Planning Act 1947, which established planning as nationalised and discretionary in character. Since then, decades of reform have built complexity, uncertainty and delay into the system. It now works best for large investors and companies, and worst for those without the resources to manage a process beset by risk and uncertainty. A simpler framework would better support a more competitive market with a greater diversity of developers, and more resilient places.
- Planning decisions are discretionary rather than rules-based: nearly all decisions to grant consent are undertaken on a case-by-case basis, rather than determined by clear rules for what can and cannot be done. This makes the English planning system and those derived from it an exception internationally, and it has the important consequences of increasing planning risk, pushing up the cost of capital for development and discouraging both innovation and the bringing forward of land for development. Decisions are also often overturned – of the planning applications determined at appeal, 36 per cent of decisions relating to major applications and 30 per cent of decisions relating to minor applications are overturned.<sup>20</sup>

The Government's aim, therefore, is to move towards a rules-based system.

## 1.2 Every area to have a Local Plan

### Background

The [National Planning Policy Framework \(NPPF\)](#) is the framework against which Local Plans are drawn up and applications for planning permission are determined. Following a consultation, the NPPF was revised and updated in July 2018 with some further, minor amendment in February 2019.

LPAs must prepare a Local Plan which sets planning policies in their area. Local Plans must be positively prepared, justified, effective and consistent with national policy in accordance with section 20 of the *Planning and Compulsory Purchase Act 2004* (as amended) and the

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<sup>19</sup> Jack Airey and Chris Doughty, [Rethinking the planning system for the 21st century](#), Policy Exchange, January 2020: page 8. For comment on the Policy Exchange report, see (for example) ["Policy Exchange report calls for zonal planning and 'no say' for councillors in decisions"](#), *Planning*, 20 January 2020 [subscription required – Members and their staff may obtain copies of this and other articles from *Planning* by ringing the House of Commons Library on 020 7219 3666]

<sup>20</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 10

NPPF. The [\*Town and Country Planning \(Local Planning\) Regulations 2012\*](#) set out the current process for preparing a Local Plan.<sup>21</sup> The Planning Practice Guidance published by MHCLG covers (amongst many other things) [\*preparing and submitting Local Plans\*](#).<sup>22</sup> More detail comes from the Planning Inspectorate's [\*Procedural Practice in the Examination of Local Plans\*](#).<sup>23</sup>

The Commons Library briefing [\*What next for planning in England? The National Planning Policy Framework\*](#) surveys some of the main policy changes reflected in the revised NPPF, including measures to encourage LPAs to get Local Plans in place as soon as possible.<sup>24</sup>

## What does *Planning for the Future* say?

As part of the drive to ensure that communities have enough land available to meet local housing need, *Planning for the Future* says that a deadline will be set; LPAs must have an up-to-date Local Plan by December 2023:

11. Ensure that communities make land sufficiently available to deliver homes in the right places. A plan for local housing need is only as good as the results it delivers. We will introduce new changes to ensure that land, sites and homes come forward on time and incentivise authorities to deliver more homes. This includes:

- Setting a deadline for all local authorities to have an up-to-date local plan – the government will require all local planning authorities to have up-to-date local plans by December 2023. The government will prepare to intervene where local authorities fail to meet the deadline in accordance with the existing statutory powers, considering appropriate action on a case by case basis.<sup>25</sup>

## 1.3 Quicker production of simplified Local Plans

### Background

The [\*foreword to Policy Exchange's report in January 2020\*](#) remarked that "perhaps the most revolutionary idea" in the report was its proposal of an approach based on zoning, with two main categories permitting or protecting against growth:

Perhaps the most revolutionary idea in this report is that land should be divided in two primary classes, not hundreds of finely tuned zoning areas. One class of land is protected against growth, either for historical or environmental reasons. The other class of land largely permits growth. By eliminating uncertainty about the permitting process, development can become faster and cheaper.

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<sup>21</sup> SI 2012/767

<sup>22</sup> MHCLG, [\*Guidance: Local plans\*](#), 1 January 2012, updated 4 January 2019

<sup>23</sup> Planning Inspectorate, [\*Procedural Practice in the Examination of Local Plans\*](#), 4<sup>th</sup> edition, June 2016

<sup>24</sup> CBP 8260, 10 June 2019

<sup>25</sup> MHCLG, [\*White paper: Planning for the Future\*](#), August 2020: page 6



If the rules of the game are clear from the beginning, then builders will be able to deliver the housing England needs.<sup>26</sup>

The Royal Town Planning Institute (RTPI) has published a [one page summary of zoning](#) and the differences between discretionary and zonal approaches to planning.<sup>27</sup>

### What does *Planning for the Future* say?

*Planning for the Future* also sets out how the planning process would be streamlined.

Simplified Local Plans would place land in three categories – growth areas “suitable for substantial development”, renewal areas “suitable for some development” and protected areas – which would (the white paper says) halve the time to acquire planning permission on larger sites identified in plans. General development management policies would be set nationally, with Local Plans containing “clear rules” with design codes and site- and area-specific requirements:

1.16. First, we will streamline the planning process with more democracy taking place more effectively at the plan making stage, and will replace the entire corpus of plan-making law in England to achieve this:

- Simplifying the role of Local Plans, to focus on identifying land under three categories - Growth areas suitable for substantial development, and where outline approval for development would be automatically secured for forms and types of development specified in the Plan; Renewal areas suitable for some development, such as gentle densification; and Protected areas where – as the name suggests – development is restricted. This could halve the time it takes to secure planning permission on larger sites identified in plans. We also want to allow local planning authorities to identify sub-areas in their Growth areas for self and custom-build homes, so that more people can build their own homes.
- Local Plans should set clear rules rather than general policies for development. We will set out general development management policies nationally, with a more focused role for Local Plans in identifying site and area-specific requirements, alongside locally-produced design codes. This would scale back the detail and duplication contained in Local Plans, while encouraging a much greater focus on design quality at the local level. Plans will be significantly shorter in length (we expect a reduction in size of at least two thirds), as they will no longer contain a long list of “policies” of varying specificity – just a core set of standards and requirements for development.<sup>28</sup>

On sustainable development, *Planning for the Future* also proposes that “unnecessary assessments and requirements that cause delay and challenge” should be abolished:

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<sup>26</sup> Jack Airey and Chris Doughty, [Rethinking the planning system for the 21<sup>st</sup> century](#), Policy Exchange, January 2020

<sup>27</sup> RTPI, [Zoning: a single page](#) (undated)

<sup>28</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 15

- Local Plans should be subject to a single statutory “sustainable development” test, and unnecessary assessments and requirements that cause delay and challenge in the current system should be abolished. This would mean replacing the existing tests of soundness, updating requirements for assessments (including on the environment and viability) and abolishing the Duty to Cooperate.<sup>29</sup>
- Local Plans should be visual and map-based, standardised, based on the latest digital technology, and supported by a new standard template. Plans should be significantly shorter in length, and limited to no more than setting out site or area-specific parameters and opportunities.
- Local authorities and the Planning Inspectorate will be required through legislation to meet a statutory timetable (of no more than 30 months in total) for key stages of the process, and there will be sanctions for those who fail to do so.<sup>30</sup>

## 1.4 Consultation with local communities

### Background

[Policy Exchange’s report in January 2020](#) argued that all but a “noisy minority” of citizens were detached from the planning process (although some of the recent comment on the white paper - discussed later in section 1.145- suggests that the current approach works and raises concerns about the reduced role for planning committees and local communities):

The planning system has been captured by the ‘noisy minority’. Low turnouts in local elections and the demographic of voters – typically older people and homeowners – means there is an incentive for parties and candidates in local elections run on antidevelopment policy platforms. Unless they have the time and patience to attend local planning committees, ordinary citizens are detached from the planning process.<sup>31</sup>

### What does *Planning for the Future* say?

*Planning for the Future* argues that the planning process will be brought into the 21<sup>st</sup> century through the proposed reforms; communities will be reconnected to the planning process and so more engaged in what

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<sup>29</sup> LPAs and county councils (in two-tier areas) are under a duty to cooperate with each other (and with other prescribed bodies) on strategic matters crossing administrative boundaries [MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: paragraph 24]. Under the NPPF, plans are sound if they are positively prepared, justified, effective and consistent with national policy [as above, paragraph 35]. Independent planning inspectors at the Planning Inspectorate (PINS) must look at all Local Plan documents that LPAs in England prepare for an examination. The LPA submits the Local Plan, alongside the consultation representations and other required documents, to PINS. PINS then arrange for the Local Plan to be scrutinised through an Examination in Public. During the Examination, the Inspector will be testing the Local Plan for soundness, legal procedural compliance and whether the Council has met the duty to co-operate. DCLG’s [Plain English Guide to the Planning System](#) [January 2015] sets out how the planning inspector will examine the local plan.

<sup>30</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 15

<sup>31</sup> Jack Airey and Chris Doughty, [Rethinking the planning system for the 21<sup>st</sup> century](#), Policy Exchange, January 2020: page 9

happens in their areas.<sup>32</sup> *Planning for the Future* also speaks of “[moving] the democracy forward”:

- move the democracy forward in the planning process and give neighbourhoods and communities an earlier and more meaningful voice in the future of their area as plans are made, harnessing digital technology to make it much easier to access and understand information about specific planning proposals. More engagement should take place at the Local Plan phase;
- improve the user experience of the planning system, to make planning information easier to find and understand and make it appear in the places that discussions are happening, for example in digital neighbourhood groups and social networks. New digital engagement processes will make it radically easier to raise views about and visualise emerging proposals whilst on-the-go on a smart phone;<sup>33</sup>

On community engagement, the white paper argues that LPAs should “radically and profoundly” reinvent their engagement with communities over Local Plans:

- Local councils should radically and profoundly re-invent the ambition, depth and breadth with which they engage with communities as they consult on Local Plans. Our reforms will democratise the planning process by putting a new emphasis on engagement at the plan-making stage. At the same time, we will streamline the opportunity for consultation at the planning application stage, because this adds delay to the process and allows a small minority of voices, some from the local area and often some not, to shape outcomes. We want to hear the views of a wide range of people and groups through this consultation on our proposed reforms.<sup>34</sup>

## 1.5 Housing need: commitment to the standard method and Housing Delivery Test

### Background

The Commons Library briefing [What next for planning in England? The National Planning Policy Framework](#) also examines the standard method for calculating housing need and the Housing Delivery Test.<sup>35</sup>

As another part of the drive towards meeting local housing need, the *Planning for the Future* policy paper in March 2020 said that the Housing Delivery Test will continue to be used to drive supply:

11. Ensure that communities make land sufficiently available to deliver homes in the right places. A plan for local housing need is only as good as the results it delivers. We will introduce new changes to ensure that land, sites and homes come forward on

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<sup>32</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 8

<sup>33</sup> As above page 14

<sup>34</sup> As above: page 15

<sup>35</sup> CBP 8260, 10 June 2019

time and incentivise authorities to deliver more homes. This includes:

- (...)
- Continuing to drive supply through the Housing Delivery Test – we will continue with plans to raise the Housing Delivery test threshold to 75% in November 2020, incentivising local authorities to deliver on their local plans.<sup>36</sup>

## Build-out

One issue which has long prompted controversy and concern is the gulf between planning permissions granted and homes built (the “build-out” rate) and delays in starting work on development.

The independent review of build-out chaired by Sir Oliver Letwin is discussed in section 12 of the Commons Library briefing [What next for planning in England? The National Planning Policy Framework](#).<sup>37</sup> In [the final report of his review](#), Sir Oliver drew attention to the NPPF’s provisions and recommended that there should be an additional requirement that large sites should provide a “diversity of offerings”, to ensure that houses can be built faster.<sup>38</sup>

## What does *Planning for the Future* say?

The white paper proposes to retain the Housing Delivery Test and the standard method, which is also included in the concurrent consultation – discussed later – about amending the current planning system. The standard method would be a means of distributing the national housebuilding target of 300, 000 new homes a year and would make LPAs responsible for allocating land suitable for housing to meet the requirement, perhaps through densification or better use of brownfield land. The white paper also, though, identifies an alternative option of leaving the calculation of how much land to include in each category for local decision. Green Belt protections would remain:

2.25. It is proposed that the standard method would be a means of distributing the national housebuilding target of 300,000 new homes annually, and one million homes by the end of the Parliament, having regard to:

- the size of existing urban settlements (so that development is targeted at areas that can absorb the level of housing proposed);
- the relative affordability of places (so that the least affordable places where historic under-supply has been most chronic take a greater share of future development);
- the extent of land constraints in an area to ensure that the requirement figure takes into account the practical limitations that some areas might face, including the presence of designated areas of environmental and heritage value, the Green Belt and flood risk. For example,

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<sup>36</sup> MHCLG, [Planning for the Future](#), March 2020: page 6

<sup>37</sup> CBP 8260, 10 June 2019

<sup>38</sup> Rt Hon Sir Oliver Letwin MP, [Independent review of build-out: final report](#), CM 9720, October 2018: page 12

areas in National Parks are highly desirable and housing supply has not kept up with demand; however, the whole purpose of National Parks would be undermined by multiple large scale housing developments so a standard method should factor this in;

- the opportunities to better use existing brownfield land for housing, including through greater densification. The requirement figure will expect these opportunities to have been utilised fully before land constraints are taken into account;
- the need to make an allowance for land required for other (non-residential) development; and
- inclusion of an appropriate buffer to ensure enough land is provided to account for the drop off rate between permissions and completions as well as offering sufficient choice to the market.

2.26. The standard method would make it the responsibility of individual authorities to allocate land suitable for housing to meet the requirement, and they would continue to have choices about how to do so: for example through more effective use of existing residential land, greater densification, infilling and brownfield redevelopment, extensions to existing urban areas, or new settlements. The existing policy for protecting the Green Belt would remain. We also propose that it would be possible for authorities to agree an alternative distribution of their requirement in the context of joint planning arrangements. In particular, it may be appropriate for Mayors of combined authorities to oversee the strategic distribution of the requirement in a way that alters the distribution of numbers, and this would be allowed for.

2.27. In the current system the combination of the five-year housing land supply requirement, the Housing Delivery Test and the presumption in favour of sustainable development act as a check to ensure that enough land comes into the system. Our proposed approach should ensure that enough land is planned for, and with sufficient certainty about its availability for development, to avoid a continuing requirement to be able to demonstrate a five-year supply of land. However, having enough land supply in the system does not guarantee that it will be delivered, and so we propose to maintain the Housing Delivery Test and the presumption in favour of sustainable development as part of the new system.

2.28. Alternative option: It would be possible to leave the calculation of how much land to include in each category to local decision, but with a clear stipulation in policy that this should be sufficient to address the development needs of each area (so far as possible subject to recognised constraints), taking into account market signals indicating the degree to which existing needs are not being met. As now, a standard method could be retained to underpin this approach in relation to housing; and it would be possible to make changes to the current approach that ensure that meeting minimum need is given greater weight to make sure sufficient land comes forward. However, we do not think that this approach would carry the same benefits of clarity and simplicity as our preferred option, and would also require additional safeguards to ensure that adequate land remains available, especially once the assessment of housing need has been translated into housing requirements. We would, therefore,



propose to retain a five-year housing land supply requirement with this approach.<sup>39</sup>

## 1.6 Brownfield sites

### Background

There are already measures in place to encourage the use of brownfield sites.

Under *making effective use of land*, [the NPPF](#) says that strategic policies should make “as much use as possible” of brownfield land:

117. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land.

118. Planning policies and decisions should:

(...)

c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;<sup>40</sup>

Section 7.3 of the Commons Library briefing [What next for planning in England? The National Planning Policy Framework](#) examines some of the main policy changes introduced through the new NPPF, including on brownfield land in the Green Belt.<sup>41</sup>

The *Planning for the Future* policy paper in March 2020 set out the steps the Government intended to take before the planning white paper was published. These included measures on brownfield land:

- **Investing £400m to use brownfield land productively** – the Government will work with ambitious mayors and local leaders to regenerate local brownfield land and deliver the homes their communities need on land which is already developed.
- **Launching a national brownfield map and a call for proposals for building above stations** – the government will launch a national brownfield sites map in April 2020 and will conduct a call for proposals to seek evidence on the barriers to, and opportunities in, building above stations in urban areas. It is vital that we make the most of existing transport hubs, encouraging modern, green communities where people live close to public transport.<sup>42</sup>

### What does *Planning for the Future* say?

In the white paper, the Government expresses a wish to create a virtuous circle, with more homes built on brownfield land:

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<sup>39</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 28

<sup>40</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: page 35

<sup>41</sup> CBP 8260, 10 June 2019

<sup>42</sup> MHCLG, [Planning for the Future](#), March 2020: paragraph 10

1.12. We wish to:

(...)

- create a virtuous circle of prosperity in our villages, towns and cities, supporting their ongoing renewal and regeneration without losing their human scale, inheritance and sense of place. We need to build more homes at gentle densities in and around town centres and high streets, on brownfield land and near existing infrastructure so that families can meet their aspirations. Good growth will make it easier to level up the economic and social opportunities available to communities.<sup>43</sup>

## 1.7 Tree-lined streets

### Background

The NPPF has a chapter on achieving well-designed places and the PPG has a [chapter on design: process and tools](#).<sup>44</sup>

Section 2 of the March 2020 [debate pack on housing and planning in England](#) discusses the Government's intentions to promote good design through planning and the work of the Building Better, Building Beautiful Commission.<sup>45</sup>

The *Planning for the Future* policy paper in March 2020 set out steps to promote good design, one of which was to respond to the Building Better, Building Beautiful Commission and put tree-lined streets at the centre of future plans:

- Respond to the Building Better, Building Beautiful Commission's report – we will look to take forward many of the Commission's recommendations, which include calling for urban tree planting and giving communities a greater opportunity to influence design standards in their area. This will put tree lined streets at the centre of future plans, so that they become the norm not the exception.<sup>46</sup>

### What does *Planning for the Future* say?

Under *effective stewardship and enhancement of our natural and historic environment*, the white paper commits to making all new streets tree-lined:

We will also deliver our commitment to make all new streets tree-lined, by setting clear expectations through the changes to the National Planning Policy Framework which will be consulted on in the autumn, and informed by the outcome of this summer's consultation on the England Tree Strategy.<sup>47</sup>

Under the heading of *creating frameworks for quality*, the white paper also says that a national model design code will cover placement of street trees and other matters.<sup>48</sup>

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<sup>43</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: pages 14-5

<sup>44</sup> MHCLG, [Guidance: Design: process and tools](#), 6 March 2014, updated 1 October 2019

<sup>45</sup> CDP 2020-041

<sup>46</sup> MHCLG, [Planning for the Future](#), March 2020: paragraph 15

<sup>47</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: paragraph 3.23

<sup>48</sup> As above: paragraph 3.6

## 1.8 Valuing green spaces

### Background

[Paragraphs 96 onwards in the NPPF](#) deal with open space and recreation. The NPPF sets out some conditions to be met before open space can be built on and also sets out policy towards Local Green Spaces:

99. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.

100. The Local Green Space designation should only be used where the green space is: a) in reasonably close proximity to the community it serves; b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and c) local in character and is not an extensive tract of land.

101. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.<sup>49</sup>

More detailed guidance appears in the [PPG on open space, sports and recreation facilities etc.](#) The PPG sets out how planning should take account of open space and describes Local Green Space status as “a way to provide special protection against development for green areas of particular importance to local communities”. The PPG covers (amongst other things) Local Green Space designation.<sup>50</sup>

## 1.9 Green Belt

### Background

[Chapter 13 of the NPPF](#) deals with protecting Green Belt land.<sup>51</sup>

The Commons Library briefing [Green Belt](#) discusses Green Belt policy and outlines the current planning rules.<sup>52</sup> The Commons Library briefing [What next for planning in England? The National Planning Policy Framework](#) discusses the NPPF and (amongst other things) its policies towards the Green Belt and particularly brownfield land in the Green Belt.<sup>53</sup> As that briefing explains, the NPPF demands that there should be “exceptional circumstances” before Green Belt boundaries can be changed<sup>54</sup> and says that inappropriate development is harmful to the

<sup>49</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: paragraph 97 onwards

<sup>50</sup> MHCLG, [Guidance: open space, sports and recreation facilities, public rights of way and local green space](#), 6 March 2014

<sup>51</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: page 40 onwards

<sup>52</sup> SN 934, 4 January 2019

<sup>53</sup> CBP 8260, 10 June 2019

<sup>54</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: paragraph 137

Green Belt and should be approved only in “very special circumstances”.<sup>55</sup>

### What does *Planning for the Future* say?

Within the three categories outlined in the white paper – growth areas “suitable for substantial development”, renewal areas “suitable for development” and protected areas – Green Belt would be part of the protected category.<sup>56</sup>

Similarly, *Planning for the Future* says that, within the nationally-determined and binding housing requirement, the Green Belt will be a constraint:

1.20. Fifth, to ensure more land is available for the homes and development people and communities need, and to support renewal of our town and city centres, we propose:

- A new nationally-determined, binding housing requirement that local planning authorities would have to deliver through their Local Plans. This would be focused on areas where affordability pressure is highest to stop land supply being a barrier to enough homes being built. We propose that this would factor in land constraints, including the Green Belt, and would be consistent with our aspirations of creating a housing market that is capable of delivering 300,000 homes annually, and one million homes over this Parliament.<sup>57</sup>

In discussing the standard method, the white paper goes on to say that existing Green Belt protections will remain:

2.26. The standard method would make it the responsibility of individual authorities to allocate land suitable for housing to meet the requirement, and they would continue to have choices about how to do so: for example through more effective use of existing residential land, greater densification, infilling and brownfield redevelopment, extensions to existing urban areas, or new settlements. The existing policy for protecting the Green Belt would remain. We also propose that it would be possible for authorities to agree an alternative distribution of their requirement in the context of joint planning arrangements. In particular, it may be appropriate for Mayors of combined authorities to oversee the strategic distribution of the requirement in a way that alters the distribution of numbers, and this would be allowed for.<sup>58</sup>

## 1.10 New national levy for developer contributions

### Background

Developer contributions may be sought in two ways, through section 106 agreements and through the Community Infrastructure Levy. Around 49% of new affordable homes supplied in England in 2018/19

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<sup>55</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: paragraph 143

<sup>56</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 24

<sup>57</sup> As above: page 19

<sup>58</sup> As above: page 28

were at least part-funded through section 106 agreements.<sup>59</sup> Detailed briefing on developer contributions can be found in these Commons Library briefings:

- [\*What next for planning in England? The National Planning Policy Framework\*](#), which discusses developer contributions and land value capture<sup>60</sup>
- [\*Tackling the under-supply of housing in England\*](#) also discusses land supply and capturing value<sup>61</sup>
- [\*Planning obligations \(section 106 agreements\)\*](#)<sup>62</sup>
- [\*Community Infrastructure Levy\*](#)<sup>63</sup>

## What does *Planning for the Future* say?

*Planning for the Future* argues that the current system of section 106 agreements and Community Infrastructure Levy should be replaced by a nationally-set value-based flat rate charge (to be called the Infrastructure Levy), set at a single or varied rate. This would (the white paper argues) sweep away months of negotiation and deliver at least as much affordable housing as at present. Another proposal is to bring additional homes created through PDRs within the scope of the Infrastructure Levy:<sup>64</sup>

- The Community Infrastructure Levy and the current system of planning obligations will be reformed as a nationally-set value-based flat rate charge ('the Infrastructure Levy'). A single rate or varied rates could be set. We will aim for the new Levy to raise more revenue than under the current system of developer contributions, and deliver at least as much – if not more – on-site affordable housing as at present. This reform will enable us to sweep away months of negotiation of Section 106 agreements and the need to consider site viability. We will deliver more of the infrastructure existing and new communities require by capturing a greater share of the uplift in land value that comes with development.
- We will be more ambitious for affordable housing provided through planning gain, and we will ensure that the new Infrastructure Levy allows local planning authorities to secure more on-site housing provision.
- We will give local authorities greater powers to determine how developer contributions are used, including by expanding the scope of the Levy to cover affordable housing provision to allow local planning authorities to drive up the provision of affordable homes. We will ensure

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<sup>59</sup> MHCLG, [Live Table 1000C](#)

<sup>60</sup> CBP 8260, 10 June 2019

<sup>61</sup> CBP 7671, 9 March 2020

<sup>62</sup> CBP 7200, 6 September 2019

<sup>63</sup> SN 3890, 19 December 2019

<sup>64</sup> The Commons Library [briefing on planning: change of use](#) [SN 1301, 9 May 2019] discusses the changes of use that can be made without planning permission – using what are known as permitted development rights (PDRs) – and some of the concerns that have been raised about the resulting office to residential conversions. The Commons Library [briefing on PDRs](#) [SN 485, 17 May 2019] provides more background information.



that affordable housing provision supported through developer contributions is kept at least at current levels, and that it is still delivered on-site to ensure that new development continues to support mixed communities. Local authorities will have the flexibility to use this funding to support both existing communities as well as new communities.

- We will also look to extend the scope of the consolidated Infrastructure Levy and remove exemptions from it to capture changes of use through permitted development rights, so that additional homes delivered through this route bring with them support for new infrastructure.<sup>65</sup>

## 1.11 Design: new fast-track system for beautiful buildings

### Background

[The NPPF](#) has a chapter on achieving well-designed places and the PPG has a [chapter on design: process and tools](#).<sup>66</sup>

The *Planning for the Future* policy paper in March 2020 set out how the Government would take steps to promote good design:

- **Revise the National Planning Policy Framework (NPPF) to embed the principles of good design and placemaking** – this will make clear that high-quality buildings and places must be considered throughout the planning process. The framework will expand on the fundamental principles of good design to define what is expected of local authorities and developers to support the creation of beautiful places.
- **Respond to the Building Better, Building Beautiful Commission's report** – we will look to take forward many of the Commission's recommendations, which include calling for urban tree planting and giving communities a greater opportunity to influence design standards in their area. This will put tree lined streets at the centre of future plans, so that they become the norm not the exception.
- **Give local authorities the ability to ensure that new homes conform to local residents' ideas of beauty through the planning system** – using the National Model Design Code we will set out clear parameters for promoting the design and style of homes and neighbourhoods local people want to see. We will ask local places to produce their own design guides and codes, informed by listening to local people and considering local context. This will embed standards in planning policy and give local communities the confidence to demand that they are met.<sup>67</sup>

Section 2 of the March 2020 [debate pack on housing and planning in England](#) discusses the Government's intentions to promote good design

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<sup>65</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 18

<sup>66</sup> MHCLG, [Guidance: Design: process and tools](#), 6 March 2014, updated 1 October 2019

<sup>67</sup> MHCLG, [Planning for the Future](#), March 2020: paragraph 15

through planning and the work of the Building Better, Building Beautiful Commission.<sup>68</sup>

### What does *Planning for the Future* say?

On design and sustainability, *Planning for the Future* sets out a number of steps towards supporting efforts to combat climate change and creating “net gain”,<sup>69</sup> “net gains for biodiversity and the wider environment”<sup>70</sup> and “beautiful places”,<sup>71</sup> with a “fast track for beauty”, under which there would be automatic planning permission for “high quality developments where they reflect local character and preferences”. The white paper describes how the “fast track for beauty” would be achieved:

3.17. We propose to do this in three ways. In the first instance, through updating the National Planning Policy Framework, we will make clear that schemes which comply with local design guides and codes have a positive advantage and greater certainty about their prospects of swift approval.

3.18. Second, where plans identify areas for significant development (Growth areas), we will legislate to require that a masterplan and site-specific code are agreed as a condition of the permission in principle which is granted through the plan. This should be in place prior to detailed proposals coming forward, to direct and expedite those detailed matters. These masterplans and codes could be prepared by the local planning authority alongside or subsequent to preparing its plan, at a level of detail commensurate with the size of site and key principles to be established. For example, a set of simple ‘co-ordinating codes’ of the sort endorsed by the Building Better, Building Beautiful Commission could set some initial key parameters for the site layout. Where sites are expected to come forward in the near future, more developed masterplans or codes, prepared by the local planning authority or site promoter, will provide greater certainty.

3.19. Third, we also propose to legislate to widen and change the nature of permitted development, so that it enables popular and replicable forms of development to be approved easily and quickly, helping to support ‘gentle intensification’ of our towns and cities, but in accordance with important design principles. There is a long history – in this country and elsewhere – of ‘pattern books’ being used to articulate standard building types, options and associated rules (such as heights and setbacks). They have helped to deliver some of our most popular and successful places, and in a way which makes it relatively easy for smaller development companies to enter the market. We want to revive this tradition, in areas suitable for development (Renewal areas), by allowing the pre-approval of popular and replicable designs through permitted development. The benefits are much more than fast delivery of proven popular designs – it will foster innovation and support industrialisation of housebuilding, enabling modern methods of construction to be developed and deployed at scale.<sup>72</sup>

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<sup>68</sup> CDP 2020-041

<sup>69</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 14

<sup>70</sup> As above: page 15

<sup>71</sup> As above: page 17

<sup>72</sup> As above: page 42

*Planning for the Future* speaks of a “quicker, simpler framework for assessing environmental impacts and enhancement opportunities” which, as part of a new focus on design and sustainability, would speed up the process while still protecting and enhancing ecosystems.<sup>73</sup>

On the day of the white paper’s launch, [the Guardian reported](#) that its proposals had created “an outcry”. The proposals around a “fast track for beauty” were criticised as “ideological puffery”:

Taking inspiration from the work of the late Conservative philosopher [Roger Scruton](#), a body is to be established to support the delivery of binding “design codes” that would also cut red tape.

Critics suggest this is ideological puffery that will have the opposite effect by creating a new administrative criteria and give lawyers a field day arguing over what is beauty.<sup>74</sup>

Section 4.2 below discusses environmental protection in planning and the forthcoming review of environmental impact assessments.

## 1.12 New homes to be “zero carbon ready”

### Background

Chapter 2 of the NPPF deals with [achieving sustainable development](#). The theme of this chapter is a presumption in favour of sustainable development in economic, social and environmental terms, but it does not get into the detail of energy efficiency or specific sustainability standards.<sup>75</sup>

Chapter 14 of the NPPF has guidance on [meeting the challenge of climate change](#). It opens by observing that the planning system should support the transition to a low carbon future. It also urges development plans to increase the use and supply of renewable and low carbon energy and heat, as well as encouraging local authorities to support community-led initiatives for renewable and low carbon energy. The NPPF advises local authorities to expect new development to take account of factors to minimise energy consumption.<sup>76</sup>

While the NPPF does not go into detail here, there is other government planning guidance which does.

The [PPG on climate change](#) sets out why planning should address climate change.<sup>77</sup> It also points out (amongst other things) that the Government expects LPAs to set local sustainability requirements “in a way consistent with the government’s zero carbon buildings policy” although since that paragraph was last updated the zero carbon buildings policy has been withdrawn; its eventual replacement will be

<sup>73</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 17

<sup>74</sup> “[Why England’s planning overhaul has sparked an outcry](#)”, *Guardian*, 6 August 2020

<sup>75</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: page 6 onwards

<sup>76</sup> As above: page 44 onwards

<sup>77</sup> MHCLG, [Guidance: climate change](#), 12 June 2014, updated 15 March 2019: paragraph 001

the future homes standard.<sup>78</sup> The [PPG on renewable and low carbon energy](#) also sets out what can be expected of local authorities in promoting sustainability in terms of renewables and low carbon energy.<sup>79</sup>

In response to a [PQ on 13 January 2020](#), Robert Jenrick reiterated the Government's commitment to the future homes standard, describing it as "a major change in the delivery of homes."<sup>80</sup>

The energy efficiency of new homes is controlled through building regulations, and a consultation on this part (part L) of the building regulations, to create the Future Homes Standard, closed on 7 February 2020. It proposed a two-stage approach, with changes to building regulations, coming into force in two stages in 2020 and 2025. The consultation suggested a two-stage approach: measures to achieve either a 20% or 31% reduction in carbon dioxide emissions in the 2020 regulations compared to the 2013 rules; and a 75-80% reduction is the aim for 2025.

Concerns have been raised by some that policy as planned may not deliver enough improvement in building fabric efficiency due to the gains from more efficient heat and electricity. PQs in July 2020 indicated that the Government was "carefully considering the responses received" and that a response would be published "in due course".<sup>81</sup>

Further information is given in the Commons Library briefing [Housing and Net Zero](#).<sup>82</sup>

Planning permission and building regulation are different, but related, requirements.

## What does *Planning for the Future* say?

*Planning for the Future* speaks in terms of supporting efforts to combat climate change and facilitating ambitious improvements to energy efficiency standards for buildings, as part of the drive towards net zero greenhouse gas emissions by 2050:

1.18. Third, to bring a new focus on design and sustainability, we will:

- Ensure the planning system supports our efforts to combat climate change and maximises environmental benefits, by ensuring the National Planning Policy Framework targets those areas where a reformed planning system can most effectively address climate change mitigation and adaptation and facilitate environmental improvements.
- Facilitate ambitious improvements in the energy efficiency standards for buildings to help deliver our world-leading commitment to net-zero by 2050.<sup>83</sup>

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<sup>78</sup> MHCLG, [Guidance: climate change](#), 12 June 2014, updated 15 March 2019: paragraph 009

<sup>79</sup> MHCLG, [Guidance: renewable and low carbon energy](#), 18 June 2015

<sup>80</sup> [HC Deb 13 January 2020 c736](#)

<sup>81</sup> [PQ 72766 21 July 2020](#)

<sup>82</sup> CBP 8830, 13 August 2020

<sup>83</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 17

(...)

1.28. This consultation document does not address every detailed part of the planning system, its function and objectives, but rather focuses on the key reforms that can help improve the delivery and quality of homes and neighbourhoods, set within our drive towards net-zero greenhouse gas emissions by 2050.<sup>84</sup>

Some insight into the Government's thinking on the [Future Homes Standard](#) was given, but no new proposals on energy efficiency were made. It noted a response to the consultation was expected in the Autumn, and suggested the planning changes would allow for the redeployment of local authority resources to great enforcement of planning and building regulations (including energy efficiency).

## 1.13 Supporting small and medium sized developers

### Background

The construction industry is dominated by small businesses including self-employed workers. Small and medium sized businesses (SMEs), including those with no employees, accounted for over 99% of businesses in the construction sector in England in 2019; this is not dissimilar from the proportion of SMEs across all sectors.<sup>85</sup> However, the construction sector is characterised by a large proportion of self-employed workers and small businesses with zero employees.

Businesses with no employees made up 83% of businesses in the sector in England in 2019 compared to 76% across all industries. Self-employed workers accounted for 38% of employment in the construction sector in March 2020 in England.<sup>86</sup> This compares to 15% across all sectors of the economy. In total there were 2 million jobs in the construction industry in England in March 2020, almost 7% of all jobs in England.<sup>87</sup>

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<sup>84</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 21

<sup>85</sup> BEIS, [Business Population Estimates 2019](#). SMEs accounted for 99.97% of the construction sector and 99.84% across all industries in England in 2019; SMEs defined as businesses with fewer than 250 employees.

<sup>86</sup> ONS, Workforce jobs data, via [Nomis database](#).

<sup>87</sup> ONS, Workforce jobs data, via [Nomis database](#).



<b>Businesses in the construction sector</b>		
England, 2019		
	Number	% Sector Total
Small and Medium Sized	909,450	99.97%
<i>Of which:</i>		
0 Employees	758,180	83.34%
Micro (1-9 employees)	135,740	14.92%
Small (10-49)	13,875	1.53%
Medium-sized (50-249)	1,655	0.18%
Large (250+)	275	0.03%
Total	909,725	100.00%

Source: BEIS, [Business Population Estimates 2019](#).

The Library briefing paper on the [Construction industry: statistics and policy](#) provides further statistics discussion on policy support for the sector in recent years.<sup>88</sup> Cash flow difficulties and access to long-term investment finance has been noted as a challenge for the industry particularly for small businesses.<sup>89</sup>

### What does *Planning for the Future* say?

One of the white paper's aims is to support SME builders and developers, who will (the Government says) be key players in economic recovery following the pandemic. The press release [accompanying the white paper](#) argued that its proposals could provide a "major boost" to SME builders:

The changes will be a major boost to SME builders currently cut off by the planning process. They will be key players in getting the country building on the scale needed to drive our economic recovery, while leading housebuilding that is beautiful and builds on local heritage and character.

(...)

Recent studies show smaller firms feel the complexities of the planning process and its associated risks, delays and costs are the key challenges they face in homebuilding.<sup>90</sup>

*Planning for the Future* makes several references to the role and needs of the SME sector. It suggests (for example) that the new Infrastructure Levy would reduce cashflow difficulties for SME developers:

4.11. As a value-based charge across all use classes, we believe it would be both more effective at capturing increases in value and

<sup>88</sup> SN 1432, 16 December 2019

<sup>89</sup> BEIS, [Construction Sector Deal](#), July 2018; HM Government, [Construction 2025](#), July 2013.

<sup>90</sup> MHCLG, [Press release: Launch of Planning for the future consultation to reform the planning system](#), 6 August 2020

would be more sensitive to economic downturns. It would reduce risk for developers, and would reduce cashflow difficulties, particularly for SME developers.<sup>91</sup>

## 1.14 Transition to the new system

To support the transition to the new system, *Planning for the Future* proposes a statutory duty, requiring LPAs to adopt a new Local Plan within 30 or 42 months, according to whether the LPA has adopted a Local Plan within the previous three years or submitted one for examination:

2.50. To support the transition to the new system, we propose a statutory duty for local authorities to adopt a new Local Plan by a specified date – either 30 months from the legislation being brought into force, or 42 months for local planning authorities who have adopted a Local Plan within the previous three years or where a Local Plan has been submitted to the Secretary of State for examination. In the latter case, the 42 month period would commence from the point at which the legislation is brought into force, or upon adoption of the most recent plan, whichever is later.

2.51. This should be accompanied by a requirement for each planning authority to review its Local Plan at least every five years. Reviews should be undertaken sooner than five years where there has been a significant change in circumstances, for instance where issues with land supply have been identified through regular monitoring. Where a review concludes that an update is required, then the same 30-month deadline would apply although there would be an expectation that in many cases an update could be completed more quickly.<sup>92</sup>

Under *delivering change*, the white paper says that the Government wants to make “rapid progress” toward this new planning system. It speaks too of a smooth transition and minimising disruption to existing plans and development proposals, for example by “making sure that recently approved plans, existing permissions and any associated planning obligations can continue to be implemented as intended”.<sup>93</sup>

## 1.15 Further reading

- Local Government Association, [\*Local planning authorities: proposed changes to the planning system\*](#) (undated)
- [“The likely risks and rewards of the proposed zonal plan system”](#), *Planning*, 14 August 2020
- [“What the White Paper means for community control of planning”](#), *Planning*, 13 August 2020
- RTPI, [Proposals for planning reform: an initial briefing](#), 10 August 2020
- [“The Observer view on Tory fantasies about planning”](#) (editorial), *Observer*, 9 August 2020

Some of these sources will require a subscription.

<sup>91</sup> MHCLG, [White paper: Planning for the Future](#), August 2020: page 49

<sup>92</sup> As above: page 35

<sup>93</sup> As above: page 54

- ["Tory planning reforms 'could kill off affordable housing'", \*Observer\*, 9 August 2020](#)
- ["Why build, build, build spells planning Armageddon", \*Sunday Times\*, 9 August 2020](#)
- ["The housing crisis will only get worse under the Tories' planning proposals", \*Guardian\*, 8 August 2020](#)
- ["The Times view on proposed planning reforms: bricks and mortar", \*The Times\*, 7 August 2020](#)
- ["Planning reforms owe debt to Poundbury. Prince Charles's thriving model town", \*The Times\*, 7 August 2020](#)
- ["Councils face sanctions if they fail to hit proposed new house-building targets", \*Telegraph\*, 6 August 2020](#)
- ["The 2020 plans for new planning permission laws in full", \*The Times\*, 6 August 2020](#)
- ["Boris Johnson targets wealthy areas in radical shake-up of planning laws", \*The Times\*, 6 August 2020](#)
- ["Planning law overhaul aims to fast-track housing projects", \*Law Society Gazette\*, 6 August 2020](#)
- ["Seven key planning changes proposed in the government's consultation paper", \*Planning\*, 6 August 2020](#)
- ["Ten things you need to know about the planning white paper", \*Housing Today\*, 6 August 2020](#)
- ["Planning reforms could slow house-building in England if not adequately resourced, warns RTPI", \*RTPI\*, 6 August 2020](#)
- ["All new streets to be tree-lined under Government plans to end 'identikit estates'", \*Telegraph\*, 5 August 2020](#)
- RTPI, [\*Plan the world we need The contribution of planning to a sustainable, resilient and inclusive recovery\*](#), 29 June 2020
- RTPI, [\*Priorities for Planning Reform\*](#), 23 April 2020
- RTPI Research Paper, [\*Chief Planning Officers: The corporate and strategic influence of planning in local authorities\*](#), June 2018
- Bridget Rosewell CBE, Professor Robert Adam, Charles Dugdale, Warwick Lightfoot, David Rudlin, John Myers, Jamie Ratcliff, Reuben Young, Dr Sue Chadwick, William Nicolle and Benedict McAleenan, [\*Planning Anew A collection of essays on reforming the planning system for the 21st century\*](#), Policy Exchange, 2020

## 1.16 Commentary and reactions to the white paper

The proposed reforms have received a mixed response and have attracted some controversy. Some have welcomed the proposed changes, but there has been some fierce criticism.

In an [open letter](#) issued shortly after the Prime Minister's *build, build, build* speech, the chief executive of the RTPI, Victoria Hills, voiced concern about the approach that the white paper was expected to take and the "planner bashing rhetoric". She argued that sweeping away the planning system was not the right response to present challenges:

Without proper planning, developers will be given carte blanche to build in places which perpetuate car dependency and health-sapping deprivation, or deny neighbours of sunlight and daylight, erect tall buildings in the wrong places, houses in areas that may give little consideration to the health and wellbeing of the people who will live in them.

(...)

Sweeping away the planning system is not the answer. Planners are not a barrier, they are a facilitator of healthy, happy sustainable communities. That is not to say that efficiencies and improvements cannot be made – the RTPI believes that technology should be harnessed to foster more efficient and inclusive planning, all planning documents should be machine-readable, terminology and processes across government should be standardised and investment in open source tools should be made.<sup>94</sup>

The President of RIBA, Alan Jones, agreed that the planning system needed to be reformed but branded the proposals as "shameful":

"While there's no doubt the planning system needs reform, these shameful proposals do almost nothing to guarantee the delivery of affordable, well-designed and sustainable homes. While they might help to 'get Britain building' – paired with the extension of Permitted Development – there's every chance they could also lead to the creation of the next generation of slum housing. The housing crisis isn't just about numbers, and deregulation won't solve it.

(...)

These reforms might seem radical, but they won't even scratch the surface when it comes to building the homes we need."<sup>95</sup>

In a [preliminary response to the white paper](#), the Local Government Association said it was vital that new homes should be delivered through a locally-led planning system and communities should retain the right to shape the areas in which they live:

Councils are committed to ensuring new homes are built and communities have quality places to live. It is vital that these are

<sup>94</sup> [Open Letter From Chief Executive Of The Royal Town Planning Institute \(RTPI\)](#), 2 July 2020

<sup>95</sup> RIBA, ['Deregulation won't solve the housing crisis' – RIBA criticises Jenrick's planning reforms](#), 6 August 2020

delivered through a locally-led planning system with public participation at its heart which gives communities the power to ensure new developments are of a high standard, built in the right places, and include affordable homes. We also need to ensure that new homes are supported by new funding for community infrastructure such as schools, playgrounds and roads.

(...)

It is vital that Government fully engages with and takes advantage of the expertise in local government to ensure that their aspirations of an improved system works in practice. We look forward to responding to this consultation in detail and working with government to ensure any reforms improve the system and protect the rights of communities to shape the areas they live in.<sup>96</sup>

In its [initial briefing on the white paper](#), the RTPI argued that there was little evidence of how the proposed changes would speed up the planning system or make it more flexible and questioned how communities and planning committees would be involved:

- The White Paper contains little evidence on how the new approach will speed up planning and provide flexibility, given the likely time it will take to develop new plans and design codes capable of dealing with significant complexity.
- There is no mention of a more proactive role for local authorities in land assembly, such as through Compulsory Purchase Orders (CPOs) or Community Land Trusts (CLTs)
- The White Paper proposes to *“streamline the planning process with more democracy taking place more effectively at the plan making stage”*. This will require deeper analysis to answer questions on community involvement in decision-making, the ability of residents to engage when tangible proposals are made for development, and the role of local authority Planning Committees in providing democratic oversight.<sup>97</sup>

The [Campaign to Protect Rural England](#) also voiced concerns about how community involvement would work within a zoning system and “missed chances” around carbon-neutral, affordable housing:

As [Tom Fyans, our deputy chief executive], says:

‘The key acid test for the planning reforms is community involvement and on first reading, it’s still not clear how this will work under a zoning system.

‘Although we welcome the government’s commitment to all areas having a local plan in place, we also need robust legal guarantees that the public are consulted regarding new development. Red lines on a map are not going to build trust in the planning system.’

(...)

‘On affordable homes, our concern is how this approach might play out in the countryside. In many rural areas, house prices are often more than ten times average earnings, and so the 30 percent discount won’t cut it. Local authorities should be able to

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<sup>96</sup> Local Government Association, [LGA responds to Government 'Planning for the Future' proposal](#), 5 August 2020

<sup>97</sup> RTPI, [Proposals for planning reform: an initial briefing](#), 10 August 2020

provide the sorts of homes needed in their area – homes that local people can afford.’<sup>98</sup>

Writing in the *Independent*, the [Mayor of London, Sadiq Khan](#), argued that the changes would be a “disaster for London” and a “nakedly ideological assault on local democracy”. London’s planning system was, he said, working well:

The government’s so-called planning revolution will be a disaster for London and will ride roughshod over communities and locally elected representatives. It will mean fewer social and affordable homes being built every year, poorer quality housing and local people left with out-of-place buildings and no opportunity to have their say. It is a nakedly ideological assault on local democracy and an attack on London and Londoners.

(...)

... This half-baked policy will pose a major obstacle to our economic recovery and will only lead to the erosion of our high streets and public spaces. It’s no surprise that the Royal Institute of British Architects has already called the proposals “shameful”.<sup>99</sup>

The white paper’s proposals on developer contributions also attracted controversy, with some commentators voicing concerns about the implications for the provision of affordable housing and casting doubt on the Prime Minister’s claim that more social housing would be built:

But the National Housing Federation called for clarity on what would replace the Section 106 agreements, which last year delivered almost 28,000 affordable homes, about half of the total. Kate Henderson, the chief executive, questioned how a replacement national levy would enable the “levelling up” of communities.

The local government association for Greater London warned that the changes were potentially disastrous and could reduce the amount of affordable housing built.<sup>100</sup>

In its [initial briefing on the white paper](#), the RTPI said that its proposals on developer contributions “could be helpful”:

This simplification of developer contributions could be helpful, and the White Paper sets an ambition to raise more revenue than the current system, with land value capture also playing a greater role. However, contributions to affordable housing could be offset by the requirement to grant discounts for First Homes, and the proposed flexibility to spend receipts on “*improving services or reducing council tax*”<sup>101</sup>

The [housing charity Shelter](#) also expressed concern at the reforms’ potential impact on social housing, arguing that section 106 agreements provided one of the few ways of creating such housing:

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<sup>98</sup> Campaign to Protect Rural England, [As the government announce major planning reforms, we criticise ‘pitiful’ aims and call for robust legal guarantees](#), 6 August 2020

<sup>99</sup> “[Planning rules aren’t just ‘red tape’ – they’re essential for building affordable homes people actually want to live in \(Writes Sadiq Khan\)](#)”, *The Independent*, 6 August 2020

<sup>100</sup> “[Affordable housing ‘will diminish due to UK planning changes’](#)”, *Guardian*, 6 August 2020

<sup>101</sup> RTPI, [Proposals for planning reform: an initial briefing](#), 10 August 2020



Section 106 agreements between developers and councils are tragically one of the only ways we get social homes built these days, due to a lack of direct government investment. So, it makes no sense to remove this route to genuinely affordable homes without a guaranteed alternative.

The government says it wants to build beautiful, but that cannot be only for a fortunate few. Struggling renters and key workers with no savings face being left behind. This pandemic has shown us the importance of a safe home like nothing before, but a safe home will remain a pipe dream for too many if the government fails to invest in social housing. Cutting up the planning system must not result in cutting social homes.<sup>102</sup>

The response has not, though, been universally negative and some have welcomed the proposed reforms. In the [press release accompanying the white paper](#), the CEO of Gleeson Homes, James Thomson, offered strong support for the proposals and particularly the commitment to build 300,000 new homes a year:

We strongly support the reform of our historic planning system, to bring it up to speed and ensure it is fit for purpose for the modern-day. In particular, we welcome initiatives to make it more transparent, speed up planning where appropriate and has a presumption towards development rather than against. The renewed commitment to building 300,000 new homes a year is an important goal and will be aided by these new initiatives.

(...)

It's also promising to see the government renew its commitment to building well designed places for people to live and work, rather than just schemes that focus solely on density often to the detriment of place.<sup>103</sup>

In the same press release, the chief UK policy director of the Confederation of British Industry, Matthew Fell, was quoted as saying that the proposed reforms would allow housebuilders to get to work and good quality homes could help meet climate targets. The Chief Executive of Network Homes, Helen Evans, welcomed the proposals which would (she said) help increase the delivery of affordable homes:

The country needs many more affordable homes and the planning system makes an important contribution towards that. I strongly welcome the intention of government's proposed reforms to increase transparency and certainty to help increase the delivery of affordable homes.<sup>104</sup>

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<sup>102</sup> [Shelter responds to major new planning reforms](#), Shelter, 6 August 2020

<sup>103</sup> MHCLG, [Press release: Launch of Planning for the future consultation to reform the planning system](#), 6 August 2020

<sup>104</sup> As above

## 2. Amending the current planning system: consultation in August 2020

Also on 6 August 2020, the Government launched a concurrent [consultation on changes to the current planning system](#).<sup>105</sup> The consultation closes at 11.45pm on 1 October 2020.

The [August 2020 newsletter](#) from the chief planner at MHCLG summarises the proposed changes:

### Changes to the current planning system

Today the Government also published a consultation setting out proposals to improve the effectiveness of the current planning system. These cover:

- The standard method for assessing housing for local plans: Proposals to revise the standard method to increase the overall number of homes being planned for and achieve a more appropriate distribution.
- Delivering First Homes: Following a consultation on the First Homes proposals in February 2020, we have published the Government's response and are now consulting on the detail of the planning proposals. This includes setting a requirement that 25% of all affordable housing secured through developer contributions should be First Homes. We are consulting on options for the remaining 75% of affordable housing secured through developer contributions, and seeking views on transitional arrangements, level of discount, interaction with the Community Infrastructure Levy and how we propose First Homes would be delivered through exception sites.
- S106 and small sites: Proposals to temporarily raise the threshold below which developers do not need to contribute to affordable housing, to up to 40 or 50 units for an 18-month period. In designated rural areas, the consultation proposes to maintain the current threshold. It also seeks views on whether there are any other barriers for SMEs to access and progress sites.
- Permission in Principle: Proposals to increase the threshold for Permission in Principle by application, to cover sites suitable for major housing-led development, rather than being restricted to just minor housing development.<sup>106</sup>

### 2.1 Standard method

#### Background

The current standard method for calculating housing need was devised through a process of consultation and then publication of guidance from MHCLG. It is discussed in section 5 of the Commons Library

<sup>105</sup> MHCLG, [Changes to the current planning system: Consultation on changes to planning policy and regulations](#), August 2020

<sup>106</sup> MHCLG, [Planning update newsletter](#), August 2020

briefing [\*What next for planning in England? The National Planning Policy Framework\*](#)<sup>107</sup> and also in section 4 of the debate pack published in March 2020 for a Westminster Hall [\*debate on the Greater Manchester Spatial Framework and the Green Belt\*](#).<sup>108</sup> As both briefings explain, the standard method must be used unless “exceptional circumstances” justify another approach.

As the debate pack mentions, Robert Jenrick promised a review, to encourage more building in urban areas and on brownfield sites. In that [\*Westminster Hall debate\*](#), the housing minister, Christopher Pincher, confirmed that the formula would be reviewed.<sup>109</sup>

At present, the standard method comprises three steps:

- Step 1: Setting the baseline
- Step 2: Affordability adjustment and
- Step 3: Capping the level of increase

## What is being proposed?

The consultation document sets out how the standard method would be amended, to include as a new element a percentage of housing stock levels and an affordability adjustment:

20. We therefore propose to introduce a new element into the standard method, a percentage of existing housing stock levels, which takes into account the number of homes that are already in an area. This should ensure that diverse housing needs in all parts of the country are taken into account. It should also offer the stability and predictability which has been absent when solely relying on household projections.

21. However, household projections, which are based on freely and publicly accessible data available at a local authority level, are still the most robust estimates of future growth trends. Projections have been used for decades in the planning system as a basis for future housing land requirements due to their simple and relatable concept of linking housing growth to the population. Therefore, we propose to retain a role for them as part of the new blended approach which takes account of stock. This helps achieve the stability and distributional benefits offered by stock whilst not losing the benefits of using projections. Further details of the exact approach are set out below.

22. The Government also proposes to introduce an affordability adjustment that takes into account changes over time, in addition to the existing approach of considering absolute affordability. This will increase the overall emphasis on affordability in the formula and ensure that the revised standard method is more responsive to changing local circumstances, so that homes are planned for where they are least affordable. For example, where affordability improves, this will be reflected by lower need for housing being identified. The Government also proposes to remove the cap which artificially suppresses the level of housing identified.<sup>110</sup>

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<sup>107</sup> CBP 8260, 10 June 2019

<sup>108</sup> CDP 2020-0064, 17 March 2020

<sup>109</sup> [HC Deb 18 March 2020 col 358WH](#)

<sup>110</sup> MHCLG, [Changes to the current planning system: Consultation on changes to planning policy and regulations](#), August 2020: page 12

The consultation document then sets out the detail of the two steps – step 1 is setting the baseline and step 2 is adjusting for market signals – and forecasts the results of the new standard method:

40. The new standard method results in a national housing need of 337,000 on the basis of currently available data. This is the starting point for planning and not the final housing requirement. Not all homes that are planned for are built, therefore the new standard method total is designed to provide enough land to account for the drop-off rate between permissions and completions.

41. The revised method identifies 76% of local housing need nationally focused in local authorities classified as urban (10,000 people or more in a built-up area – i.e. major and minor conurbations, cities and towns and towns in a sparse setting) by the 2011 ONS classification. This will make the most of our transport hubs, support the objectives of brownfield-first and gently densifying urban areas, including building upwards where appropriate.<sup>111</sup>

An [analysis by property consultants Lichfields](#) sets out how the revised standard method might change the housing requirement in each LPA.<sup>112</sup>

## 2.2 Delivering First Homes: planning issues

### Background

[The NPPF](#) defines affordable housing as

housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

with further definitions for affordable housing for rent, starter homes, discounted market sales housing and other affordable routes to home ownership.<sup>113</sup>

First Homes are one form of affordable housing.

The Government [consulted on its First Homes proposals](#) in February 2020.<sup>114</sup> First Homes would (the Government argued) address the low delivery of discounted market sales housing. The consultation set out how First Homes would support people wishing to buy a property in their local area, with a minimum discount of 30 per cent:

16. The primary objective of First Homes is to support people who wish to purchase a home in their local area but are unable to afford a property on the open market. The National Planning Policy Framework currently defines discounted market sales homes as those made available at a minimum discount of 20% off full market value. We do not believe that this level of discount is sufficient.

<sup>111</sup> MHCLG, [Changes to the current planning system: Consultation on changes to planning policy and regulations](#), August 2020: page 16

<sup>112</sup> Lichfields, [How many homes? The new Standard Method](#), August 2020

<sup>113</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: page 64

<sup>114</sup> MHCLG, [Consultation on the design and delivery of First Homes](#), February 2020: page 9

17. We believe that a 30% discount off market price should be the minimum level of discount under this scheme.<sup>115</sup>

Formerly, there was no target for affordable housing and it was left up to individual local authorities to determine what percentage would be appropriate for their areas, based on their local circumstances. In the February 2017 [Housing white paper](#), though, the Government set out plans to introduce a policy expectation – to be included in the NPPF – that 10% of a housing site would be made up of affordable home ownership units.<sup>116</sup> In a [press release to accompany the](#)

[Housing White Paper](#), the Department for Communities and Local Government (DCLG) set out what it had done and what it intended to do to promote affordable housing.<sup>117</sup>

Under [Delivering a sufficient supply of homes](#), the NPPF sets out how LPAs should assess the size, type and tenure of housing needed, including affordable housing, and says that major development (defined as ten or more houses) should normally (but with certain exceptions) provide at least 10% of the homes for affordable home ownership:

62. Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on-site unless:

- a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and
- b) the agreed approach contributes to the objective of creating mixed and balanced communities.

63. Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount.

64. Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should also be made where the site or proposed development:

- a) provides solely for Build to Rent homes;
- b) provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students);

For more background briefing on affordable housing, see the Commons Library briefing [What is affordable housing?](#) (CBP 7747, 23 December 2019)

<sup>115</sup> MHCLG, [Consultation on the design and delivery of First Homes](#), February 2020: page 9

<sup>116</sup> DCLG, [Fixing our broken housing market](#), Cm 9352, February 2017

<sup>117</sup> DCLG, [Government announces ambitious plan to build the homes Britain needs](#), 7 February 2017

c) is proposed to be developed by people who wish to build or commission their own homes; or

d) is exclusively for affordable housing, an entry-level exception site or a rural exception site.<sup>118</sup>

In reply to a [topical question on 13 January 2020](#), Robert Jenrick said that the Government intended to invest more in affordable housing.<sup>119</sup>

## What is being proposed?

Here, the consultation document sets out proposals for setting developer contributions for First Homes. The consultation document suggests that planning applications should seek to capture the same amount of value as would be captured under the LPA's existing published affordable housing policy within its Local Plan. A quarter of affordable housing on site should be First Homes and the consultation document offers two options for the remaining three quarters:

50. Local authorities should already have affordable housing policies set out in their local plan, which will include the amounts of affordable housing to be sought, and the tenure mix of this housing. The National Planning Policy Framework currently states that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. Under our intended approach, therefore, it is necessary to define the criteria for policy compliance, under which a development is assumed to be viable.

51. The Government proposes that, under the new system, a policy compliant planning application should seek to capture the same amount of value as would be captured under the local authority's up-to-date published policy. For instance, a local policy may require 20% affordable housing on site, half of which is shared ownership, and half of which is social rent. The plan viability assessment will set out assumptions on the amount of value captured – for example, a social rent home may be discounted by 50% from market price, and a shared ownership home may be discounted by 20%. This allows the total value captured under the policy to be calculated. This value can then be reallocated to a different affordable housing mix under the new policy.

52. In addition to capturing the same amount of value towards affordable housing as the existing policy, where onsite affordable housing is required, a policy compliant application will have a minimum of 25% of affordable housing units onsite as First Homes. For the remaining 75% of affordable housing secured through developer contributions, there are two broad options:

- Option 1: Where a local authority has a policy on affordable housing tenure mix, that policy should be followed, but with First Homes delivering a minimum of 25% of the affordable housing products. First Homes should replace as a priority other affordable home-ownership products, as defined in the National Planning Policy Framework, prioritising the replacement of those tenures which secure the smallest discount from market price.

<sup>118</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: pages 17-8

<sup>119</sup> [HC Deb 13 January 2020 c747](#)



- i. Where this replaces all home ownership products, any rental products are then delivered in the same ratio as set out in the local plan policy. For instance, if a local plan policy requires an affordable housing mix of 20% shared ownership units, 40% affordable rent units and 40% social rent units, a compliant application would deliver an affordable 21 housing tenure mix of 25% First Homes; 37.5% affordable rent and 37.5% social rent.<sup>120</sup>
- ii. Where this does not replace all home ownership products, the remainder of the home ownership tenures are delivered, and the rental tenure mix is delivered in line with the proportions set out in the local authority plan policy. For instance, if a local plan policy requires 80% of units to be shared ownership and 20% to be social rent, a policy compliant application would deliver 25% First Homes units, 55% shared ownership and 20% social rent.
- Option 2: A local authority and developer can negotiate the tenure mix for the remaining 75% of units.<sup>120</sup>

## 2.3 Higher threshold for developer contributions

### Background

For more background briefing on affordable housing, see the Commons Library briefing [What is affordable housing?](#)<sup>121</sup>

As the Commons Library briefing [Planning Obligations \(Section 106 Agreements\)](#) explains in more detail, planning obligations - sometimes known as section 106 agreements or "affordable housing levies" - are legally enforceable obligations entered into under section 106 of the [Town and Country Planning Act 1990](#) (as amended) to mitigate the impacts of a development proposal.<sup>122</sup>

Planning obligations are agreements made between a developer and the LPA designed to meet the concerns an LPA may have about meeting the cost of providing new infrastructure for an area. The obligations may be provided by the developers "in kind" – that is, where the developer builds or provides directly the matters necessary to fulfil the obligation, for example by building a number of affordable homes for an area. Alternatively, planning obligations can be met in the form of financial payments. (In some cases, it can be a combination of both). Planning obligations can be changed and can be renegotiated at any point.

The [PPG on planning obligations](#)<sup>123</sup> and a [briefing from the Local Government Association's Planning Advisory Service](#) provide more information.<sup>124</sup>

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<sup>120</sup> MHCLG, [Changes to the current planning system: Consultation on changes to planning policy and regulations](#), August 2020: pages 20-1

<sup>121</sup> CBP 7747, 23 December 2019

<sup>122</sup> CBP 7200, 24 May 2016

<sup>123</sup> MHCLG, [Guidance: Planning obligations](#), 19 May 2016, updated 1 September 2019

<sup>124</sup> Planning Advisory Service, [s106 obligations overview](#) (undated)

The PPG states that contributions should be sought from only for major developments, which for residential development means 10 or more homes or a site with an area of 0.5 hectares or more:

**Are there any specific circumstances where contributions through planning obligations should not be sought from developers?**

Planning obligations for affordable housing should only be sought for residential developments that are major developments. Once set, the Community Infrastructure Levy can be collected from any size of development across the area. Therefore, the levy is the most appropriate mechanism for capturing developer contributions from small developments.

For residential development, major development is defined in the National Planning Policy Framework as development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development it means additional floorspace of 1,000 square metres or more, or a site of 1 hectare or more, or as otherwise provided in the [Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#).

In designated rural areas local planning authorities may instead choose to set their own lower threshold in plans and seek affordable housing contributions from developments above that threshold. Designated rural areas applies to rural areas described under [section 157\(1\) of the Housing Act 1985](#), which includes National Parks and Areas of Outstanding Natural Beauty.

Planning obligations should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home.

See related policy: National Planning Policy Framework [paragraph 63](#) and [glossary](#)

Paragraph: 023 Reference ID: 23b-023-20190901

Revision date: 01 09 2019 See [previous version](#)<sup>125</sup>

In response to Covid-19, the Government introduced the [Community Infrastructure Levy \(Coronavirus\) \(Amendment\) \(England\) Regulations 2020](#), which gave charging authorities more flexibility over Community Infrastructure Levy payments by enabling them to defer CIL payments, to temporarily disapply late payment interest and surcharge payments and giving them a discretion over crediting back interest already charged where they consider it appropriate to do so.<sup>126</sup> The regulations came into force on 22 July 2020. More information is in the [compendium of guidance to local government on coronavirus](#).

## What is being proposed?

Under the heading of *supporting small and medium-sized developers*, the consultation document remarks that SME builders build the majority of smaller sites, which tend to build out more quickly.<sup>127</sup> It proposes to go beyond the current power to defer Community Infrastructure Levy

<sup>125</sup> MHCLG, [Guidance: Planning obligations](#), 19 May 2016, updated 1 September 2019

<sup>126</sup> SI 2020/781

<sup>127</sup> See subsection 1.5 of this briefing for reference to Sir Oliver Letwin's independent review of build out.

payments and extend the support given to SMEs in economic recovery by raising to 40 or 50 homes the threshold at which developer contributions would be sought, for a time-limited period which would end “as the economy recovers from the impact of Covid-19”. The consultation document acknowledges that there will be a “trade-off between introducing measures to increase the number of developable small sites and the importance of securing section 106 planning obligations to deliver affordable housing including First Homes”:

72.To support SMEs in the medium term during economic recovery from Covid-19, we are also proposing to reduce the burden of contributions on SMEs for more sites for a time-limited period.

(...)

76.To stimulate economic recovery with a particular focus on SMEs, the threshold for affordable housing contributions could be raised. This would reduce the burden of developer contributions, as smaller sites are more likely to be built out by SMEs.

77.We understand the trade-off between introducing measures to increase the number of developable small sites and the importance of securing section 106 planning obligations to deliver affordable housing including First Homes. For example, for a threshold of up to 40 units we would expect to see a reduction of between 7% and 14% of section 106 affordable housing delivery over a single year, assuming overall housing delivery remained constant. For a threshold of up to 50 units, this would be between 10% and 20%. However, we anticipate that raising the threshold would make more sites viable for SME developers and would increase the pace of their delivery as the need for negotiation would be removed. On balance, the proposed approach would allow more small sites to come forward and help minimise the economic pressure that SMEs are under.

78.To ensure that this measure is targeted at the economic recovery phase and does not inflate land prices in the longer term, we are proposing that the higher threshold is implemented for a time-limited period and lifted as the economy recovers from the impact of Covid-19. This should also minimise any constraints on the introduction of First Homes. We are keen to hear views on the benefits and impacts of this proposal on the delivery of new homes. The Government’s proposed approach 79.We are proposing to raise the small sites threshold to up to either 40 or 50 new homes through changes to national planning policy and are seeking views on the most appropriate level. These thresholds balance the aim of supporting SMEs with the need to deliver new affordable homes. This will be for an initial period of 18 months in which we will monitor the impact of the raised threshold on the sector before reviewing the approach.<sup>128</sup>

The white paper also proposes to scale up the site size threshold at the same proportion as the increase in the number of homes threshold.

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<sup>128</sup> MHCLG, [Changes to the current planning system: Consultation on changes to planning policy and regulations](#), August 2020: page 25 onwards

## 2.4 Permission in principle

### Background

One of the key planning changes from the *Housing and Planning Act 2016* was a new system of allowing the Secretary of State to grant “planning permission in principle”.

Planning “permission in principle” is therefore a relatively process that grants planning permission for housing-led development. It separates the decision about the principle of whether housing development should be approved from a later technical details consent process. The in-principle matters relate to the location, use, and amount of development on a site. It is expected that everything else will be reserved for the technical details consent stage. Planning permission in principle would then have to be combined with a new “technical details consent” granted by the local authority before development could go ahead.

A number of statutory instruments which came into force in April 2017 implement the permission in principle policy. These include:

- [\*Housing and Planning Act 2016 \(Permission in Principle etc\) \(Miscellaneous Amendments\) \(England\) Regulations 2017\*](#)<sup>129</sup>
- [\*The Town and Country Planning \(Permission in Principle\) Order 2017\*](#)<sup>130</sup> and
- [\*The Town and Country Planning \(Brownfields Land Register\) Regulations 2017\*](#)<sup>131</sup>

Major development is outside the scope of permission in principle, unless the site is entered in Part 2 of a brownfield land register: the [PPG on permission in principle](#) identifies the types of development to which LPAs cannot grant permission in principle.<sup>132</sup>

### What is being proposed?

The consultation document seeks views on extending permission in principle to cover major development. The Government argues here that this change too would benefit SME builders:

94.To address this current anomaly, we propose to remove the restriction in the current Permission in Principle regulations on major development. This will enable applications for Permission in Principle to be made for a far wider range of sites, enabling more landowners and developers to use this route to secure permission for housing development. Currently, 84% of planning applications for residential development are for schemes of 10-150 homes, which deliver 46% of new housing development each year.

95.We envisage that a change of this kind will particularly benefit small and medium-sized developers who tend to focus on building smaller major developments. It will reduce their upfront planning

The Commons Library briefing [Planning Reform Proposals](#) (SN 6418, 12 July 2017) provides more information.

<sup>129</sup> SI 2017/276

<sup>130</sup> SI 2017/402

<sup>131</sup> SI 2107/403

<sup>132</sup> MHCLG, [Guidance: Permission in principle](#), 28 July 2017, updated 15 March 2019

costs and provide certainty quickly about the principle of development. In doing so, it will complement the Government's wider initiatives to support small and medium developers, including through the Home Builders Fund which provides loan funding to meet the development costs of building homes for sale or rent and where a loan offer is conditional on applicants having a clear route to achieving planning consent.<sup>133</sup>

The existing restrictions in the Permission in Principle Regulations relating to environmental impact assessments and habitats requirements would not change.

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<sup>133</sup> MHCLG, [\*Changes to the current planning system: Consultation on changes to planning policy and regulations\*](#), August 2020: pages 30-1

### 3. Recent changes to planning rules and policy

There have already been several waves of changes to rules on change of use and PDRs during the Covid-19 pandemic, with more planning policy changes to come.

The UK Government has published a [compendium of guidance to local government on coronavirus](#), including on planning and building safety.<sup>134</sup> The [July 2020 update from the chief planner](#) at MHCLG provides an overview of recent changes.<sup>135</sup> Property consultants Lichfields have also published an [overview of the recent changes](#), with links to articles offering further commentary.<sup>136</sup>

The Commons Library briefings [Planning: change of use](#)<sup>137</sup> and [Permitted development rights](#) offer detailed analysis of change of use and PDRs.<sup>138</sup>

#### 3.1 Pubs operating as takeaways: change of use from 24 March 2020

Rules around change of use were relaxed in March 2020 to enable (for example) pubs in England to operate as take-aways.<sup>139</sup> The changes are mentioned on the last page of the [Commons Library briefing on coronavirus: support for businesses](#).<sup>140</sup>

For Wales, no equivalent change was necessary, because pubs there are already able to change to offer takeaways. When the UK Government made the change, [the Welsh Government tweeted](#) confirming this.

#### 3.2 Temporary use of land, markets and upward extensions: new PDRs from 24 June 2020

The [Town and Country Planning \(Permitted Development and Miscellaneous Amendments\) \(England\) \(Coronavirus\) Regulations 2020](#) were laid before Parliament on 24 June and are now in force.<sup>141</sup> They cover three areas of PDRs:

- **Temporary use of land:** Existing PDRs allow (with certain conditions) temporary use of land for up to 28 days without planning permission. The new Regulations create a second,

<sup>134</sup> MHCLG, [Coronavirus \(covid-19\): guidance for local government](#), 17 March 2020, updated 30 July 2020

<sup>135</sup> MHCLG, [Planning update newsletter](#), July 2020

<sup>136</sup> Lichfields, [Calm before the reform: extensions to permissions, major changes to use classes & new PD rights](#), 22 July 2020

<sup>137</sup> SN 1301, 23 April 2020

<sup>138</sup> SN 485, 23 April 2020

<sup>139</sup> [The Town and Country Planning \(General Permitted Development\) \(England\) \(Amendment\) Order 2020](#), SI 2020/330

<sup>140</sup> CBP 8847, 2 July 2020

<sup>141</sup> SI 2020/632, amending the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#) (SI 2015/596)



temporary period of 28 days, available only until 31 December 2020.

- **Upward extensions:** It has long been the Government's aim to broaden PDRs to enable owners to extend their properties upwards. There was a consultation in 2018 which proposed extending this PDR to residential, business and commercial properties and sought views on using it to expand existing homes, as well as to create new ones. The new PDR in these Regulations is confined only to creating new homes, and then only on top of purpose-built, detached blocks of flats, up to two additional storeys. The background is explained in the Commons Library briefing on *planning: change of use*.<sup>142</sup>
- **Markets:** These Regulations also introduce a PDR to allow a local authority to hold a market for an unlimited number of days without the requirement to submit an application for planning permission, from 25 June 2020 to 23 March 2021.

The territorial extent of this Order is England and Wales but its territorial application is England.

More detail is in the [Explanatory Memorandum to the Regulations](#).

### 3.3 Upward extensions: increased PDRs from 31 August 2020

The [Town and Country Planning \(General Permitted Development\) \(England\) \(Amendment\) \(No. 2\) Order 2020](#) was laid on 21 July and comes into effect on 31 August 2020.<sup>143</sup>

It expands the PDR for upward extensions - previously only available for the creation of new homes on top of purpose-built blocks of flats (see discussion in section 3.2 above) - to allow for the extension of existing homes and the creation of new homes above certain other types of building. The right applies to buildings built since 1 July 1948, but not in Conservation Areas, National Parks and the Broads, areas of outstanding natural beauty, or sites of special scientific interest. There are various provisions about height, overlooking and so on and all these rights are subject to prior approval.

The territorial extent of this Order is England and Wales but its territorial application is England.

More detail is in the [Explanatory Memorandum to the Order](#).

Generally speaking, the fee for prior approval (as shown on the [Planning Portal's fee calculator](#)) is £96. The [July 2020 newsletter from MHCLG's chief planner](#) recorded that the fees for PDRs for upward extensions and demolition and rebuilding would be higher:

Fees for the construction of new homes

We are currently amending the fees regulations to provide for a prior approval fee for homes constructed under the rights to build

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<sup>142</sup> SN 1301, 23 April 2020

<sup>143</sup> SI 2020/755, amending the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#) (SI 2015/596)

upwards to create new homes, and to the right for demolition and rebuild. The prior approval fee is set at £334 per new dwelling up to 50 units, and a fixed fee of £16,525 plus £100 for each dwelling in excess of 50. These amendments are subject to Parliamentary approval.<sup>144</sup>

An [article in the specialist publication \*Planning\*](#) reported views of planning professionals on likely take-up and how the PDR might work in practice.<sup>145</sup>

### 3.4 Demolition of vacant, redundant buildings and rebuilding as residential: new PDR from 31 August 2020

This was foreshadowed in the *Build, build, build* announcement, discussed later.

The [Town and Country Planning \(General Permitted Development\) \(England\) \(Amendment\) \(No. 3\) Order 2020](#) was laid on 21 July and comes into effect on 31 August 2020.<sup>146</sup> This deals with PDRs for demolition and rebuilding as residential, as proposed in the 2018 consultation [Planning reform: Supporting the high street and increasing the delivery of new homes](#).<sup>147</sup> That consultation had promised further consultation on the detail, but the Explanatory Memorandum to this Order says that will not now happen, in the interests of speed.

[Article 4 of the 2020 Order](#) adds a new class ZA to the 2015 Order, dealing with demolition of buildings and construction of new dwellinghouses in their place.<sup>148</sup>

To fall within the scope of this new PDR, the building to be demolished must have been built before 1 January 1990, be vacant, redundant and free-standing and fall within the B1(a) offices, B1 (b) research and development, B1 (c) industrial processes (light industrial), and free-standing purpose-built residential blocks of flats (C3) use classes on 12 March 2020.

The PDR will be subject to the prior approval process and the buildings must have been vacant for at least six months prior to the date of the application for prior approval. There are limits on the scale of the development, as the [Explanatory Memorandum to the Order](#) explains:

7.9 Recognising the streamlined planning process, limits are placed on the scale of development permitted. The right allows for redevelopment of a single new building within the footprint of buildings with a footprint of up to 1,000 sq m, and with a maximum height of 18 metres. The demolition or the replacement

<sup>144</sup> MHCLG, [Planning update newsletter](#), July 2020. For comment on the fees, see ["Housing ministry announces higher prior approval fees for upwards extensions and demolition PD rights"](#), *Planning*, 29 July 2020

<sup>145</sup> ["What the new permitted development right allowing homes to be extended upwards means for councils and applicants"](#), *Planning*, 30 July 2020

<sup>146</sup> SI 2020/756

<sup>147</sup> MHCLG, [Planning Reform: Supporting the high street and increasing the delivery of new homes](#), October 2018

<sup>148</sup> [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#) (SI 2015/596)

build of buildings with a footprint greater than 1,000 sq m is not permitted. The right does not apply to part of a building, nor does it allow for the demolition of more than one building within the curtilage and the incorporation of any additional footprint.

The territorial extent of this Order is England and Wales but its territorial application is England.

## Concerns about archaeology

Concerns have been expressed about the potential impact of recent changes to planning policy for archaeology and protection of the historic environment. The PDR for demolition mentions heritage and archaeology and makes provision for heritage and archaeology statements.

The Chartered Institute for Archaeologists (CIfA) and Council for British Archaeology (CBA) issued a [statement on 3 July 2020](#), in which they expressed concern about the Prime Minister's *build, build, build* announcement and its implications (as they saw them) for archaeology:

It is, therefore, particularly concerning that the Prime Minister thought to single out and make light of the work of our professional ecologist colleagues by referring to “newt counting delays” to illustrate where development is slowed as a result of regulation.

It is vital that Government does not either falsely accuse nor accidentally sweep up archaeological safeguards into their agenda to relax or bypass planning regulations. There remains very little evidence that either archaeological or ecological regulation is ineffective. It is worth noting that the 2018 Letwin Review found no fault with these regulations, instead finding that the fundamental driver of ‘build out rates’ once planning permission is granted is the ‘absorption rate’ – the rate at which market sale homes can be sold without undermining the local market.<sup>149</sup>

## Planning policy for the historic environment

The Commons Library briefing [What next for planning in England? The National Planning Policy Framework](#) examines some of the main policy changes introduced through the new NPPF.<sup>150</sup>

Under *conserving and enhancing the historic environment*, it instructs LPAs to maintain or create a historic environment record and, in determining applications, to require developers to submit an appropriate desk-based assessment (and, where necessary, field evaluation) for any site which has or may have heritage assets with archaeological interest:

189. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate

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<sup>149</sup> CIfA and CBA, [CIfA & CBA response to Boris Johnson’s ‘Build, build, build’ speech](#), 3 July 2020

<sup>150</sup> CBP 8260, 10 June 2019

expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.<sup>151</sup>

It also defines “archaeological interest”:

Archaeological interest: There will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point.<sup>152</sup>

More detailed guidance comes from the [PPG on historic environment](#). It says (amongst many other things) that conservation requires a flexible and thoughtful approach to as yet undiscovered, undesignated remains of archaeological interest and outlines when an archaeological statement will be needed.<sup>153</sup> In discussing non-designated heritage assets of archaeological interest, the PPG calls for a “proportionate” response.<sup>154</sup>

### **The new PDR from 31 August 2020: heritage and archaeology**

One of the conditions set out in Article 4 of the 2020 Order is that

Where any development under Class ZA is proposed, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval of the authority as to (...) the impact of the development on heritage and archaeology.<sup>155</sup>

The [Explanatory Memorandum to the 2020 Order](#) reiterates that the PDR provides for (amongst other things) local consideration of the impacts of the development on heritage and archaeology and explains how the heritage and archaeology statement will be used:

7.14 The right allows for local consideration of specific planning matters through prior approval. These include: the transport and highways impacts of the development, contamination and flooding risks, the impact of noise from other premises on the future residents, design and external appearance of the new building, the adequacy of natural light in all habitable rooms of each new dwellinghouse, the impact of the introduction of residential use into an area, and the impact of the development on the amenity of the new building and of neighbouring premises, including overlooking, privacy and light. As the right allows for demolition it will further provide for local consideration of the method of demolition, and the impacts of the development on heritage and archaeology. It will also allow for consideration of plans for landscaping including the planting and maintenance of shrubs and trees.

(...)

7.21 The application must also be accompanied by a heritage and archaeology statement, which could include for example reference to the local Historic Environment Record, as well as plans to mitigate any impact on any heritage or archaeological

<sup>151</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: page 54

<sup>152</sup> As above: page 65

<sup>153</sup> MHCLG, [Guidance: Historic environment](#), 10 April 2014, updated 23 July 2019: see in particular paragraphs 002 and 021

<sup>154</sup> As above: paragraph 041

<sup>155</sup> ZA.2(2)(j)

assets. Where the local planning authority considers that prior approval is required, they may request additional information, and if reasonably practicable, consult with those bodies with relevant heritage and archaeological expertise with whom they would consult when considering these matters in respect of a planning application. Where justified, conditions relevant to matters for prior approval may be attached to the grant of prior approval.

### 3.5 New use classes from 1 September 2020

This too was foreshadowed in the *Build, build, build* announcement, discussed later.

Broadly speaking (but with certain exceptions) changes of use between different classes within the Use Classes Order require planning permission.

The rules relating to when a change of use for a building does and does not require planning permission are set out in:

- the [Town and Country Planning \(Use Classes\) Order 1987](#) (as amended)<sup>156</sup> and
- the [Town and Country Planning \(General Permitted Development\) Order 2015](#)<sup>157</sup>

The 1987 Order (as amended) puts uses of land and buildings into various categories known as “use classes”. The categories give an indication of the types of use which may fall within each use class, but this is only a general guide and it is for LPAs to determine, in the first instance, depending on the individual circumstances of each case, which class a use falls into.

Not all uses are put into a use class; those that are not are called “sui generis”. Otherwise, there are four main categories, which are then split into subclasses. The [Planning Portal outlines each class and subclass](#) and what it entails.<sup>158</sup> The Commons Library briefing [Planning: change of use](#) provides detailed information.<sup>159</sup>

The [Town and Country Planning \(Use Classes\) \(Amendment\) \(England\) Regulations 2020](#) were laid on 21 July and come into force on 1 September 2020.<sup>160</sup> They create new use classes - a broad Class E (commercial, business and service), Class F1 (learning and non-residential institutions) and Class F2 (local community) – and so obviate the need to obtain planning permission for some changes between various non-residential uses required under the previous use classes. Shops will fall into Class E (commercial, business and service) or Class F2 (local community) depending on their size, with smaller shops in the local community category. The [Explanatory Memorandum to these Regulations](#) suggests that this will recognise the role of small, local shops in meeting day to day shopping needs.

<sup>156</sup> SI 1987/764 and [The Town and Country Planning \(Use Classes\) \(Amendment\) \(England\) Order 2010](#), SI 2010/653

<sup>157</sup> SI 2015/596

<sup>158</sup> Planning Portal, [Change of use: use classes](#) (undated)

<sup>159</sup> SN 1301, 23 April 2020

<sup>160</sup> SI 2020/757

These Regulations also move some uses – including what used to be class A4 drinking establishments, class A5 hot food takeaways and D2 cinemas, concert, dance and bingo halls - out of the previous use classes and into the “sui generis” category. This provides some measure of protection against change of use, in that any change of use cannot be done under PDRs and will require planning permission.

According to the Explanatory Memorandum to these Regulations, these reforms will help to create vibrant, mixed use town centres. There will be transitional arrangements, retaining the effect of the PDR based on the use classes in place before these Regulations come into force:

7.9 These reforms are primarily aimed at creating vibrant, mixed use town centres by allowing businesses greater freedom to change to a broader range of compatible uses which communities expect to find on modern high streets, as well as more generally in town and city centres. They apply to all uses of land and buildings across England.

7.10 There are a number of permitted development rights which grant general planning permission allowing changes of use between the former use classes without the need to submit a planning application. These regulations provide transitional provisions which retain the effect of the permitted development right based on the classes that were in place prior to these regulations coming into force. A building or use will continue to be subject to any permitted development rights that it was entitled to on or before 31 August 2020. These transitional provisions will remain in place until 31 July 2021 when new, revised permitted development rights will be introduced. These savings provisions also apply to relevant Article 4 Directions.

The territorial extent of these Regulations is England and Wales but their territorial application is England.

In an [announcement to accompany the new rules on 21 July 2020](#), the Housing Secretary, Robert Jenrick, spoke of “cutting out unnecessary bureaucracy” and renewing town centres.<sup>161</sup> Responding to this announcement, the Royal Town Planning Institute (RTPI), Royal Institute of British Architects, Royal Institution of Chartered Surveyors and Chartered Institute of Building voiced concerns about increasing use of PDRs and their consequences for quality of life:

We have seen further announcements related to PDRs, including:

1. Extra storeys on residential building without the need for planning permission
2. Demolition of empty buildings if replaced with residential, without the need for planning permission
3. Further reforms to use class orders, to expand the commercial presences that can be repurposed to residential without planning permission

We are concerned around how these PDRs will be implemented, and the potential impact on the quality of life of future residents and local communities. All PDRs must require minimum space, building and design standards, and should be implemented in

<sup>161</sup> MHCLG, [News story: New laws to extend homes upwards and revitalise town centres](#), 21 July 2020



such a way as to ensure they contribute towards affordable housing and community infrastructure. Having these safeguards does not mean delays in construction, it means that the homes built in the early 2020s will not become the social disasters of the 2030s.<sup>162</sup>

[Planning magazine reported mixed views](#) on the potential impact for town centres of the use class changes:

The changes have been warmly welcomed by many in the private sector. Ian Fletcher, director of policy at the British Property Federation, said they struck a balance. "I think they are radical, without being reckless," he said. "They provide welcome flexibility between commercial uses, but don't stray into allowing commercial to residential, while there is a list of exceptions which remain outside the new commercial, business and service use."

(...)

But Mike Kiely, chairman of the Planning Officers Society, said authorities will be hugely concerned at the loss of control over their town centres. "The consequences will be phenomenal. Just leaving the market to do what it wants is very unlikely to deliver the combination of uses that attract people to town centres," he said. "At the moment, councils cluster uses to provide vitality. This will decimate town centres as you end up with lots of 'dead' uses not serving the public. It's madness."<sup>163</sup>

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<sup>162</sup> Royal Town Planning Institute, Royal Institute of British Architects, Royal Institution of Chartered Surveyors and Chartered Institute of Building, [Letter to Robert Jenrick](#), 21 July 2020

<sup>163</sup> ["Why some fear the government's use class overhaul may be a threat to town centres"](#), *Planning*, 30 July 2020

## 4. Other planning policy changes ahead

### 4.1 *Business and Planning Act 2020*

More changes will be introduced through the [Business and Planning Act 2020](#), which received Royal Assent on 22 July 2020.

The [Commons Library briefing on the Bill](#) outlines the changes, which will cover:

- a fast track process for varying planning conditions relating to working hours on construction sites
- time limits for development (extending the dates on which planning permission, outline planning permission and listed building consents might otherwise expire)
- planning proceedings (giving the Planning Inspectorate more flexibility in deciding whether certain local planning appeals should be heard by way of written representations, a hearing or a local inquiry) and
- arrangements for the electronic inspection of the Mayor of London's spatial development strategy.<sup>164</sup>

MHCLG has published [planning guidance to accompany the Business and Planning Act 2020](#), covering construction working hours, extension of certain planning permissions, making current spatial development strategies available digitally and pavement licences.<sup>165</sup>

### Inspection of Mayor of London's spatial development strategy

[The Town and Country Planning \(Spatial Development Strategy\) \(Coronavirus\) \(Amendment\) Regulations 2020](#) were laid on 21 July and come into force on 12 August 2020.<sup>166</sup> They make amendments to the [Town and Country \(London Spatial Development Strategy\) Regulations 2000](#)<sup>167</sup> and the [Combined Authorities \(Spatial Development Strategy\) Regulations 2018](#) relating to how documents are made available for inspection between 12 August 2020 and 31 December 2020.<sup>168</sup>

### 4.2 Environmental protection

#### Planning policy for the environment

The [NPPF 2019](#) defines an Environmental Impact Assessment as "a procedure to be followed for certain types of project to ensure that decisions are made in full knowledge of any likely significant effects on the environment".<sup>169</sup> On decision making, the NPPF 2019 observes that

<sup>164</sup> CBP 8947, 26 June 2020

<sup>165</sup> MHCLG, [Collection: Planning guidance to accompany the Business and Planning Act 2020](#), 23 June 2020, updated 22 July 2020

<sup>166</sup> SI 2020/765

<sup>167</sup> SI 2000/1491

<sup>168</sup> SI 2018/827

<sup>169</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: page 66

the right information – including formal assessments, where required – will be crucial:

43. The right information is crucial to good decision-making, particularly where formal assessments are required (such as Environmental Impact Assessment, Habitats Regulations assessment and flood risk assessment). To avoid delay, applicants should discuss what information is needed with the local planning authority and expert bodies as early as possible.<sup>170</sup>

The NPPF 2019 has a chapter on conserving and enhancing the natural environment, which opens by setting out how (amongst other things) planning policies and decisions should minimise impacts on and provide net gains for biodiversity.<sup>171</sup> One of the principles outlined in the NPPF is that “if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”.<sup>172</sup>

The PPG offers additional guidance on [natural environment](#),<sup>173</sup> [environmental impact assessment](#)<sup>174</sup> and [tree preservation orders and trees in conservation areas](#).<sup>175</sup>

A consultation on [updating planning requirements for biodiversity net gain](#) ran between December 2018 and February 2019. The Government response was published in July 2019.<sup>176</sup>

The Commons Library briefing [What next for planning in England? The National Planning Policy Framework](#) examines some of the main policy changes introduced through the new NPPF, including on environmental gain.<sup>177</sup>

Section 7 of the [Commons Library briefing on the Environment Bill 2019](#) discusses its provisions for nature and biodiversity, including net gain. As that briefing explains in more detail, [the Environment Bill 2019](#) contains provisions which would require a developer to have submitted, and had approved, a “biodiversity gain plan” in order to obtain planning permission. The plan will have to cover a developer’s plans to minimise impact on habitats, the pre- and post-development biodiversity value, and any offsite biodiversity credits and gains. The schedule to the Bill sets out conditions for approving a biodiversity plan, and that the biodiversity gain objective of 10% must be met.<sup>178</sup>

<sup>170</sup> MHCLG, [National Planning Policy Framework](#), CP 48, February 2019: page 13

<sup>171</sup> As above: page 49

<sup>172</sup> As above: pages 50-1

<sup>173</sup> 21 January 2016, updated 21 July 2019

<sup>174</sup> 6 March 2014, updated 15 March 2019

<sup>175</sup> 6 March 2014

<sup>176</sup> Defra, [Net gain: Summary of responses and government response](#), July 2019

<sup>177</sup> CBP 8260, 10 June 2019

<sup>178</sup> CBP 8712, 24 October 2019: see in particular pages 144-5

## A new approach to Environmental Impact Assessments in planning?

In response to a [PQ in July 2020](#), the planning minister, Christopher Pincher, said that the Government wanted to see “better planning for nature”.<sup>179</sup>

Also in July 2020, in a [speech on environmental recovery](#), the Environment Secretary, George Eustice, announced a consultation on changing the approach to environmental assessment and mitigation within the planning system, to (he said) “protect more of what is precious”:

Later this autumn we will be launching a new consultation on changing our approach to environmental assessment and mitigation in the planning system. If we can front-load ecological considerations in the planning development process, we can protect more of what is precious.

(...)

Delivering this change is what lies at the heart of our approach to future farming policy, our approach to biodiversity net gain in the planning system, and also behind other initiatives like highly protected marine areas that we intend to pilot. Building back greener means what it says, and I want to work with all of you to make that happen.<sup>180</sup>

Media coverage of the speech suggested that some wildlife groups were offering a cautious welcome:

But green groups are concerned the reforms could lead to weaker protections for rare habitats and species. Many are mistrustful of ministers’ intentions, following a speech by the Prime Minister earlier this month [in which he appeared to blame slow housebuilding rates in England on environmental protections for rare newts](#).

Dr Jeremy Biggs, co-founder and director of the Freshwater Habitats Trust, told i: “If the agenda is less box ticking and better science-based conservation action, then that is welcome. But if we hastily ditch protection of threatened species and habitats in the name of planning reform, that will make it difficult to stop the decline of nature, never mind reversing it.”<sup>181</sup>

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<sup>179</sup> [PO 64882, 2 July 2020](#)

<sup>180</sup> Defra, [Speech: George Eustice speech on environmental recovery: 20 July 2020](#), 20 July 2020

<sup>181</sup> [“Government plans overhaul of planning rules to ‘consolidate and simplify’ environmental restrictions”](#), *iNews*, 20 July 2020

## 5. Background: Policy announcements in March and June 2020

### 5.1 *Planning for the Future*

As mentioned earlier, the Government's policy paper *Planning for the Future* was published in March 2020.<sup>182</sup> It set out proposals under five headings:

- Supporting communities to deliver more homes for local people
- Helping first time buyers onto the housing ladder
- Creating beautiful, sustainable places
- Ensuring affordable, safe and secure housing for all and
- Speeding up the planning system

It also said that there would be an "ambitious" Planning White Paper to "modernise" the planning system.<sup>183</sup>

### 5.2 *Build, Build, Build*

The [planning changes announced on 30 June 2020](#) at the time of the Prime Minister's speech on the economy included

- Reform of the Use Classes Order, to give commercial premises (but not pubs, libraries, village shops and other types of use "essential to the lifeblood of communities") more scope for change of use.
- More scope for commercial buildings to change to residential use without the need for a planning application.
- Builders to be able to demolish and rebuild vacant and redundant residential and commercial buildings without planning permission, if they are rebuilt as homes.
- Property owners to be able to extend their properties upwards, via a fast track approval process, subject to neighbour consultation.
- A planning policy paper, to be published this month.<sup>184</sup>

In his [speech on the economy on 30 June 2020](#), the Prime Minister argued that "newt-counting delays" slowed down house building:

Why are we so slow at building homes by comparison with other European countries?

In 2018 we built 2.25 homes per 1000 people

Germany managed 3.6, the Netherlands 3.8, France 6.8

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<sup>182</sup> MHCLG, [Planning for the Future](#), March 2020: paragraph 10

<sup>183</sup> As above: paragraph 5

<sup>184</sup> PM's Office and 10 Downing Street, [Press release: PM: Build, build, build](#), 30 June 2020

I tell you why - because time is money, and the newt-counting delays in our system are a massive drag on the productivity and the prosperity of this country and so we will build better and build greener but we will also build faster.<sup>185</sup>

Section 4.2 above discusses environmental impact assessments in planning.

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<sup>185</sup> PM's Office and 10 Downing Street, [PM Economy Speech: 30 June 2020](#). For media comment on the speech, see (for example) "[Psychic energy in, newt counters out: Boris Johnson's magic economic potion](#)", *Guardian* online, 30 June 2020 and "[Boris Johnson's newt-counting claim questioned](#)", *BBC News* online, 3 July 2020





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