

We need a plan to sort out local plans

The 'fairer, faster, more predictable' system promised in 2004 has failed to deliver



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Once upon a time, the system in England for local authorities to adopt their local plans was slow, complicated and uncertain. Many authority areas were without an up-to-date local plan, and therefore had no proper basis for determining applications for planning permission.

Fifteen years ago, the Planning and Compulsory Purchase Act 2004 (the 2004 Act) was meant to change that by bringing in a system that was touted (against the scepticism of the Conservative party in opposition) as "fairer, faster and more predictable", bringing in "planning clarity, certainty and more strategic direction" (Barbara Roche, House of Commons, 17 December 2002).

While local plan inquiries have been replaced by examinations, at which the relevant inspector has the role of determining whether the plan meets legal requirements and is "sound" by reference to policy tests in the National Planning Policy Framework (NPPF), and while the 2004 Act's world of "local development schemes", "development plan documents" and "local development documents" can, in theory, allow for relevant policies to be updated as appropriate, the system remains highly unsatisfactory.

What's the problem?

We still do not have adequate local plan coverage: Savills research in May 2019 identified that only 58% of authorities have adopted a plan since the March 2012 NPPF, and many of those are now due for review.

Threats by the government to intervene, where authorities fail to bring forward

plans, have proved to be hollow. Indeed, the only four interventions by the government in relation to the local plan process since March 2012 have been to issue a holding direction to halt the adoption of plans – on three of those occasions at the behest of a member of parliament.

Authorities appear to struggle not just to achieve local member support for plans which properly meet local housing requirements as set out in the NPPF, but also to reflect changes in the government's prescribed methodology for assessing local need, which has been a moving target with further refinements in the offing.

While we no longer have long local plan inquiries, where barristers regularly appeared in order to engage in prolonged cross-examination seeking to introduce omission sites into the plan, the overall process is no swifter. Lichfields published research in January 2019 which found the average examination length since March 2012 has been 18 months!

The government appears to be concerned that inspectors are giving authorities an unnecessarily hard time. The previous secretary of state, James Brokenshire, wrote an open letter to the Planning Inspectorate on 18 June 2019. It stressed to inspectors "who are doing a challenging job" the importance of being "pragmatic in getting plans in place that... represent a sound plan for the authority and are consistent in how they deal with different authorities".

Brokenshire added: "We support and expect Inspectors to work with LPAs to achieve a sound plan, including by recommending constructive main modifications in line with national policy. In this regard I would reiterate the views [of previous minister Greg Clark] on the need to work pragmatically with councils to achieve a sound plan."

However, there are few recent instances of inspectors recommending a plan be withdrawn, or finding it not sound. In fact, it is the pressure on inspectors to be pragmatic that causes plan examinations to take so long, with authorities allowed to provide additional evidence to back up their policy choices and embark on further rounds of consultations as to changes to their proposals, whether or not at the instigation of the inspector.

Green belt issues

It took 37 months from submission of the West Oxfordshire local plan to publication of the inspector's final report. The process in Cambridge and South Cambridgeshire took 28 months. Authorities do have difficulties where their area includes green belt, given the uncertainty as to how the "exceptional circumstances" policy test is to be calibrated as against the extent of unmet local housing need. Welwyn Hatfield's plan was submitted for examination in May 2017. The inspector was not satisfied the council had allocated sufficient housing sites and the council embarked on

a further call for green belt sites for possible release. To the frustration of the inspector, examination will continue for at least another year or so. The inspector examining the Windsor and Maidenhead plan, submitted for examination in January 2018 but similarly becalmed, has expressed equivalent frustrations. The St Albans local plan was submitted in March 2019, following a previous attempt. Already the hearing sessions have been postponed until early 2020, due in part to additional evidence provided by the council on its approach to green belt releases. Fifteen months on from submission of the York plan, after years of delay and disagreements, there is no sign of any hearing.

Justifying strategic allocations of sites for new communities proves equally problematic, with sustainability appraisal needing to examine all "reasonable alternatives". The inspectors examining the West of England joint spatial plan confirmed in a letter dated 1 August 2019 that they are considering recommending withdrawal of the plan, due to concerns as to how the strategic development locations in the plan were selected. The inspector examining the North Essex Authorities section 1 local plan was similarly not satisfied with sustainability appraisal work underpinning identification of three new garden communities.

In many of these examples, the respective parties' positions are frequently shored up by repeated exchanges of counsels' opinions and consultants' technical reports. The nature of the debate is not conducive to the minority of non "experts" around the table. The elongated process often leads to a "feedback loop" where further amendments are then required to keep up with political or market changes.

The aspirations behind the 2004 Act have certainly not been met... yet.