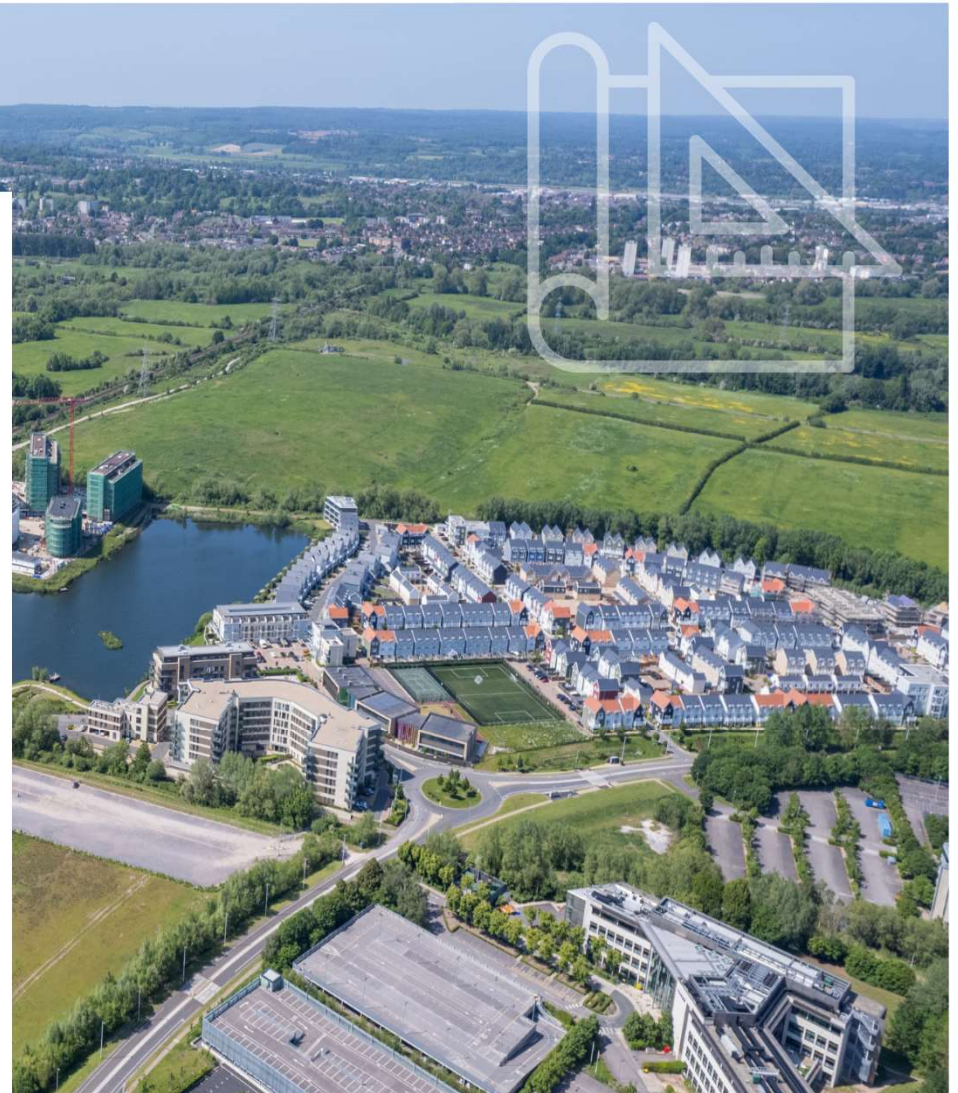




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The Planning and Infrastructure Bill: getting Britain building?

19 March 2025





Meet the speakers



Douglas Edwards KC



Andrew Fraser-Urquhart KC



Hugh Flanagan



George Mackenzie



Esther Drabkin-Reiter



Michael Feeney



Infrastructure – Part 1



Andrew Fraser-Urquhart KC



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Infrastructure – Part 1

- Context: aim for 150 DCOs in this Parliament
- NPS review every 5 years
- Amended/simplified consultation requirements
- No paper stage for JR applications – straight to oral hearings



National Policy Statements – Provisions (CL 1-2)

- Mandatory review / update by SofS of whole of each NPS every 5 years
- Can be extended in exceptional circumstances, but SofS must provide explanation to Parliament
- Existing power to review whole/part at any time is retained
- New simplified procedure for partial amendment to meet central government policy, legislative changes or relevant court decisions – no requirement to respond to suggested changes



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National Policy Statements – Comment

- Welcome requirement to keep NPS up to date
- Resource implications in ensuring meaningful changes with proper consultation
- Possible political “to and fro”
- Degree of scrutiny in simplified procedure



Consultation Requirements – Provisions (CL 4-5)

- Rewording of requirements for consultation report – summarise reps and state how account taken of them
- Statutory consultees/LPAs to follow Guidance to be issued by SofS as to how to respond to consultations
- Category 3 persons (those likely to be affected by CA) will not need to be consulted pre-application but notified at time point of application



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Consultation Requirements – Comment

- Question about how change of language will really affect the burden of consultation/report
- Details of Guidance awaited – how can it really affect the day-to-day burden of consultation
- Less time for CA candidates to influence scheme and perhaps reduce need for CA



Judicial Review Process – Provisions (CL 8)

- Power to make CPR must be exercised so as to allow only for oral hearing for JR app (no paper stage)
- Power to make CPR must be exercised so as to allow Court at oral hearing to declare case totally without merit
- No appeal to Court of Appeal for cases declared totally without merit



Judicial Review Process – Comment

- Welcome (for speeding up DCO implementation) but perhaps minor change given overall context of impact of JR challenge on DCO implementation – 70% of challenges get some form of permission
- Issues of judicial resources and expertise
- Other aspects of Banner review left out for later CPR changes – threshold for permission, NSIP ticket, designation as Significant Planning Case etc.



Infrastructure – Part 1



Hugh Flanagan



Opting-out

Tests:

- SoS considers it **appropriate** for alternative consenting regime to apply
- No application for DCO made
- Written request
- Alternative consenting authority made aware of intention to request a direction



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Test for acceptance

- Section 55 original: “application is of a **standard that the SoS considers satisfactory**”
→
- Section 55 amended: “standard of the application is such as to enable the SoS to conclude that **it is suitable to proceed to examination**”



Procedure for changes at acceptance stage

- SoS may request applicant:
 - provide supplementary or revised information
 - make clarifications or corrections
 - make other limited changes
- in order that application would meet the required standard



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Infrastructure Planning (Onshore Wind and Solar Generation) Order 2025

- Reintroduces onshore wind generating stations into definition of NSIPs in PA08
- Sets NSIPs capacity threshold at 100MW
- Contains transitional provisions to 31.12.25



Part 3: Development and Nature Recovery – cls.48-60

Environmental Delivery Plans: what, how, who, why and so what?

Esther Drabkin-Reiter





Environmental Delivery Plans: What?

A plan that sets out (cls.48, 50):

- Environmental features likely to be affected by development
- Conservation measures to protect and enhance those features
- Amount of nature restoration levy to be paid
- Environmental obligations to be discharged/disapplied/modified if developer pays the nature restoration levy

And specifies:

- The development area, kind of development and maximum amount of development (cl.49)
- How much conservation measures are expected to cost (cl.50)
- A charging schedule which sets rates for the Nature Restoration Levy (cl.51)
- Conservation status of environmental feature, alternatives considered, licence terms and monitoring provisions (cl.52)



Environmental Delivery Plans: How?

So far as considered relevant, having regard to (cl.53):

- The development plan, EIP, EA 2021 strategies and other strategies and plans
- Other matters in secondary legislation

Having consulted on the draft EDP for at least 28 working days (cl.54)

The EDP having passed the “overall improvement test” (cl.55)

In force for a period of at most 10 years (cl.49)

Plus any other matters set out in regulations (cl.53)



Environmental Delivery Plans: Who?

Natural England (or another body as set in regulations – cl.74)

- Preparation of EDP (cls.48, 53)
- Consultation on draft EDP (cl.54)
- Reporting on EDP (at least at midpoint and endpoint) (cl.57)
- Implementation of conservation measures (cl.71)

Secretary of State

- Consideration of whether EDP passes overall improvement test (cl.55)
- Making of EDP (cls.48, 55)
- Publication of EDP (or direction that NE publish) (cl.56)
- Amendment/revocation of EDP (on request from NE or at own initiative) (cls.58-59)

Public authorities

- Duty to cooperate with NE (cl.55)



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Environmental Delivery Plans: Why?

A more strategic rather than project-based approach to nature recovery

Securing improved outcomes for the environment through efficiencies of scale

Delivering a pro-growth planning system – avoiding delays while mitigation is put in place

Reducing burdens on developers and local authorities



Environmental Delivery Plans: So what?

Opportunities

- A more joined up approach?
- Restriction of legal challenge on habitats grounds
- Building on and expanding existing solutions eg on nutrient neutrality and SANGs

Challenges

- Funding/delivery and breadth of coverage – huge new responsibility for NE
- Only deals with matters covered by HRA – obligation to undertake EIA remains
- Flexibility vs certainty
- Timing of implementation of conservation measures is crucial



Part 3: Development and Nature Recovery



Michael Feeney



Nature Restoration Levy: Brief Overview

- Where there is EDP, developer can ask Natural England (NE) to pay levy ahead of development commencing.
- Effect is that treated as fulfilling obligations of environmental legislation such as Habitats Regulations and WCA 1981 (detail in Schedule 4).
- EDP can make payment mandatory.
- Detail to be provided in Regulations, likely modelled on CIL Regulations in terms of setting charging schedule, assuming liability, payment and enforcement.



Nature Restoration Levy: Aims

- Guide to the Bill:

'Where an EDP is in place and a developer utilises it, the developer would no longer be required to undertake their own assessments, or deliver project-specific interventions, for issues addressed by the EDP.'

The government believes this approach will facilitate a more strategic approach to the discharge of environmental obligations and result in improved environmental outcomes being delivered more efficiently. By reducing delays to development, this new approach may also facilitate faster delivery of housing across England.'



Nature Restoration Levy: Thoughts

- Not replacing the current system, will be an addition to the current system. Will not be appropriate in all cases. Levy unlikely to be suitable for sites with site-specific constraints/issues.
- Huge amount of work for NE with new responsibilities and powers (including compulsory purchase power).
- Charging schedule will be crucial as to whether developers use this option and levy does speed up planning process.



Part 2, Chapters 1 & 2, clauses 44-47: planning reform

Planning: decision-taking and plan-making

George Mackenzie





Overview of Part 2

Chapter 1: Decision-making

- Fees for planning applications (cl.44)
- Training for local decision-makers (England) (cl.45)
- Delegation of planning decisions (England) (cl.46)

Chapter 2: Plan-making

- Strategic plan making (cl.47)





Fees for planning applications (cl.44/s.303 TCPA 1990)

The big idea

- LPAs to be able to set their own fees to cover costs of carrying out planning (and connected) functions.
- Guidance indicates that there is currently a £362m “annual funding shortfall”.

The detail

- Ring fence: fees must be applied only towards the carrying out of planning functions, but not “applications made in legal proceedings”.
- Regulations will make provision for consultation, criteria, review, publication and intervention where appropriate by the SOS.
- Guidance refers to a national fee framework which authorities can use as a starting point.

Questions

- Costs of: appeals, adverse costs awards, UTLC proceedings, judicial review and statutory review.
- Costs of operating DM is sensitive to service levels. What is “reasonable”? Note no move towards a BRC model, i.e. private consultants.



Training for decision-makers (cl.45/s.319ZZA TCPA 1990)

The big idea

- Elected members of LPAs (or mayors/mayoral decision makers) to be “prohibited” from exercising (or “being involved in exercising”) relevant planning functions unless they have undergone training covering “the key principles of planning” (Fact Sheet).

The detail

- Requirement for the training to be SOS-accredited [319ZZA(4)] and for LPAs to publish on their website a “list of their members holding accreditation” [319ZZA(5)].
- Odd that there is both a statutory prohibition on non-accredited members taking part in decision making [319ZZA(3)] and yet a provision saying “The validity of anything done in the exercise of a prescribed planning function is not affected by any breach of sub-s(3)” [319ZZA(5)].

Questions

- Why are there no teeth?
- What will this training look like? Will it be enough to make a difference?



Delegation of planning decisions (cl.46/s.319ZZC-E TCPA 1990)

The big idea

- The REALLY big idea here that is being drawn upon is that the proper role of elected members in planning is (a) plan making and (b) deciding big applications which are contrary to DP.
- Bill makes provision for SOS to introduce in effect a national scheme of delegation, to introduce consistency across LPAs in terms of what planning committees can and cannot decide [319ZZC]
- Also provision (s.319ZZCD) for SOS to prescribe size of planning committees to prevent them becoming “sprawling” (Fact Sheet).

The detail

- All of the detail will be contained in subordinate legislation. Background material suggests a threshold of around 40 homes will be set and that development that complies, or broadly complies, with the DP will not go to committee.
- The subordinate legislation can contain exemptions, conditions and vary between areas.

Questions

- Cuts across training provisions. The idea of training is to teach “key principle of planning” but then remove the ability of members to take decisions.



Strategic plan making (cl.47 and Sch.3/Part 1A PCPA 2004)

The big idea: strategic planning authorities will make spatial development strategies

- A new tier of “*spatial development strategies*” forming part of the development plan (so, brought into play in the context of s.38(6) [Sch.3 para.3]).
- This is an unequivocally good idea. Clearly, the DTC has not been able to fill the vacuum left by the abolition of regional plans by the Localism Act 2011.

Déjà vu?

- The Guidance emphasises that this categorically not a return to regional planning, and there is some truth to that.
- Rather, it is a return to structure planning: the two-tier system under TCPA 1968 pre local government re-organisation in 1972 (when the geographical size of authority areas was reduced):
 - *Structure plans* – prepared following a local area review and set out high-level characteristics, predicted envelope of change for the area and policies for the improvement of the area and relationship with neighbouring area.
 - *Local plans* – detailed policies giving effect to the structure plans.
- It’s the London model.



The mechanics of strategic planning (1)

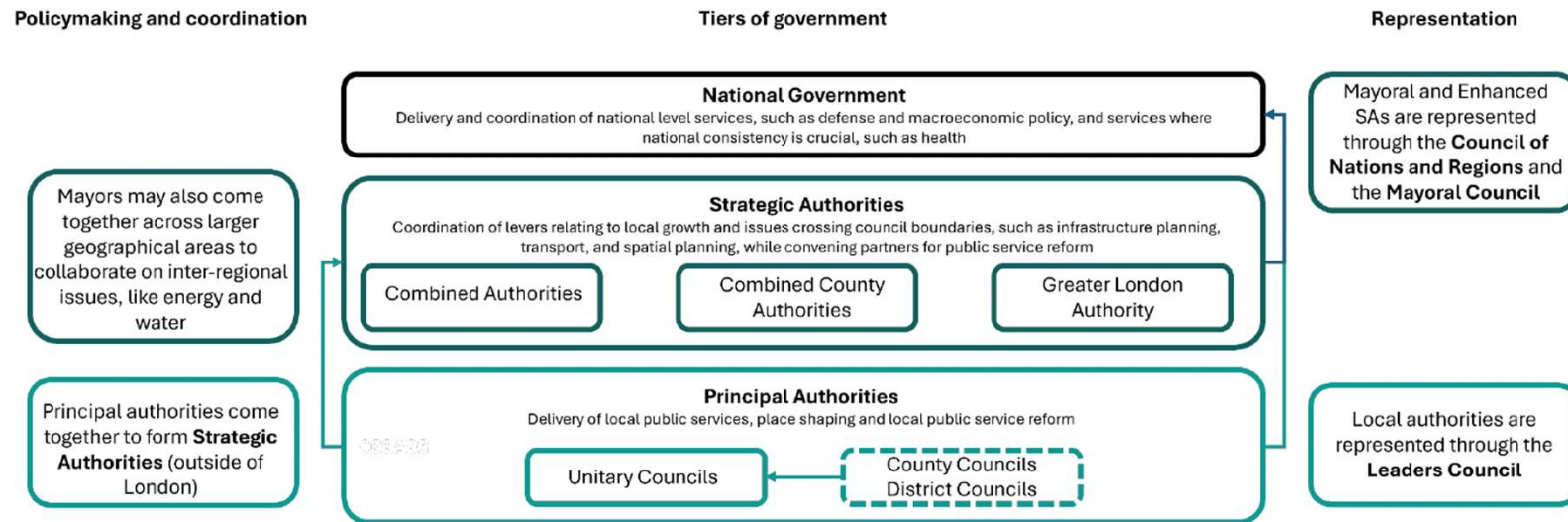
Strategic planning authorities [s.12A(2)]

- Strategic planning board
 - Note: if the SOS thinks that it is “desirable” that a SDS relates to an area of two or more principal authorities, they can after consultation by regulations (not direction, so can be annulled by Parliament) establish a “joint committee” of the relevant authorities [s.12B]
 - Detail is to be refined in subordinate legislation (e.g. composition, costs, procedure, sub-committees and decision-making/voting)
 - Getting this right is critical: see failure of West of England JSP (twice) and Oxfordshire Plan.
- Combined authority
- Combined county authority
- Upper tier county council
- Unitary authority
- Note the complexity of LG arrangements at present (see next slide).



Proposed structure of local government post-devolution

Figure 2: Streamlining government





The mechanics of strategic planning (2)

Spatial development strategies [s.12D]

- Must contain statement of policies of strategic importance to the area and a reasoned justification [12D(1)]
- Must be designed to secure adaptation/mitigation to climate change [12D(10)] and must take account of nature recovery strategies [12D(11)] and must be consistent with (and must not repeat) national development policy [12D]
- May specify infrastructure of strategic importance [12D(2)]
- May specify an amount or distribution of housing of strategic importance
 - What is meant by “of strategic importance” ? We don’t know, it’s not defined and will be left to policy, but s.12D(6) says that it need not affect the whole area.
- Must not specify where development should take place – no allocations [12D(12)(b)]



The mechanics of strategic planning (3)

Procedure for SPD preparation

- SPA produces a bespoke timetable [12E]. Secretary of State can intervene and direct changes to be made to it. Guidance suggests 2 years.
- Next, it is actually prepared [12F] and regard must be had to certain prescribed matters e.g. health outcomes and sustainable development.
- Publication and consultation on a “draft strategy” [12H). Note just one round of consultation. Regard must be had to consultation responses.
- Then public examination [2I] at which “no person has the right to be heard”.
- Examiner can recommend modifications but SDS cannot be withdrawn after submission for examination [12I(3)]. If mods are recommended there is a post-examination procedure involving submission of mods to SOS.
- SOS can direct adoption if SPA don’t resolve to do so [12Q]
- Adoption, review, monitoring and amendments.



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The mechanics of strategic planning (4)

Secretary of State's powers of intervention [s.12P]

- SOS can take over the preparation of SDS from SPA or alter an operative strategy or direct an SPA to withdraw, modify, revoke, amend etc its SDS.
- If that is done a bespoke timetable for next steps must be produced and implemented [12P(5)]
- The conditions are:



12P Powers where strategic planning authority is failing etc

- (1) This section applies if the Secretary of State considers that—
 - (a) a strategic planning authority is failing to do anything it is necessary or expedient for it to do in connection with the preparation, adoption, alteration, replacement or review of a spatial development strategy,
 - (b) a spatial development strategy is, is going to be or may be—
 - (i) inconsistent with current national policies, or
 - (ii) detrimental to the interests of an area outside the strategy area, or
 - (c) a proposed alteration of a spatial development strategy will, or may, result in the strategy becoming—
 - (i) inconsistent with current national policies, or
 - (ii) detrimental to the interests of an area outside the strategy area.



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