

# Planning for a better future

Our planning manifesto for the government

## Planning Officers Society

POS is the single credible voice for public sector planners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable, and achieve the social, economic and environmental aspirations of all sectors of the community. It is within this context that we have set out this advice to Government so we can plan together for a better future.

## POS Manifesto

This started in early 2014 when we looked ahead to the national parliamentary elections in May 2015. The main parties were drafting their manifestos, so we thought about what we could do to help them. This resulted in *Planning for a better future: Our planning manifesto for the next government*. The time since then has seen an unprecedented amount of change to the planning system, so our initial planning manifesto for the next government has morphed into an on-going planning manifesto for government.

These are think pieces that tackle a topical area within planning practice and sets out our recommendations for improvement. They comprise a growing series of Manifesto Background Papers that look in detail at specific issues. Those that are still current are summarised in our main Planning Manifesto paper that sets out the current ask from POS to the government.

The views expressed in these documents reflect the initial view of POS. It is a consensus position. It should not be taken as a final position; rather an informed starting point to debate the issues. It is expected that the recommendations will evolve as the debate progresses.

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: land owners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development.

Other titles in the series can be viewed from our website.

## Contents

|   |                                      |    |
|---|--------------------------------------|----|
| 1 | Introduction                         | 4  |
| 2 | Our manifesto                        | 4  |
|   | Improving local plans                | 4  |
|   | Funding infrastructure               | 5  |
|   | We need to talk about the Green Belt | 5  |
|   | Redesigning outline applications     | 6  |
|   | Delivering affordable housing        | 7  |
|   | Making the system more flexible      | 8  |
|   | Improving compulsory purchase        | 10 |
| 3 | Making great places                  | 11 |
| 4 | Tools for the job                    | 11 |
| 5 | Conclusions                          | 11 |

Published: July 2107

## Contact details

**Mike Kiely** President 2013/14

**Anna Rose** President 2016/17

**John Silvester** Communications Manager

president@planningofficers.org.uk

svp@planningofficers.org.uk

communicatons@planningofficers.org.uk

# 1 Introduction

- 1.1 It has been attributed to people as far apart in time as Benjamin Franklin and Winston Churchill, but the phrase, “if you fail to plan, you plan to fail” is as true today as it was then. Harnessing the opportunities provided by the planning system to achieve a better future for our children will be vital over the coming years. By nurturing the conditions needed to achieve sustainable economic growth and meeting the needs of our growing population, we can create a real legacy for future generations.
- 1.2 The UK is one of the most densely populated countries in Europe with the 8th largest economy in the world and it is growing. Planning provides essential tools to achieve sustainable economic growth and vibrant and healthy communities, whilst maintaining and enhancing our rich legacy of natural, built and historic assets. The planning system provides a clear and stable platform for investment in a congested island where there is intense pressure on land. The system has proved to be remarkably adaptable since its introduction in 1947 as it has responded to economic circumstances and changing demands. It remains our best means of managing change with communities playing a key role in shaping their area’s future.
- 1.3 This Manifesto calls for a series of targeted changes and refinements to the planning system to ensure that the system we have is optimised to do its job as effectively and efficiently as possible.

# 2 Our manifesto

- 2.1 The areas that POS considers need to be reformed to improve the planning system are summarised below. Full details are contained in separate background papers, which are on our website.

## Improving local plans

- 2.2 The duty to cooperate is a challenge for many local planning authorities. POS considers that evolutionary changes to the Local Plan process should be made to enable the strategic stage of plan making to be carried out efficiently and effectively, allowing the rest of the process to be simplified. The key aspects of these changes are:
  - Local Plans should be prepared in 2 stages: the strategy followed by the detailed policies
  - The strategy stage is where the Duty to Cooperate needs to be focused
  - Strategic Environmental Assessment and Issues and Options should only be applied to stage 1
  - The Planning Inspectorate applies the Soundness Test to stage 1 and signs it off
  - This leaves the drafting of the detailed policies that will deliver the strategy as a simpler process as it will be done in the context of a clear, agreed and sound strategy
  - The Planning Inspectorate's role at stage 2 would only be to hear objections to the detailed policies
  - The carrying out of the Soundness Test at stage 1 and limiting future involvement of the Planning Inspectorate to considering objections to detailed

policies, re-establishes a clear process for the plan to gain weight in decision making as it progresses through the system to final adoption

- This approach should speed up the planmaking process

2.3 For more details see our *Manifesto Background Paper 1 Local Plans: An Evolutionary Approach to Improvement* on our website (first published September 2014, updated August 2015).

## Funding infrastructure

2.4 When CIL was introduced it was as an alternative to s106 agreements, but the reality is they are both necessary tools, because they are good at different things. POS recommends some key changes that will combine the best of both current regimes in an integrated way that optimises their effectiveness. These changes are:

- The intention for CIL to be funded via the land value rather than through development finance should be clearly stated by government and become a clear feature of the CIL setting process and Development Management viability assessments
- There should be a basic “de minimus” levy rate that can be easily adopted, set nationally on a zoned basis
- The basic levy rate applies to all developments that CIL currently applies to.
- If a LPA considered that there was scope for a greater Levy contribution, then they would set their own rate above the basic rate in a similar way as a CIL rate is set now.
- An Agreement would still apply to any mitigation or compensation that is directly necessary to enable a development to proceed but does not come within the statutory definition of Infrastructure, such as securing affordable housing or delivering local employment policies.
- On large strategic developments where need for Infrastructure is caused by a development or group of developments the LPA can seek to negotiate payments for this subject always to the Levy rate being the minimum payment.
- Flexibility between levy and agreements should be a standard feature of the system subject always to the levy amount being the minimum payable in any circumstances

2.5 For more details see our *Manifesto Background Paper 2 Infrastructure: Funding It in a More Effective Way* on our website (first published March 2015, updated August 2015).

## We need to talk about the Green Belt

2.6 The Green Belt has passed its 80th birthday. It is increasingly becoming the Marmite of planning policy: defended and decried in equal measure. The planners who have created and defended the Green Belt over the years take a step back from this highly-charged debate to look at the policy afresh. Our key insights are:

- The GB is not an environmental policy
- When introducing the GB with the 1947 Planning Act, the Minister at the time said, “even if ... neither green nor particularly attractive scenically, the major function of the Green Belt was ... to stop further urban development”
- The GB is a spatially constraining strategic policy whose main role is to stop cities from sprawling physically

- Paragraph 83 of the NPPF requires that, once established, GB boundaries should only be altered in exceptional circumstances and then only as part of a review of a local plan as it is a strategic decision on where development should be located
- It seems axiomatic that it is only if the conditions that resulted in the creation of the GB in the first place have changed, that it may need to be rethought
- Those conditions would be that it is now necessary for the urban area to physically grow to accommodate a growth in its population, because all efforts to accommodate that growth within its boundaries have been exhausted
- There are two types of GB review: testing whether the current GB boundaries are correct and reviewing the GB to release sites to meet housing needs
- The application of the five purposes that the GB serves (para 80 of the NPPF) is the way to carry out the former, but plays no useful role in the latter
- The paper sets out a methodology that allows a GB review that is designed to release sites for housing to be carried out.

2.7 For more details see our *Manifesto Background Paper 3 We Need to Talk about the Green Belt* on our website (first published March 2015, updated August 2015).

## Redesigning outline applications

2.8 “Outline planning applications have got too complex! Why can’t we go back to simple red-line outlines?” POS looks at the truth and reasons behind this claim and suggests an innovative solution. Its key features are:

- Outlines are complex because the LPA must consider all material planning considerations and the outline planning permission must contain all the necessary planning conditions
- LPAs only get one shot at this – they cannot condition matters afresh in the approval of details stage
- Our solution lies in separating out the decision on the principle of a development from the conditions that control the detailed development
- The applicant would be required to submit:
  - A short description of the proposed development
  - Ownership certificate and agricultural land declaration
  - A basic plan including high-level details of the application (site, number of units, access route etc)
  - Additional information that is necessary to support the application, particularly an explanation of why there are no in-principle impediments to the development that can’t be addressed at the detailed stage
- Consultation and publicity/advertisement would be carried out as usual
- The development principle would be formally endorsed by the LPA and an approval in the form of a decision notice issued to the applicant
- The decision would not be a planning permission as such, the document would not have conditions attached to it, but it would indicate what matters are necessary to address in any subsequent application and set out what additional supporting information would be needed to be included in a subsequent application for planning permission
- LPAs should have the power to issue these unilaterally as this could be a useful pro-active tool that enables Local Plan allocations to be more dynamic

and streamlined and would be a more efficient version of a Local Development Order

- Our background paper also sets out our suggestions for streamlining the information requirements for applications for planning permission

2.9 For more details see our *Manifesto Background Paper 4 Red Line Submissions: A Proportionate Approach* on our website (first published August 2015).

## Delivering affordable housing

2.10 Where there is a viability argument, affordable housing is inevitably the casualty and land price inflation the outcome. POS has devised a public policy response that could effectively address this problem. Its key features are:

- What is becoming increasingly clear since the publication of the NPPF is that in any viability negotiation, the provision of Affordable Housing is nearly always the casualty
- The Secretary of State has gone on record (Planning Magazine 23 November 2015) stating that his "unambiguous policy position" is that land or site value "should reflect policy requirements"
- There is unambiguous evidence that the industry does not consider and reflect policy requirements when setting the price for land
- The challenge therefore is how we can create the conditions that result in the suppression of land price inflation so that the trade in land is reset at a level that both delivers the full gamut of planning policy contributions but also maintains a healthy supply of land for development
- POS believe that if there was a genuine political desire to do this it could be done in a way that would both deliver these aims and put an end to the wasteful viability gaming that is now a very unwelcome feature of Development Management negotiations
- The solution is to move to a fixed AH percentage that would not be subject to viability arguments, save for truly exceptional circumstances
- The approach would start with an empirically established position: for each area the starting Affordable Housing level would be the average Affordable Housing percentage secured in (say) the years following the introduction of the NPPF in 2012
- Once the new system was introduced that would become the fixed Affordable Housing rate for that area for a period of two years
- After that, the Affordable Housing rate would increase by 5% per annum until it reached the Affordable Housing target for the area as set out in the Local Plan
- This would give the industry ample warning of the change so that they can adjust their behaviour: the run-in period where the policy is introduced, the two-year flat rate period and the modest 5% annual rise towards the policy set Affordable Housing target, all go towards enabling the change to be comfortably accommodated by the industry

2.11 For more details see our *Manifesto Background Paper 5 Affordable Housing: Delivering it in a More Effective Way* on our website (first published January 2016).

## Making the system more flexible

2.12 The need to change a design, and potentially a planning permission, is a normal feature of the development process and the planning system should be capable of dealing with it in an effective and efficient manner. Our planning system was never explicitly designed to have this flexibility. POS proposes six changes to the planning system to address this:

1. Permission in Principle and the role of outline applications:

- POS considers that the proposals promoted by government could go further and the detailed regulations need careful design:
- Specific local plan allocations for any type of land use should benefit from PIP
- Applications for all scales of development should be possible, not just 10 homes or fewer
- LPAs should have the power to issue a PIP unilaterally as this could be a useful pro-active tool that enables Local Plan allocations to be more dynamic and streamlined and it would be a more efficient version of a Local Development Order
- PIP proposals should be for high level sign-off of development principles on a specific site
- The decision should confirm that, or otherwise, and set out clearly the detailed matters that will need to be addressed at the next, detailed approval, stage so that applicants know what matters they need to address to gain planning permission
- POS also recommends a review of the need for the full/outline application split

2. Flexibility with planning fees when amending applications:

- The scope to amend an application once submitted, but before it is determined, is quite wide
- A significant constraint in the flexibility that could be achieved here is that there is no statutory provision to seek an extra planning fee during the determination if an amended application requires a higher fee
- Flexibility in the Fees Regulations should be introduced to enable changes to be made to live applications and any associated uplift in the application fee to be paid to the LPA

3. Determining applications with split decisions:

- LPAs should have a clear power to issue a split decision, as the Secretary of State has under section 79 of the 1990 Act when dealing with appeals
- This would apply where the two elements are clearly severable or where the refusal relates to a detailed element that the LPA cannot support, but otherwise the rest of the scheme is satisfactory

4. Ability to condition unacceptable details:

- You cannot approve something (e.g. the drawing says the walls of the extension will be in brick) and then take that part of that approval away by condition (e.g. require the elevations to match the main stone building)

- If that is required, the detail on the drawing would have to be changed or amended via a letter or email and the amendment should be referred to in the decision notice
  - Government should consider addressing this as it could enable quicker positive decisions, with unresolved issues being dealt with through conditions, without prior agreement
5. Making legal agreements easier to resolve:
- Typically, section 106 agreements run into difficulties after the LPA resolves to approve planning permission subject to the completion of the agreement
  - A right of appeal against the failure to complete the legal agreement should be introduced
  - At such an appeal the Inspector would only look at the terms of the agreement insofar as they are appropriate to mitigate the impact of unacceptable development to make it acceptable in planning terms
  - A simpler alternative would be to divorce the completion of section 106 agreements from the planning application determination process and allow it to be routinely dealt with through a Grampian style condition
6. A better system for amending planning permissions:
- S96A is a specific system for non-material changes to planning permission
  - The use of s73 to deal with minor material amendments is a sticking-plaster solution to a problem that should have been dealt with clearly through legislation
  - POS recommends a new combined procedure to deal with all amendments.
  - The LPA would issue one of three types of decision:
    - a) Decide that the amendment is not material and confirm this without the need to carry out any publicity or consultation. This is effectively the current section 96A procedure, except that a new consent should be issued so that the cumulative impact of such amendments, if any, are explicitly dealt with.
    - b) Decide that the amendment is material, but can be dealt with as an amendment because it does not go to the heart of the consent. The process would involve publicity or consultation where necessary (usually just the neighbours affected) and, if approved, results in a new planning consent, again so that the cumulative impact of such amendments, if any, are dealt with. The LPA should be able to add conditions (in addition to those on the original consent) to deal with any new matters raised by the amendment(s).
    - c) Decide that the change goes beyond what can be considered as an amendment and refuse the application. There would be no need for any publicity or consultation.
  - There should be a right of appeal against the second (where refused or new conditions are imposed) and third outcomes
- 2.13 For more details see our *Manifesto Background Paper 6 From Concept to Construction: Making the System More Flexible* on our website (first published February 2016).

## Improving compulsory purchase

2.14 It is common ground in the sector that the CPO regime is complex and in desperate need of reform. POS looks at how the regime could be improved as a tool to enable local planning authorities to be more proactive in unlocking sites with housing potential to support the delivery of sustainable development. Our three key changes are:

### 1. CPO as a tool to tackle land banking

- A new CPO enabling power for local planning authorities to use where a site is a “housing site” and that development has not come forward after a “specified period”
- A “housing site” would include the following:
  - A site with a valid Planning Permission
  - A site with an appropriate Permission in Principle (with LPAs able to issue PiP unilaterally – see *Red Line Submissions: A Proportionate Approach* and *From Concept to Construction: Making the System More Flexible*)
  - A specific site allocation in a Development Plan Document (including a Neighbourhood Plan)
- The “specified period” could be three years, to match the life of a planning permission

### 2. Is there a simpler alternative to CPO?

- Generally for funding purposes, LPAs often have to enter back-to-back arrangements for CPO
- The time taken to procure the right partner and to negotiate the various agreements can be as long as, or even longer than, the CPO process itself
- POS believes that a Compulsory Selling Order could be the solution
- The process would be like a current CPO, but the outcome would be an Order to sell the land with a specified minimum sales price which would be the existing use value – this would be set as part of the CSO process
- POS recommends ways in which this could work

### 3. Modernising the compensation regime

- Land value capture is a challenge and not paying some (realistic) hope value would not be human rights compliant (Article 1, Protection of Property under the First Protocol of the Human Rights Act 1998)
- However, the regime that has built up to deal with hope value is cumbersome and can have unintended consequences
- Alternative uses, which the land owner has never pursued, suddenly in a CPO scenario are viable and incredibly valuable; much more valuable than the current use; POS questions whether this should be the basis of compensation
- POS believes that in scenarios where the CPO scheme is one with a clear market value, that there should only be two compensation options available to CPO land/property owners: existing use value or (if the owner considers that there is a higher hope value) a residual land value appraisal
- The residual land value approach would be the total value of the CPO scheme, minus the cost of providing the CPO scheme (including supportive infrastructure) with an appropriate contingency

- The second approach would leave the CPO scheme-world land value, with all (realistic) hope value properly accounted for
- 2.15 For more details see our *Manifesto Background Paper 7 Compulsory Purchase: Three Essential Improvements* on our website (first published February 2017).

### 3 Making great places

- 3.1 The Society welcomes the importance attached in the NPPF to the design of the built environment. With development activity increasing, it is important that in the resultant boom, design standards are not compromised and a legacy of quality is left for future generations. Therefore, the planning system should continue to be enabled to promote, facilitate, manage and deliver good design.
- 3.2 However, prospective developers need to play their part too. The Society believes that the Government should work with major developers and the volume house builders to help ensure that the expectations of the NPPF & PPG are recognised and delivered by all concerned. POS would be happy to participate in such work.

### 4 Tools for the job

- 4.1 Planners in local authorities have embraced the new world of spatial planning and development management and have been equipping themselves with the skills and knowledge needed to take on these challenging roles. The development of skills and expertise particularly in new areas such as land economics, development viability and infrastructure provision is still on-going, but must continue to be fully supported by sufficient funding and training.
- 4.2 The ongoing austerity measures have had a devastating effect on local government finance and it is recognised across the sector that funding of planning services is a vital issue that must be addressed if we are to deliver the growth that the nation needs. Government must continue to explore ways within which funding can be leveraged into planning services. The development sector has been clear on their willingness to assist in this.

### 5 Conclusions

- 5.1 Planning is the key to meeting housing needs and delivering economic growth through the creation of sustainable development. POS invites government to work with us on our approach to building a more efficient and effective planning system which we believe will:
- Support the development of sustained economic prosperity;
  - Designate at national level, areas for major growth;
  - Ensure all areas have appropriate and effective strategic planning arrangements in place;
  - Provide for the growing need for jobs, homes and leisure;
  - Ensure that the infrastructure necessary to support development is funded;
  - Create safe and secure communities;
  - Deliver sustainable development; and
  - Leave a positive legacy for future generations.