Planning Reform Proposals

Since the Coalition Agreement, major reforms to the planning system have taken place with the introduction of the Localism Act 2011 and the National Planning Policy Framework.

The Government has stressed that the planning system should work proactively to support economic growth and it is still concerned that various aspects of the planning system are burdened by “unnecessary bureaucracy that can hinder sustainable growth.” A number of reforms are now contained in the Growth and Infrastructure Bill, Bill 75 2012-13, which include:

- allowing planning applications to be decided by the Planning Inspectorate, if the local authority has a track record of consistently poor performance;
- allowing for planning obligations (section 106 agreements) relating to affordable housing to be renegotiated to make a development economically viable again; and
- for certain commercial and business projects to be decided by the Planning Inspectorate through the nationally significant infrastructure projects process.

A number of other announcements on planning reform have also been made, which do not have provisions in the Bill, including:

- to allow change of use for certain buildings without needing planning permission;
- to increase existing permitted development rights for extensions to homes and business premises, in non protected areas, for a three-year period; and
- to give a financial incentive to neighbourhoods which have adopted a neighbourhood development plan to receive 25% of the community infrastructure levy revenues from approved developments.

In addition to these reforms, the Government’s long-standing aim to abolish regional spatial strategies is still an on-going process. This note sets out more information about the key planning reform announcements and the proposals. For further information about proposals to stimulate housing supply see Library standard note, Stimulating housing supply.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to our general terms and conditions which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.
1 Key planning reform announcements

The Coalition Agreement in 2010 set out the Government’s ambitions for a “radical reform” of the planning system. Since this agreement, major reforms have taken place with the introduction of the Localism Act 2011 and the National Planning Policy Framework, which was effective from April 2012.

The Government has stressed that the planning system should work proactively to support economic growth and it is still concerned that various aspects of the planning system are burdened by “unnecessary bureaucracy that can hinder sustainable growth.”¹ Key announcements on planning reforms not yet implemented have been made in:

- Budget March 2011 and the accompanying Plan for Growth. The Budget set out a proposal to streamline the planning applications and related consents regimes. This is to include a 12 month guarantee for the processing of all planning applications, including any appeals;

¹ HC Deb 6 Sep 2012 c31WS
• **HM Treasury Autumn Statement 2011.** The Statement set out proposals to: review the planning appeals procedure; to consult on proposals to allow for the reconsideration of planning obligations in certain circumstances; and to consult on proposals to allow existing agricultural buildings to be used for other purposes such as offices and retail space.

• **Communities and Local Government press release 3 July 2012**. The Government announced a package of measures which included: making it easier to re-use existing agricultural, retail and commercial buildings, such as offices and warehouses, without the need to submit a planning application; cutting out unnecessary information in the application process; reviewing the supporting planning guidance which accompanied the old planning policy framework; and speeding up the process for determining planning appeals.

• **Written Ministerial Statement 6 September 2012.** The Secretary of State, Eric Pickles, set out proposals: to legislate to allow applications to be decided by the Planning Inspectorate, if the local authority has a track record of consistently poor performance; to look at options to speed up planning appeals; to introduce legislation that would allow planning obligations to be renegotiated; and to increase existing permitted development rights for extensions to homes and business premises in non protected areas for a three-year period.

• **Growth and Infrastructure Bill, Bill 75 2012-13,** which was introduced to the House on 18 October 2012. The Bill would enact a number of the proposals set out above, including: allowing planning applications to be decided by the Planning Inspectorate, if the local authority has a track record of consistently poor performance; allowing for planning obligations (section 106 agreements) relating to affordable housing to be renegotiated to make a development economically viable again; for certain commercial and business projects to be decided by the Planning Inspectorate through the nationally significant infrastructure projects process; and to introduce a limit on the information local planning authorities can require to be submitted with a planning application.

### 2 Growth and Infrastructure Bill

The **Growth and Infrastructure Bill, Bill 75 2012-13,** was introduced to the House on 18 October 2012. The second reading debate on the Bill was on 5 November 2012. The Bill and its Explanatory Notes are available on the [Parliament website](http://www.parliament.uk), and the Department for Communities and Local Government (DCLG) has published a background note on the Bill.

The Bill was not announced in the Queen’s Speech, but stems from concern by the Government that various aspects of the planning system are burdened by “unnecessary bureaucracy that can hinder sustainable growth.” The Bill also implements a number of recommendations from the [Penfold Review of non-planning consents](http://www.gov.uk), undertaken by planning expert Adrian Penfold in 2010, into consents which have to be obtained alongside or after, and separate from, planning permission, to complete and operate a development.

---

2 Department for Communities and Local Government, *Next steps to improve the planning system and support sustainable development*, 3 July 2012
3 HC Deb 6 Sep 2012 cc29WS
4 HC Deb 5 Nov 2012 cc596
5 DCLG, *Growth and Infrastructure Bill Background Paper*, 18 October 2012
6 HC Deb 6 September 2012 c31WS
Finally, the Bill also contains two clauses under the heading “economic measures” which relate to business rates and the creation of a new employment status of “employee-owner”. It is largely an amending piece of legislation.

Full details about the planning reform proposals in the Bill are set out in House of Commons Library Research Paper, *Growth and Infrastructure Bill*, Research Paper 12/61, 25 October 2012 and so are not reproduced here. In summary, in relation to planning reform, the Bill would:

- Allow (but not require) planning applications to be made direct to the Secretary of State (in practice the Planning Inspectorate) if an LPA had been “designated” for having a track record of consistently poor performance;
- Broaden the powers of the Secretary of State to award costs between the parties at planning appeals and certain other planning proceedings;
- Give the Secretary of State further powers to award costs between the parties at compulsory purchase order inquiries;
- Introduce a limit on the Local Planning Authority’s power to require information with planning applications;
- Allow for planning obligations (section 106 agreements) which relate to affordable housing to be modified or discharged in order to make a development economically viable;
- Make it easier for local authorities to dispose of surplus land held for planning purposes;
- Change the current regime of review of minerals planning permissions, to allow for greater discretion about whether and when to hold a review;
- Provide for changes to the town and village green registration system so that land owners could block registration, by others, of their land as a town or village green. It would also prevent town and village green registration from occurring when a number of “trigger” events happen, such as an application for planning permission or where the land is identified for potential development;
- Make technical changes to the Special Parliamentary Procedure which certain developments have to go through, in addition to the process of getting planning permission; and
- Amend the scope of the planning regime for nationally significant infrastructure to allow it to include significant commercial and business development.

**3 Proposed reforms**

The reforms described in the sections below are those not related to the *Growth and Infrastructure Bill*, but which stem from other Government announcements.

**3.1 Planning application decisions and appeals**

Information about the current system of determining planning application and appeals is set out in the Library standard notes:
• **Planning for Constituency Cases**, SN/SC/5378, 13 July 2012

• **Planning appeals: policy** SN/SC/1031, 16 November 2011

• **Planning appeals: procedure**, SN/SC/3256, 16 March 2012

**Application decisions**

The **Budget** in March 2011 first set out proposals to streamline the planning application and appeals system. The Department for Communities and Local Government (DCLG) press release on 3 July 2012 announced the publication of a consultation, *Streamlining information requirements for planning applications*, July 2012. The consultation proposed to:

- Reduce the nationally-prescribed information requirements for outline planning applications
- [provide] Strong encouragement for local planning authorities to keep their local information requirements under frequent review
- Amalgamate standard application form requirements for agricultural land declarations and ownership certificates.7

The closing date for responses to the Consultation was 11 September 2012. The **Government’s Response** to the Consultation was published on 27 December 2012.8 The Government confirmed that it would take forward to the substantive proposals, as consulted on. In addition to this, the **Growth and Infrastructure Bill** seeks to limit a local planning authority’s power to require information with planning applications.

The Government also published a Consultation, *Statutory consultee performance and award of costs*, in July 2012. The Consultation aims to keep planning application delays to a minimum by ensuring that there is an effective mechanism for applicants to obtain an award of costs where a statutory consultee in the planning process has acted unreasonably. The closing date for responses to the Consultation was 11 September 2012.

On 21 January 2013 the Government published a new consultation, *Streamlining the planning application process*. The consultation contains proposals to reinstate an applicant’s ability to challenge councils about the information necessary for a planning application to be valid, and remove the need for councils to list their reasons for granting planning permission. It also seeks to “simplify” the requirement to provide design and access statements with most minor applications. Specifically, the Government seeks to amend:

- A. the thresholds for Design and Access Statements, in order to reduce unnecessary statutory burdens for those applications where due consideration of design quality and accessibility does not require the provision of a nationally prescribed document
- B. the content of Design and Access Statements, in order to reduce unnecessary complexity in the legislation that contributes to overly long and/or repetitive

7 Department for Communities and Local Government, *Streamlining information requirements for planning applications*, July 2012

8 Department for Communities and Local Government, *Streamlining information requirements for planning applications consultation: Government response*, 27 December 2012
Statements whose content may be disproportionate to the scale and nature of development proposed, simply in order to comply with statutory requirements.


**Appeals**

The *Autumn Statement* in November 2011 committed the Government to review the planning appeals procedure:

... seeking to make the process faster and more transparent, improve consistency and increase certainty of decision timescales. Proposals will be brought forward for implementation in summer 2012.\(^9\)

Further commitment to change the appeals system was given in the Written Ministerial Statement of 6 September 2012.\(^11\) It said there would be a consultation on options to speed up the planning appeals system:

Swift determination of appeals by the Planning Inspectorate is also of critical importance. We will consult shortly on options to speed up planning appeals - and for a new fast-track procedure for some small commercial appeals. I have also instructed the Planning Inspectorate with immediate effect to divert resources to prioritise all major economic and housing related appeals, to ensure applicants receive a response in the quickest possible time.\(^12\)

The Government published a consultation on 1 November, *Technical review of planning appeal procedures* which consults on proposals to streamline the planning appeals system by making changes to secondary legislation. The Government’s aim is to make the appeals process faster and more transparent, improve consistency and increase certainty of decision timescales, and lead to quicker development when the appeal is upheld. The proposals are to achieve this through:

- Earlier submission and notification of appeal statements – so interested parties see information earlier and can comment;
- Agreeing ‘Common Ground’ upfront – so councils and appellants narrow the issues of dispute more openly and clearly;
- Starting hearings and inquiries sooner – leading to quicker decisions, within agreed boundaries set for the Planning Inspectorate;
- Introducing an expedited ‘Commercial Appeals Service’ – so some appeals on minor commercial developments follow a shorter process with a minimum of documentation.

---

\(^9\) Department for Communities and Local Government, *Streamlining the planning application process*, 21 January 2013, p7

\(^10\) HM Treasury, *Autumn Statement 2011*, November 2011, p34

\(^11\) HC Deb 6 Sep 2012 cc29WS

\(^12\) HC Deb 6 Sep 2012 cc29WS
• Exploring opportunities for aligning other planning-related appeal processes – so that the number of Statutory Instruments (the legal rules and regulations) is reduced.

• Issuing one guide to planning appeal procedures – as part of the drive to reduce planning guidance to a minimum.

The Planning Inspectorate is also taking steps to improve its online appeal process to speed up access to information, and may consider reviewing the appeal procedure determination criteria and its bespoke timetable service.  

The consultation period closed on 13 December 2012.

3.2 Green Belt

The Government has not announced any proposals to change the law in relation to protection of the green belt. In the written ministerial statement of 6 September 2012, however, it encouraged local councils to use existing laws to review and tailor the extent of green belt land in their local areas. As an incentive to use these powers, councils who review green belt land in their local plans will have their local plan examination process prioritised:

The Green Belt is an important protection against urban sprawl, providing a 'green lung' around towns and cities. The Coalition Agreement commits the Government to safeguarding Green Belt and other environmental designations, which they have been in the new National Planning Policy Framework. The Localism Act allows for the abolition of Labour's Regional Spatial Strategies which sought to bulldoze the Green Belt around thirty towns and cities across the country, subject to the Strategic Environmental Assessment process, as outlined in my Statement of 3 September 2012, Official Report, Column 5WS.

As has always been the case, councils can review local designations to promote growth. We encourage councils to use the flexibilities set out in the National Planning Policy Framework to tailor the extent of Green Belt land in their areas to reflect local circumstances. Where Green Belt is considered in reviewing or drawing up Local Plans, we will support councils to move quickly through the process by prioritising their Local Plan examinations. There is considerable previously developed land in many Green Belt areas, which could be put to more productive use. We encourage Councils to make best use of this land, whilst protecting the openness of the Green Belt in line with the requirements in the National Planning Policy Framework.

Further information about the law relating to green belt land is set out in Library standard note, Green belt, SN/SC/934.

3.3 Permitted development rights

Permitted development rights are basically a right to make certain changes to a building without the need to apply for planning permission. These derive from a general planning permission granted from Parliament in The Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418) (the 1995 Order), rather than from permission granted by the local planning authority. Schedule 2 of the Order sets out the scope of permitted development rights. For more information on the current permitted development rights for home extensions see the Government’s planning portal webpage on extensions.

13 Department for Communities and Local Government, Technical review of planning appeal procedures, 1 November 2012
14 HC Deb 6 Sep 2012 cc29WS
In some circumstances local planning authorities can suspend permitted development rights in their area. For more information on permitted development rights see Library standard note, Permitted Development Rights, SN/SC/485.

The Government has announced changes which would extend permitted development rights in certain circumstances:

**Home extensions**

In its written ministerial statement on 6 September 2012 the Government announced that it would extend permitted development rights, for three years, in order to make it easier for homeowners and businesses to extend their properties:

We will consult shortly on changes to increase existing permitted development rights for extensions to homes and business premises in non-protected areas for a three-year period. This will mean less municipal red tape to build a conservatory and similar small-scale home improvement and free up valuable resources in local authorities.\(^{15}\)

The consultation, Extending permitted development rights for homeowners and businesses, was published on 12 November 2012. The main proposals in the consultation are:

- Increasing the size limits for the depth of single-storey domestic extensions from 4m to 8m (for detached houses) and from 3m to 6m (for all other houses), in non-protected areas, for a period of three years. No changes are proposed for extensions of more than one storey.

- Increasing the size limits for extensions to shop and professional/financial services establishments to 100m\(^2\), and allowing the building of these extensions up to the boundary of the property (except where the boundary is with a residential property), in non-protected areas, for a period of three years.

- Increasing the size limits for extensions to offices to 100m\(^2\), in non-protected areas, for a period of three years.

- Increasing the size limits for new industrial buildings within the curtilage of existing industrial premises to 200m\(^2\), in non-protected areas, for a period of three years.

- Removing some prior approval requirements for the installation of broadband infrastructure for a period of five years.

We also wish to explore whether there is scope to use permitted development to make it easier to carry out garage conversions.\(^{16}\)

The consultation period ended on 24 December 2012. The changes would be made by amending the Town and Country Planning (General Permitted Development) Order 1995 (SI 418). In response to a PQ in the House of Lords the Government confirmed that any changes following the consultation would be implemented by statutory instrument, subject to the negative procedure.\(^{17}\)

---

\(^{15}\) HC Deb 6 Sep 2012 cc29WS  
\(^{16}\) Department for Communities and Local Government, Extending permitted development rights for homeowners and businesses, 12 November 2012, p2-3  
\(^{17}\) HL Deb 15 Oct 2012 cWA451-2
publication, *Measures coming into force between 1 January and 30 June 2013*, it suggests that the changes are due to come into force in April 2013.\(^\text{18}\)

For more information about this proposal and reaction to it see Library standard note, *Permitted Development Rights*, SN/SC/485

**Reuse of existing buildings**

The *Town and Country Planning (Use Classes) Order 1987* 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. It is only a general guide and it is for local planning authorities to determine, in the first instance, depending on the individual circumstances of each case, which class a particular use falls into. Further information about use classes is available on the Government’s *Planning Portal website* and in Library Standard Note *Planning Use Class Orders*, SN/SC/01301

**Office to residential**

In April 2011 the Government consulted on a proposal to on granting permitted development rights to change use of buildings from commercial to residential use, *Relaxation of planning rules for change of use from commercial to residential: Consultation*. Responses to the consultation were published in July 2012, *Changing land use from commercial to residential consultation: summary of responses and government response*. In it the Government said that it would include a new policy in the National Planning Policy Framework to direct local planning authorities to normally approve planning application for change from commercial to residential use:

> to include a new policy in the National Planning Policy Framework, to be read in the wider context of the Framework document, that local planning authorities ‘…should normally approve planning applications for change to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate’...\(^\text{19}\)

On 24 January 2013 the Government announced that it would introduce new permitted development rights to allow change of use from B1(a) office to C3 residential.\(^\text{20}\) A *letter to chief planning officers* confirmed that the new rights will come into force in Spring 2013 and run for a period of three years from the date of coming into force. The operation of the rights will be considered towards the end of that period, and the rights may potentially be extended for a further period or indefinitely.\(^\text{21}\) The Secretary of State confirmed that there would be opportunity for local authorities to seek an exemption to the new rights in certain circumstances:

> We recognise that, as with all permitted development rights, there may be unique local circumstances which should be taken into account. The chief planner is today writing to local planning authorities giving them the opportunity to seek a local exemption where this can be justified on economic grounds.

\(^{18}\) Department for Communities and Local Government, Fifth Statement of New Regulation: *Measures coming into force between 1 January and 30 June 2013*, December 2012, page 8

\(^{19}\) Department for Communities and Local Government, *Changing land use from commercial to residential consultation: summary of responses and government response*, July 2012

\(^{20}\) HC Deb 24 January 2013 c16WS

\(^{21}\) Department for Communities and Local Government, *Letter to Chief Planning Officers, Permitted development rights for change of use from commercial to residential*, 24 January 2013
We will only grant an exemption in exceptional circumstances, where local authorities demonstrate clearly that the introduction of these new permitted development rights in a particular local area will lead to (a) the loss of a nationally significant area of economic activity or (b) substantial adverse economic consequences at the local authority level which are not offset by the positive benefits the new rights would bring.

Once local planning authority requests for exemption have been considered, the regulations for the new permitted development rights will be bought forward.\(^{22}\)

**Other new permitted changes of use**

In July 2012 the Government also published a consultation, *New opportunities for sustainable development and growth through the reuse of existing buildings*. It proposed to create new permitted development rights to assist change of use from existing buildings:

(...) the Government is proposing action in four areas:

- To create permitted development rights to assist change of use from existing buildings used for agricultural purposes to uses supporting rural growth;
- To increase the thresholds for permitted development rights for change of use between B1 (business/office) and B8 (warehouse) classes and from B2 (industry) to B1 and B8.
- To introduce a permitted development right to allow the temporary use for two years, where the use is low impact, without the need for planning permission.
- To provide C1 (hotels, boarding and guest houses) permitted development rights to convert to C3 (dwelling houses) without the need for planning permission.

On 24 January 2013, the Government confirmed that it would make the following changes:

**Getting redundant agricultural buildings back into use**

As part of the 2011 growth review we undertook to review how change of use is handled in the planning system. We ran a consultation “New opportunities for sustainable development and growth through the reuse of existing buildings” in July 2012.

Following that consultation, I can confirm that in order to help promote rural prosperity and job creation, agricultural buildings will be able to convert to a range of other uses, but excluding residential dwellings. There will be a size restriction and for conversions above a set size a prior approval process will be put in place to guard against unacceptable impacts, such as transport and noise.

**Flexibility for business uses**

To enhance flexibility in the planning system, which can be vital when a quick response is necessary to support business growth, we will increase the thresholds for permitted development rights for change of use between business/office (B1) and warehouse (B8) classes and from general industry (B2) to B1 and B8 from 235 m(2) to 500 m(2).

**Getting empty town centre buildings back into use**

To create opportunities for new and start-up businesses and help retain the viability and vitality of our town centres, we will allow a range of buildings to convert temporarily

\(^{22}\) HC Deb 24 January 2013 c16WS
to a set of alternative uses including shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices (B1) for up to two years.  

A Government press notice confirmed that the new permitted development rights for agricultural buildings would not allow conversion to residential dwellings.  

**Schools**

On 25 January 2013 the Government announced plans to allow free schools to open in a variety of buildings, for one year, without needing planning permission.  

A written ministerial statement from the Secretary of State confirmed the proposal:

In announcing the outcome of my October 2010 consultation, “Planning for schools development”, I committed to continue to explore whether there was further scope and need for the planning system to do more in the future to support state-funded schools. Therefore, I have decided to bring forward new permitted development rights for change of use to a new state-funded school. It is my intention to include within the Town and Country Planning (General Permitted Development) Order 1995 (as amended):

- A permitted development right to allow for the temporary change of use to a new state-funded school from any other use class along with minor associated physical development. This will be for a single year which would cover the first academic year. It will provide certainty that a school opening will not be delayed by an outstanding planning application, but will not replace the need to secure planning permission for the use beyond that first year.

- A permitted development right to allow change of use to a new state-funded school from offices (B1); hotels (C1); residential institutions (C2); secure residential institutions (C2A); and assembly and leisure (D2). Any subsequent change from a new state-funded school to other uses in non-residential institution class (D1) will not be permitted. These changes will be subject to a prior approval process to mitigate any adverse transport and noise impacts.  

It is expected that the proposals will be included in the *Growth and Infrastructure Bill 2012-13*, which is currently in the House of Lords.

### 3.4 Development consent for nationally significant infrastructure projects

Nationally Significant Infrastructure Projects (NSIPs) are usually large scale developments such which require a type of consent known as “development consent” under procedures governed by the *Planning Act 2008* as amended. Any developer wishing to construct an NSIP must first apply for development consent to do so. For such projects, the Planning Inspectorate examines the application and will make a recommendation to the relevant Secretary of State, who will make the decision on whether to grant or to refuse development consent. Any resulting development consent order automatically removes the need to separately obtain a number of consents that would otherwise be required for development, including planning permission.

---

23 HC Deb 24 January 2013 c16WS  
24 Department for Communities and Local Government, Planning measures will make best use of underused buildings for providing new homes, 24 January 2013  
25 Department for Communities and Local Government, Planning changes to help open free schools’ gates faster, 25 January 2013  
26 HC Deb 25 January c25-26WS
There are a number of other consents, however, that are currently fall outside the scope of a development consent order and which are the responsibility of other Departments and Government Agencies. The Government announced on 6 September 2012 that it wanted to simplify this system and would work to extend the principle of a “one-stop-shop” for non-planning consents for major infrastructure.\(^{27}\) To this end, the Government published a Consultation on 26 November, *Nationally significant infrastructure planning: expanding and improving the ‘one stop shop’ approach for consents*. The Consultation proposes to simplify the development consent system by:

- removing the requirement for separate Secretary of State consents for certain matters;
- establishing new arrangements to improve coordination between the Planning Inspectorate, applicants and the other consenting bodies to make the overall consents process more efficient;
- streamlining the list of consents that sit outside the development consent process in the absence of agreement from the relevant consenting body; and
- reviewing the list of prescribed consultees.\(^{28}\)

The Consultation closed on 7 January 2013.

### 3.5 Review of planning practice guidance

On 16 October 2012 it was announced that Lord Taylor of Goss Moor would lead an external group that would look to streamline some of the existing 6,000 plus pages of planning practice guidance. The Government’s press release set out the rationale for the review:

> The large amount of planning practice guidance currently used - added to over the years and often contradictory - makes it difficult for residents and businesses to engage effectively with the planning system. This review will streamline that practical guidance to make the planning system swifter and more accessible.

> A clearer, reduced set of planning practice guidance will better support growth, help create the homes and jobs that the country needs, protect and enhance our natural and historic environment, and help put power back into the hands of communities.\(^{29}\)

Lord Taylor’s report was published on 21 December 2012, *External Review of Government Planning Practice Guidance*. The report concluded that the current system of planning practice guidance was no longer fit for purpose and was not in a form that could be effectively managed or updated by Government. The report recommended that guidance should be cut to that which is essential and should be clearly defined and described as Government Planning Practice Guidance.\(^{30}\) The report recommended that the most urgent revocation of guidance and updating should be completed by 28 March 2013, with the majority of most of the revision completed by July 2013:

---

\(^{27}\) HC Deb 6 September 2012 c32WS

\(^{28}\) Department for Communities and Local Government, *Nationally significant infrastructure planning: expanding and improving the ‘one stop shop’ approach for consents*, 26 November 2012, annex A, p14-15

\(^{29}\) Department for Communities and Local Government, *External group to look at streamlining the 6,000 pages of planning practice guidance*, 16 October 2012

The present guidance suite is **unfit for purpose**, and could not simply be decanted into the new web-based format. Indeed, it is vital that it is not. It will be necessary to create new material, drawing out (in consultation with practitioners) the vital elements from within the existing suite of guidance documents, updating and formatting as appropriate to a web based resource, before decanting it into the new site. This should be done as a matter of priority, and we believe the aim should be to complete the great majority of this work by **July 2013**, subject to necessary consultation, legislative and EU processes, etc. **At that point all the existing guidance should have been, or be, cancelled - so there is one up-to-date web-based Government Planning Guidance resource.**

Lists of current planning practice guidance notes are given in the annexes to the report, alongside recommendations about whether they should be cancelled, revised or retained.

Following Lord Taylor’s report, the Government has published a Consultation, **Review of Planning Practice Guidance – Consultation**, which seeks views on the recommendations in Lord Taylor’s report. The Consultation closed on 15 February 2012.  

### 3.6 Judicial review

On 13 December 2012 the Government published a Consultation seeking views on proposals to reform the time limit for judicial review proceeding relating to, (among other areas), planning. The Consultation set out concern that in certain types of case, in particular those involving large planning developments or constructions where significant sums may be at stake, any delays could have an impact on the costs of the project, potentially putting its financial viability at risk. The proposal, for planning cases, is to reduce the time after the initial decision that an application for judicial review could be lodged from three months to six weeks. It also set out a proposal to restrict the number of repeated applications that can be made. The Consultation closed on 24 January 2013.

### 3.7 Environmental impact assessment thresholds

The aim of **Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment** is to protect the environment and human health by ensuring that a competent authority (e.g. a local authority or the Secretary of State) giving consent for certain projects to proceed, makes the decision in the knowledge of any likely significant effects on the environment. The procedure is known as environmental impact assessment. The European Commission has proposed to amend this Directive to ensure consistent application of it between Member States.  

In a **written statement** on 6 December 2012, the Secretary of State, Eric Pickles, said that the Commission’s proposals to amend the Directive could add further cost and delay to the planning system, by increasing the regulatory burden on developers:

> The European Commission has announced that it is seeking to amend the environmental impact assessment directive. The explanatory memorandum outlines that the proposals could result in a significant increase in regulation, add additional

---

cost and delay to the planning system, and undermine existing permitted development rights. In addition, the proposal appears inconsistent with the conclusion of the October European Council that it is particularly important to reduce the overall regulatory burden at EU and national levels, with a specific focus on small and medium firms and micro-enterprises. This view was unanimous among all EU Heads of Government, who also agreed with the Commission’s commitment to exempt micro-enterprises from EU legislation.35

The Directive is enacted into UK law through the *Town and Country Planning (Environmental Impact Assessment) Regulations 2011* (SI 2011/194), which set the thresholds for when a development project will require an environmental impact assessment. The Chancellor’s Autumn Statement on 5 December 2012 said that the Government would consult on updated guidance on conducting environmental impact assessments by Budget 2013, and would consult on raising screening thresholds set out in the Regulations later in 2013.36 In his 6 December written statement, Eric Pickles set out the Consultation on updated guidance would aim to give greater certainty about when an environmental impact assessment would and would not be required:

It has become apparent that some local planning authorities require detailed assessment of all environmental issues irrespective of whether EU directives actually require it; similarly, some developers do more than is actually necessary to avoid the possibility of more costly legal challenges which add delays and cost to the application process. Consequently, my Department will be consulting in 2013 on the application of thresholds for development going through the planning system in England, below which the environmental impact assessment regime does not apply. This will aim to remove unnecessary provisions from our regulations, and to help provide greater clarity and certainty on what EU law does and does not require.37

### 3.8 Changes to temporary stop notices

A local council can issue a Temporary Stop Notice if it thinks there has been a breach of planning control and it is expedient that the activity should be stopped immediately. Temporary Stop Notices apply for 28 days, during which the local council is able to assess the circumstances and determine whether to take further enforcement action.

The *Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005* (SI 2005/206) limit the circumstances in which local councils can use Temporary Stop Notices in respect of caravans used as main residences. The Government is concerned that this may discourage or prohibit the use of Temporary Stop Notices in some instances where they could be beneficial.

On 27 December 2012 the Government published the Consultation, *Changes to Temporary Stop Notices: revoking Statutory Instrument 2005/206*. The proposal is to revoke this statutory instrument:

The Government therefore proposes revoking Statutory Instrument 2005/206. This would give local councils greater freedom to make a decision on the basis of local circumstances on whether serving Temporary Stop Notices in respect of caravans used as main residences is appropriate. It will remain for local councils to consider the consequences of taking enforcement action on the rights of the individuals concerned, both traveller and local residents, and whether the action is necessary and

---

35 HC Deb 6 December 2012 c71-2WS  
37 HC Deb 6 December 2012 c71-2WS
The Consultation closed on 13 February 2013. The Government was particularly keen to hear views from local councils and those who use caravans as main residences, including travellers.

3.9 Financial incentive for development

On 10 January 2013 the Department for Communities and Local Government announced that in areas where there is a neighbourhood development plan in place, the neighbourhood will be able receive 25% of the revenues from the Community Infrastructure Levy arising from the development that they have chosen to accept. Under the proposals the money would be paid directly to parish and town councils and could be used for community projects such as re-roofing a village hall, refurbishing a municipal pool or taking over a community pub.

The Government’s aim is to reward areas that have adopted a neighbourhood plan. Neighbourhoods without a neighbourhood development plan but where the community infrastructure levy is still charged will receive a capped share of 15% of the levy revenue arising from development in their area.

The aim of the proposal is to incentivise house building:

Instead of hectoring people and forcing development on communities, the government believes that we need to persuade communities that development is in everyone’s interest. Incentives are key to getting the homes built that we both need for today and for future generations.

It is vital this country increases the number of homes it builds to meet the needs of its increasing population. The failure of previous administrations to build enough homes, latterly despite the credit boom, led to a severe housing shortage that has been made worse by the rapid increase in the number of households. The number of people living alone has rocketed, and immigration has led to an influx of 1.7 million people into England in the last decade.

The Government aims to put in place this incentive from “spring 2013”. For further information on neighbourhood development plans see Library standard note, Neighbourhood Planning in Localism Act, 29 May 2012 and the My Community Rights website.

3.10 Right to Light

The law relating to a right to light is a very complex area. A right to light is a property right called an easement that gives landowners the right to receive light through defined apertures (i.e. a window) in buildings on their land. The right may be created by express grant, by

---

38 Department for Communities and Local Government, Changes to Temporary Stop Notices: revoking Statutory Instrument 2005/206, 27 December 2012, para 4.1
39 Department for Communities and Local Government, Communities to receive cash boost for choosing development, 10 January 2013
40 Planning Portal, Cash for communities that choose development, 10 January 2013
41 Department for Communities and Local Government, Communities to receive cash boost for choosing development, 10 January 2013
42 Department for Communities and Local Government, Communities to receive cash boost for choosing development, 10 January 2013
implication and by prescription. The right may enable landowners to prevent construction that would interfere with their rights or, in some circumstances, to have a building demolished.

On 18 February the Law Commission issued a consultation paper, *Rights to Light*, which seeks to examine whether the law by which rights to light are acquired and enforced provides an appropriate balance between the interests of landowners and the need to facilitate the appropriate development of land. It looks at the relationship between rights to light and the planning system and examines whether the remedies available to the courts where rights to light are infringed are reasonable, sufficient and proportionate.43 The background to the Consultation is previous work done by the Law Commission on easements which found that "rights to light appear to have a disproportionately negative impact upon the potential for the development of land."44 Another factor is a recent court case which has been suggested has had "a detrimental effect on the ability of rights to light disputes to be resolved swiftly and amicably."45

The Law Commission has made four provisional proposals to change the law:

1. We propose that for the future it should no longer be possible to acquire rights to light by prescription.
2. We propose the introduction of a new statutory test to clarify the current law on when courts may order a person to pay damages instead of ordering that person to demolish or stop constructing a building that interferes with a right to light.
3. We propose the introduction of a new statutory notice procedure, which requires those with the benefit of rights to light to make clear whether they intend to apply to the court for an injunction (ordering a neighbouring landowner not to build in a way that infringes their right to light), with the aim of introducing greater certainty into rights to light disputes.
4. We propose that the Lands Chamber of the Upper Tribunal should be able to extinguish rights to light that are obsolete or have no practical benefit, with payment of compensation in appropriate cases, as it can do under the present law in respect of restrictive covenants.46

The Consultation closes on 16 May 2013.

Following publication of the consultation, the Telegraph reported an initial response to it from the Chairman of the House of Commons Communities and Local Government Select Committee, Clive Betts:

Clive Betts, chairman of the Commons communities and local government committee, said there was “no merit” in revising the laws and said that light “makes an enormous difference to people’s homes”. “Light is actually very important,” said Mr Betts. “If you allow people to build large extensions and you took away their right to light, essentially people could have the enjoyment of their homes substantially worsened.

43 Law Commission, *Rights to Light consultation homepage*, 18 February 2013
44 Law Commission, *Rights to Light consultation executive summary*, 18 February 2013, p1
45 Law Commission, *Rights to Light consultation executive summary*, 18 February 2013, p1
“I can’t see any justification for scrapping it. It seems to me a perfectly good principle, one people can understand and support. Instinctively my reaction would be that I don’t see any merit in this.”

4 Regional Spatial Strategies

The Coalition Agreement of May 2010 said that the Government would “rapidly abolish Regional Spatial Strategies and return decision-making powers on housing and planning to local councils.” On 6 July 2010 in a written statement to the House, the Secretary of State for Communities and Local Government, Eric Pickles, announced that regional spatial strategies would be revoked. Legal challenges have delayed the revocation and the abolition of regional spatial strategies has not yet taken place.

The Localism Act 2011 provides for the abolition of regional strategies in a two-stage process. The first stage, to remove the regional planning framework and prevent further strategies from being created, took effect when the Localism Act received Royal Assent on 15 November. The second stage would be to abolish the existing regional strategies by secondary legislation.

The Government is keen to avoid further legal challenge and has said that any final decision on the abolition of the strategies must take account of the possible environmental effects of revocation of each of the existing regional strategies. It is now updating the earlier environmental reports on the proposed revocation of the regional strategies and undertaking additional consultation. A written statement in the House of Lords on 25 July 2012 explained the situation:


As part of the Strategic Environmental Assessment process, and before the decision of the European Court of Justice, there has already been consultation with the statutory consultation bodies on the scope and level of detail of the environmental reports. Public consultation took place between October 2011 and January 2012 on the basis of environmental reports published in October 2011. Detailed responses were provided in the course of this exercise.

Following the decision of the European Court of Justice, in the light of planning policy and legislation that have been put in place since January 2012, in light of the earlier consultation responses, and in order to be meticulous in observing the requirements of the Directive, the Government is now updating the environmental reports and undertaking additional consultation. We are publishing the first of the updated environmental reports: the report in respect of the proposed revocation of the East of

---

47 “Right to light under threat in planning law shake-up” The Telegraph, 18 February 2013
49 HC Deb 6 July 2010 cc4-5WS
50 For more information on the legal proceedings see Local Government Lawyer, Government fends off Regional Spatial Strategies appeal, 31 May 2011
51 HL Deb 25 July 2012 cWS66-8
52 Department for Communities and Local Government website, Strategic Environmental Assessments [on 12 September 2012]
England Regional Strategy shortly and will place a copy in the Libraries of both Houses. This report builds on and is intended to supersede the previous report.

The period for consultation responses will remain open for eight weeks. We welcome and encourage all interested parties to respond. At the end of that period we will consider all consultation responses, including those already submitted during the October 2011 to January 2012 response period.

In the coming weeks my Department will publish updated environmental reports relating to the proposals on each of the other regional strategies, so that those proposals too can be the subject of additional consultation. In each case there will be an 8 week period for consultation responses. All updated environmental reports will be placed in the Libraries of both Houses as they are published.53

The written statement explains that the proposed revocation of the Regional Strategies may be regarded as a material consideration by decision makers when determining planning applications and appeals. It also sets out their status in regard to plan making:

In respect of plan-making, the National Planning Policy Framework implementation period provides councils with the incentive to get their plan policies up to date and in doing so they can have regard to the policy to revoke Regional Strategies and the new National Planning Policy Framework policies. A local plan document must be in general conformity with the regional strategy at the stage that the plan is submitted for examination but it is open to councils when preparing local plans to take account of the policy to revoke up to the time of submission. Local authorities can also bring forward proposals (for example on housing targets) which have a local interpretation to them in their plans, based on their own sound evidence base where that is justified by the local circumstances. That evidence base is likely to be more up to date than that included in the Regional Strategies. Each case will depend on its particular facts.54

On 11 December 2012 the Secretary of State, Eric Pickles, announced that the East of England’s Regional Strategy would be the first to be abolished, from 3 January 2013.55

On 14 February 2014 Eric Pickles announced the decision to revoke the Regional Strategy for the South East of England, with the exception of policies relating to the Thames basin heaths special protection area and Oxfordshire structure plan policy relating to Upper Heyford RAF base. The Order to effect this decision is due to be laid after the February 2013 Parliamentary recess, under the negative resolution procedure.56

53 HL Deb 25 July 2012 cWS66-8
54 HL Deb 25 July 2012 cc66-8WS
55 Department for Communities and Local Government, First regional strategy to be abolished, 11 December 2012
56 HC Deb 14 February 2013 c58-59WS