

Planning Reform

Recent and forthcoming
changes

22 May 2023



PLANNING REFORM

DESIGN CODE
PLANNING PERMISSION

GROWTH

RENEWAL

PROTECTION

GARY

Agenda

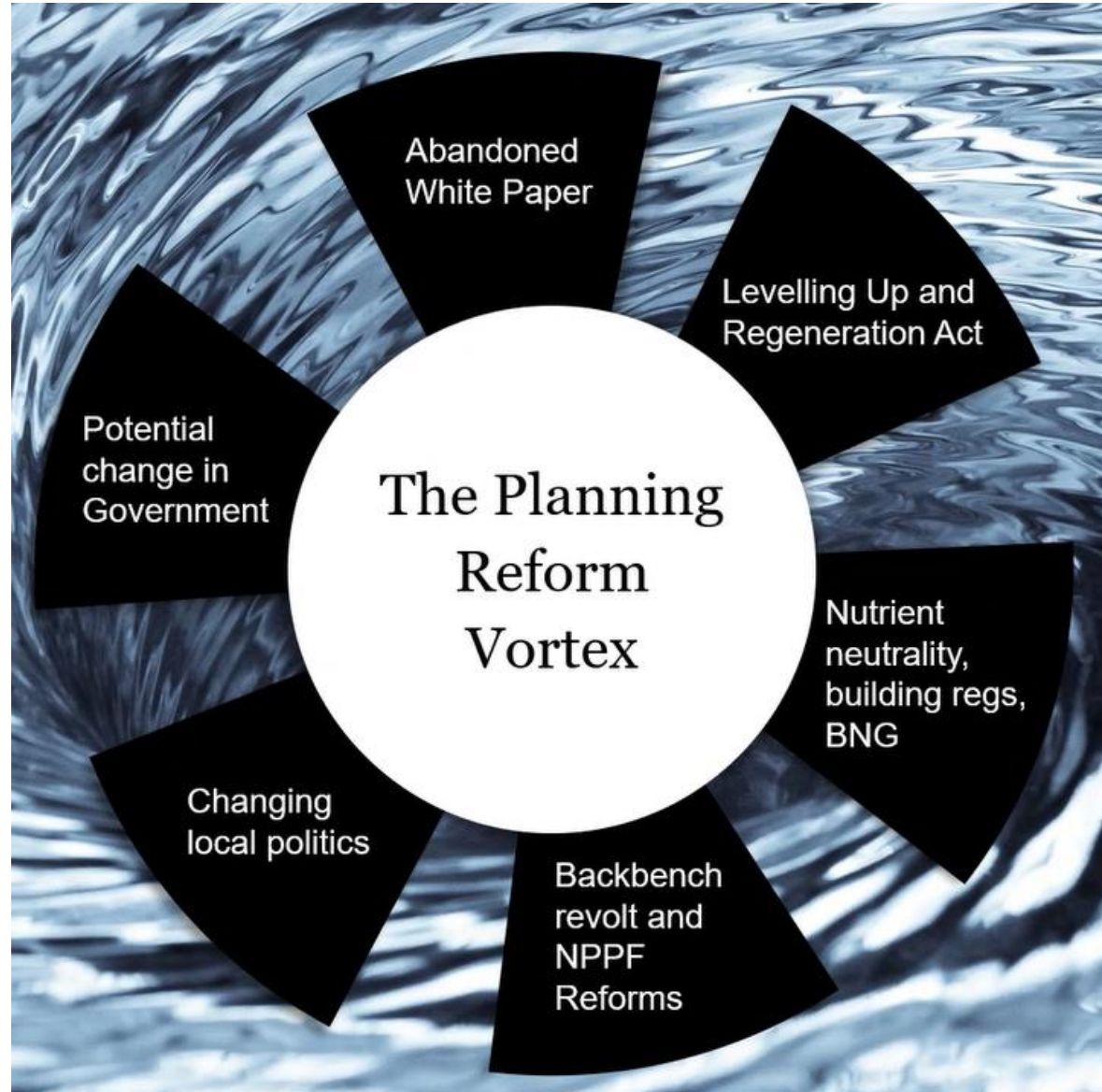
1 Overview of Government's
planning reform agenda

2 Plan-making changes

3 NPPF changes

4 LURA

5 Questions



Many recent changes

Levelling Up and Regeneration Act 2023 (October)

National Planning Policy Framework

December 2023

Ministerial Statements

Most recent December 2023

More Permitted Development Rights

Biodiversity Net Gain – 2024

Flood and Water Management Act

Aviation

Jet Zero, Airspace Modernisation, Noise Action Plans

Most recent changes over the past year or so



Levelling Up and Regeneration Act - 2023

National Model DM Policies
Local Plans
Design Codes
Infrastructure Levy
Environmental Outcome Reports



Planning reform consultations

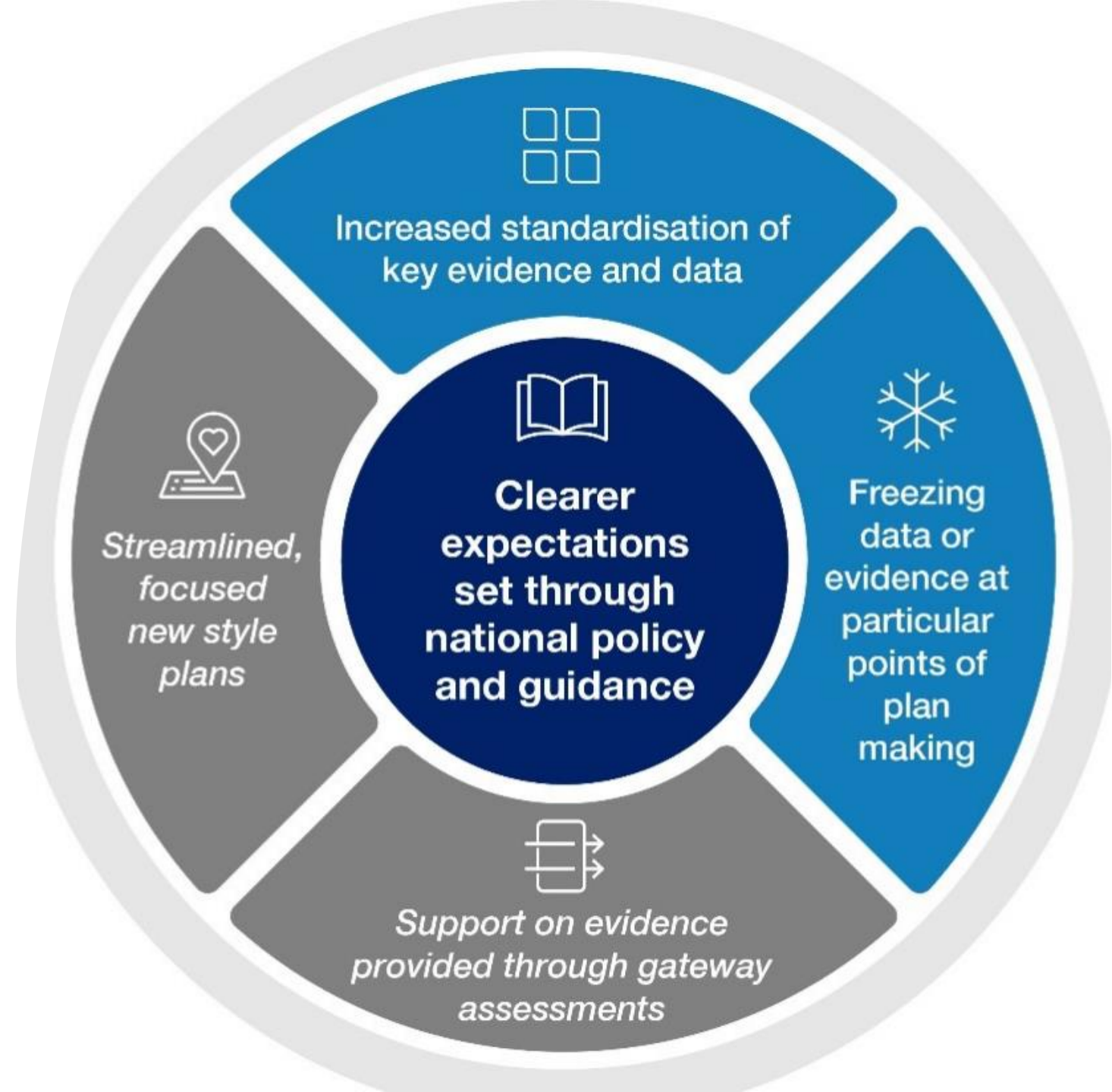




11 key pain points identified through listening to plan making participants

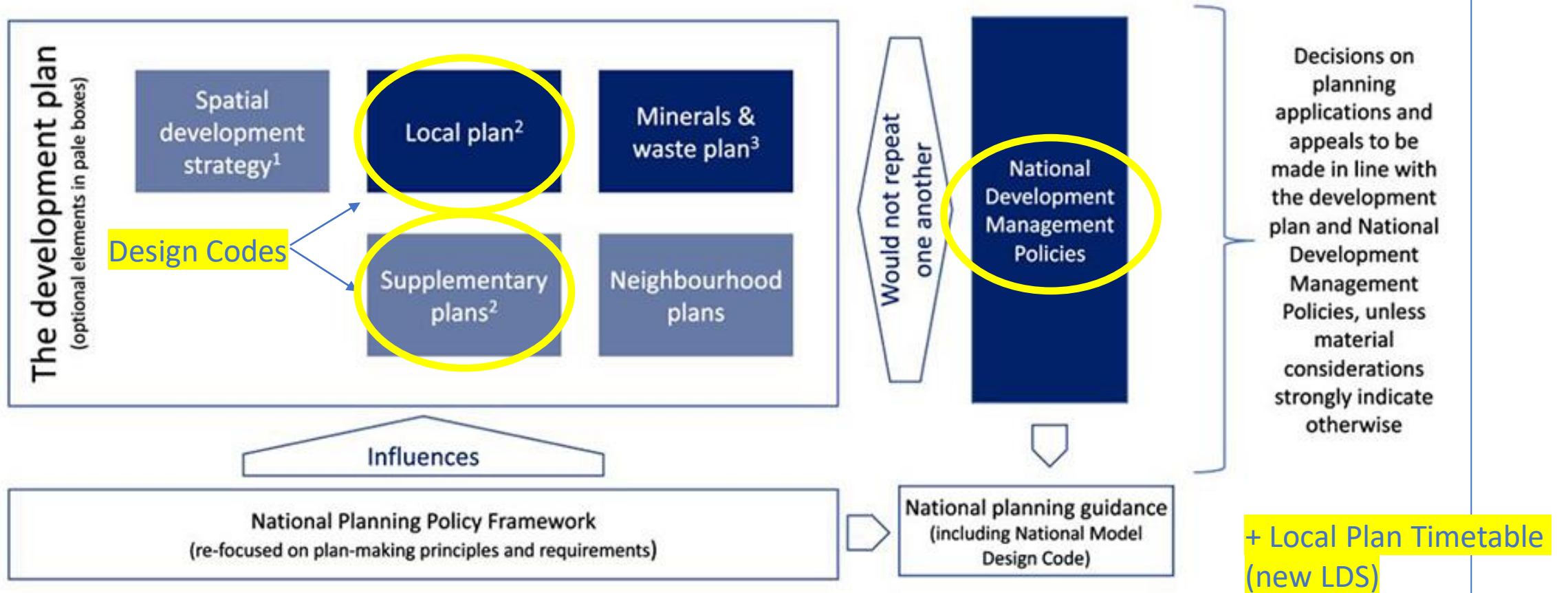
- 1. Lack of guidance on how to make plan** can result in unclear ownership, inconsistencies, and delays.
- 2. Uncertainty about evidence requirements and fear of challenge at examination** can drive overproduction, which leads to delays and puts pressure on time-strapped planning officers.
- 3. Citizens often don't understand Local Plans, and planners don't have capacity/guidance to involve them** resulting in a poor public perception and low engagement.
- 4. Lack of clear communicable timelines and updates** can prevent users from understanding and getting involved.
- 5. Lack of standard formats, terminology, templates** can make Plans inconsistent, time-consuming to develop and hard to use.
- 6. The political nature of the process can be masked** reducing trust as plans are not a true reflection of decisions made.
- 6. Documents are technical, long and contain unnecessary detail** making them hard to use and navigate.
- 7. Plans are usually static and pdf based** meaning they go out of date quickly and are no longer relevant.
- 8. Plans are uncertain and take so long to produce** that they are often out of date, driving development to go a different route.
- 9. Poor monitoring and feedback loops** can mean that plans are not updated and evolve.
- 10. Data is often locked up in pdfs**, making data not accessible or usable.
- 11. Parts of the plan-making process are simply more laborious, repetitive and time consuming than they need to be** (eg reps processing)

- **New Local Plans**



The role of plans and national policy in the reformed system

(elements with full statutory weight in decisions on applications shown in blue)



- 1 Mandatory where SDS powers have been conferred on Mayoral/combined authorities; voluntary elsewhere.
- 2 A **district-wide design code** must form part of the local plan, or else be contained in a supplementary plan. The local plan will also be informed by an **Infrastructure Delivery Strategy**, to be produced by the local planning authority, and by any **Neighbourhood Priorities Statements** produced by neighbourhood planning groups in the area.
- 3 Minerals and waste can be covered in separate documents, and can be combined with the local plan where an authority has powers over both.

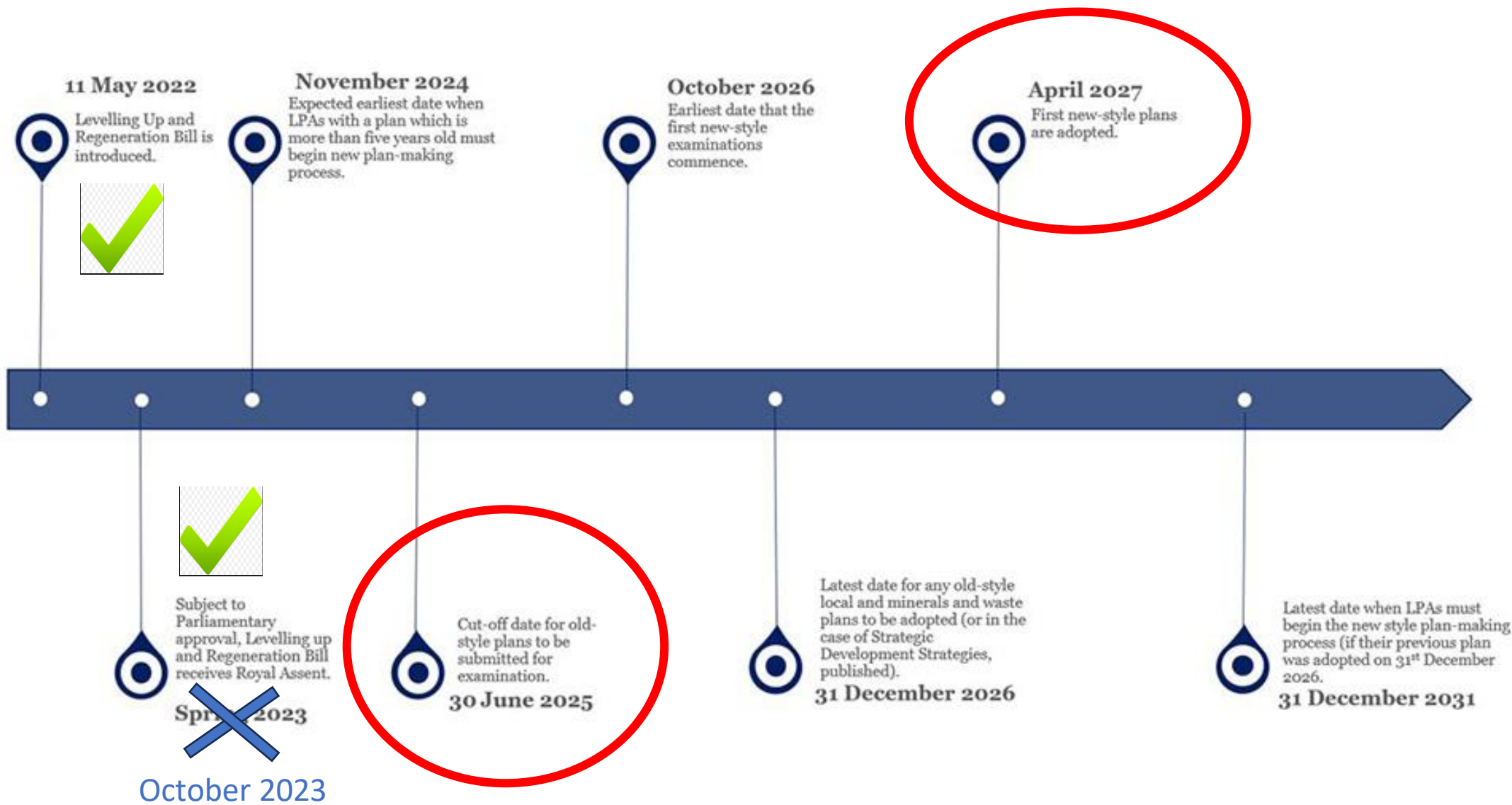
Unknown: duty to co-operate – what is the replacement?

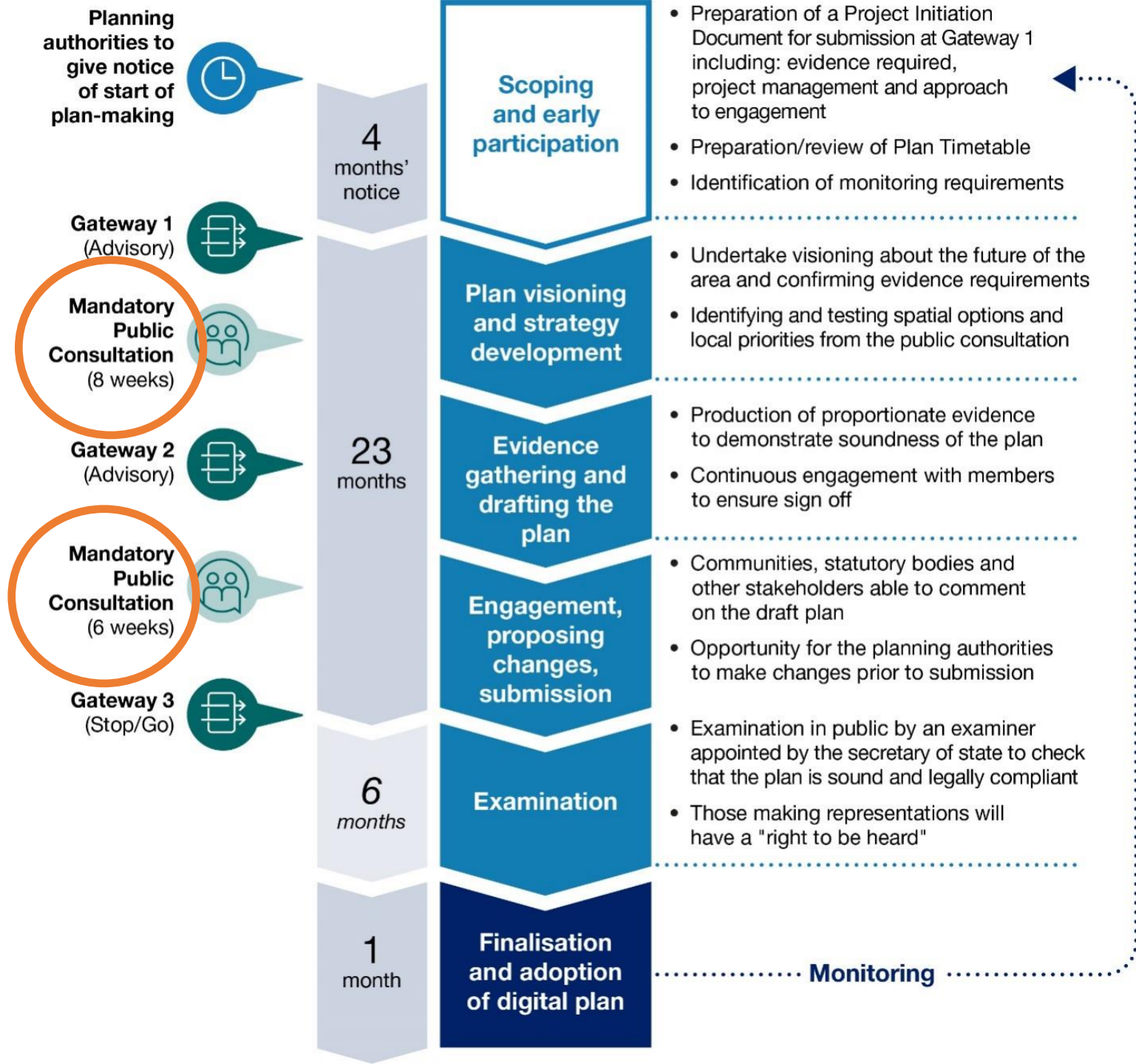
National Development Management Policies – what we know so far

- Consultation and parliamentary scrutiny will be required - unless immaterial, correction or emergency
- SoS and LPA duty to have special regard to the mitigation of, and adaptation to, climate change with respect to policy making
- Three guiding principles for drafting NDMPs were put forward in December 2022:
 - *“Covering only matters that have a direct bearing on the determination of planning applications;*
 - *Limited to key, nationally important issues commonly encountered in making decisions on planning applications across the country (or significant parts of the country); and*

National Development Management Policies – the Government suggests...

- Existing NPPF policies aimed at decision-making would be one category of NDMP
- *“Selective new additions to reflect new national priorities, for example net zero policies that it would be difficult to develop evidence to support at a district level, but which are nationally important.”*
- *“Selective new additions to close ‘gaps’ where existing national policy is silent on planning considerations that regularly affect decision-making across the country (or significant parts of it).”*
- Three gaps/potential topics to develop NDMPs identified by the Government:
 - carbon reduction in new developments (could be a baseline);
 - allotments (or it could go in a wider green spaces policy); and
 - housing in town centres and built-up areas





Current system

Submission deadline:
30 June 2025

Adoption deadline: **31 December
2026**

Future system

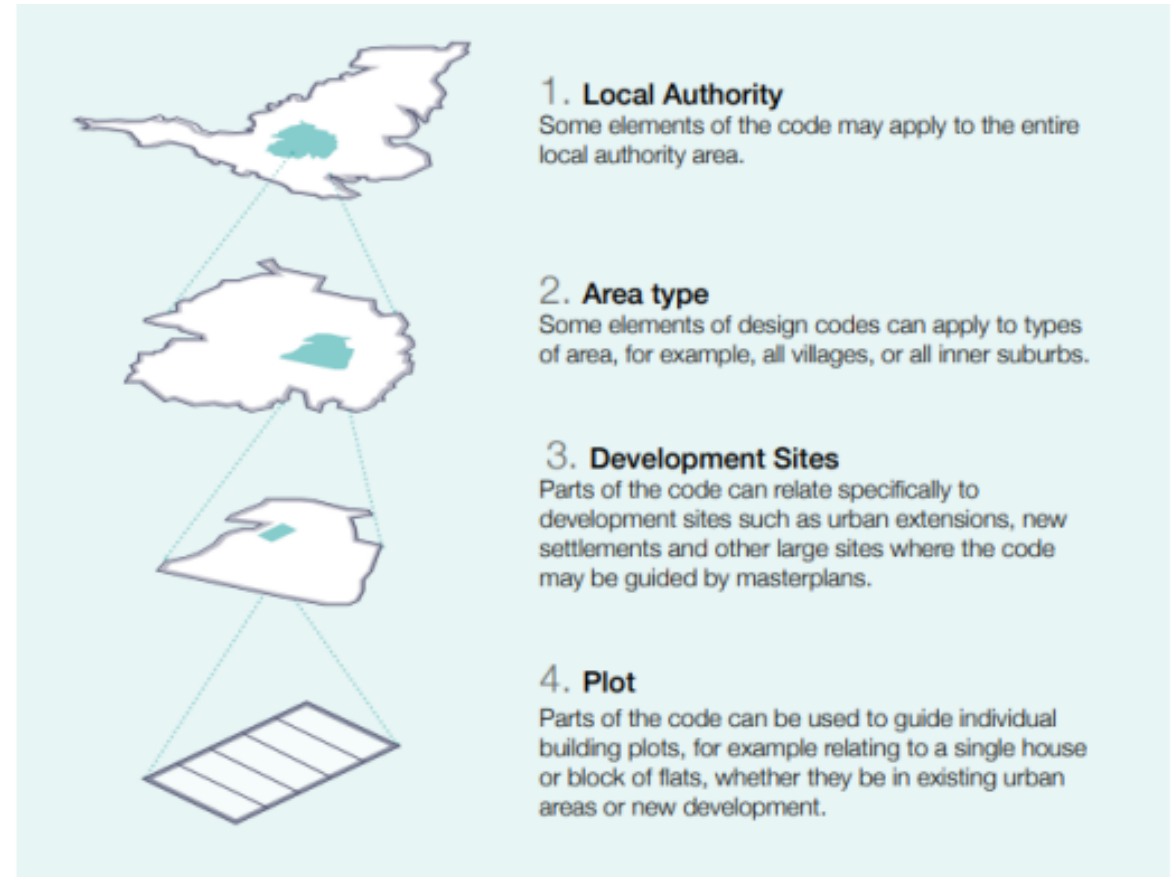
Regs, policy & guidance in place so
plan-making can start: **Autumn 2024**



As yet no details

Compulsory Design Codes – How will they work?

- Builds upon the Planning White Paper and the work of the Building Better, Building Beautiful Commission, and the National Model Design Code
- Each local plan to be accompanied by an area wide design code
- To be adopted as part of the local plan or as a supplementary plan
- Potential for design codes to influence site allocations
- Compliance with design codes to be mandatory
- Design expertise and resource levels in local authorities



The National Planning Policy Framework – December 2023

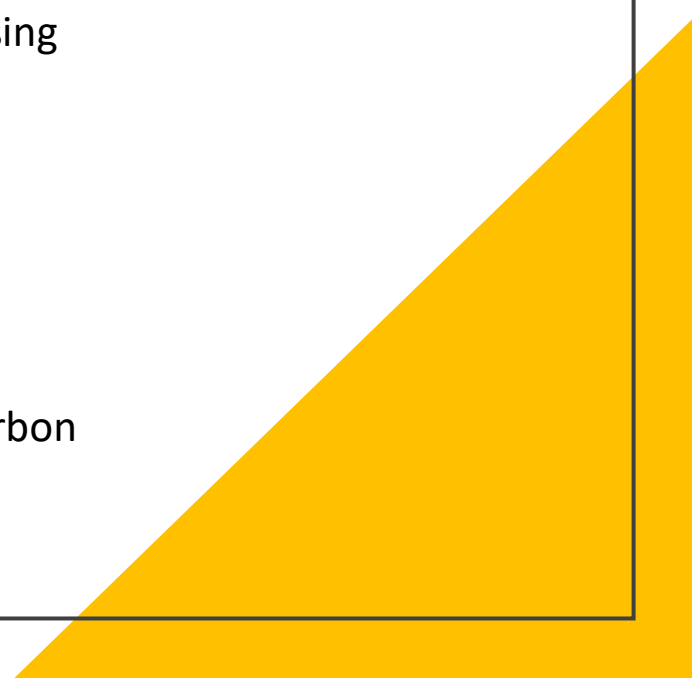
Government says, in the WMS, that the revised NPPF will:

- *“Facilitate flexibility for local authorities in relation to local housing need;*
- *clarify a local lock on any changes to Green Belt boundaries;*
- *safeguard local plans from densities that would be wholly out of character;*
- *free local authorities with up-to-date local plans from annual updates to their five-year housing land supply;*
- *limit the practice of housing need being exported to neighbouring authorities without mutual agreement;*
- *bolster protections from speculative development for neighbourhoods that develop their own plans;*
- *support self-build, custom-build and community-led housing; and*
- *cement the role of beauty and placemaking in the planning system”.*



Photo credit: JPI Media via Yorkshire Post

NPPF Changes

- Green Belt
 - Housing – Standard Method is an advisory starting-point for establishing a housing requirement for the area + changes to housing land supply ‘test’
 - Beauty (well designed) and visual clarity on proposals (images/materials)
 - Character and density (plan making) – appropriateness of “uplifts”
 - Energy efficiency on the adaptation of existing buildings
 - Meeting Older People’s Housing Needs
 - Community-led and self build housing and community-led initiatives for low carbon energy
- 
- A large yellow triangle is positioned in the bottom right corner of the slide, pointing towards the top right. It is partially cut off by the right edge of the slide.

Green Belt

- There is now definitively no requirement to review/amend GB boundaries when plan-making, where it was previously silent (LPA can choose to amend)
 - No longer an implication that not meeting housing need would lead to a Green Belt boundary review, as part of preparing a local plan
 - Plans can be adopted without fully meeting needs and without Green Belt review as GB release doesn't have to be a reasonable alternative.
- **But...** might this approach strengthen the VSC route at application stage, if needs go unmet?

Housing Land Supply

- **NPPF introduces 4 Year Housing Land Supply:** LPAs with an up to date plan (beyond reg 18) with a “policies map” and “allocations to meet a requirement” only need only need to demonstrate a 4-year supply.
- The intention: *“to provide authorities with a strong incentive to agree a local plan, giving communities more of a say on development and allowing more homes to be built”*
- The politics:
 - On the one hand, some LPAs will be able to allocate less land supply in their plans.
 - On the other hand, the Housing Delivery Test still applies, and therefore under delivery could ultimately lead to the presumption in favour of sustainable development applying.
 - The future? – oversupply to be considered in HDT not Local Plan target (likely through a PPG)

Beauty and visual clarity

- Beauty and a requirement for beautiful design components are mentioned in several more places in the revised NPPF – usually alongside other terminology, such as “well-designed”
- Strategic policies should set out an overall strategy for the pattern, scale and design quality of places (to ensure outcomes support beauty and placemaking)
- New wording inserted into policy:

“clear and accurate plans and drawings which provide visual clarity about the design of the development and are clear about the approved use of materials where appropriate”.

Character and Density

- Specifically plan making, not decision making
- When applying pre-existing NPPF policies regarding plan-making for optimisation of land and considering minimum density standard policies for **housing** development, one must now consider whether:

“significant uplifts in the average density of residential development may be inappropriate if the resulting built form would be wholly out of character with the existing area”

- The tests here are clear – ‘may’, ‘significant uplifts’ and ‘wholly out of character’.
- An authority-wide design code that does or will form part of the development plan must provide evidence of when such circumstances might arise
- As before, LPAs should refuse applications which they consider fail to make efficient use of land



<https://www.gov.uk/guidance/when-to-use-the-nppf-density-standard>

Meeting older people's housing need

- Plan-makers must now identify need for housing for older people, including consideration of the type of accommodation likely to be required and reflect it in policies
- Para regarding establishing need amended as per bold text:

*Within this context of establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) those who require affordable housing; families with children; **older people (including those who require retirement housing, housing-with-care and care homes); [...]***



Photo credit: iStock

Written Ministerial Statement:

Local plan interventions

- Government says it will intervene where local planning authorities have failed to put a plan in place.
- Government has identified seven of the 'worst' authorities in terms of plan-making, which have not submitted a plan for examination since 2004: St Albans, Amber Valley, Ashfield, Basildon, Castle Point, Medway, and Uttlesford.
- These authorities were required to publish a plan timetable within 12 weeks of the publication of the new NPPF



LURA

- Tracking and reacting to build out rates
- Commencement and completion notices
- Enforcement
- Information about dealings with land – ownership, options etc
- Applications for permissions not substantially different from existing permission
- CPO
- Locally Led Urban Development Corporations
- Infrastructure Levy
- Environmental Outcome Reports

LURA – information about dealings in land

Part 11 Information about interests and dealings in land – in force, but regulations needed. Consultation closed March 2024.

Part 11 of the Levelling Up and Regeneration Act looks to provide greater transparency on contractual control agreements in England and Wales. When we refer to contractual controls, we are referring to agreements, such as option agreements, that are used to control land short of outright ownership.

The regulations, which the government plans to deliver under the Act, seek to create a dataset comprising the “what”, “where”, “who” and “when” of contractual control agreements that will promote transparency by providing a reliable and accessible source of information for communities, developers, and other stakeholders.

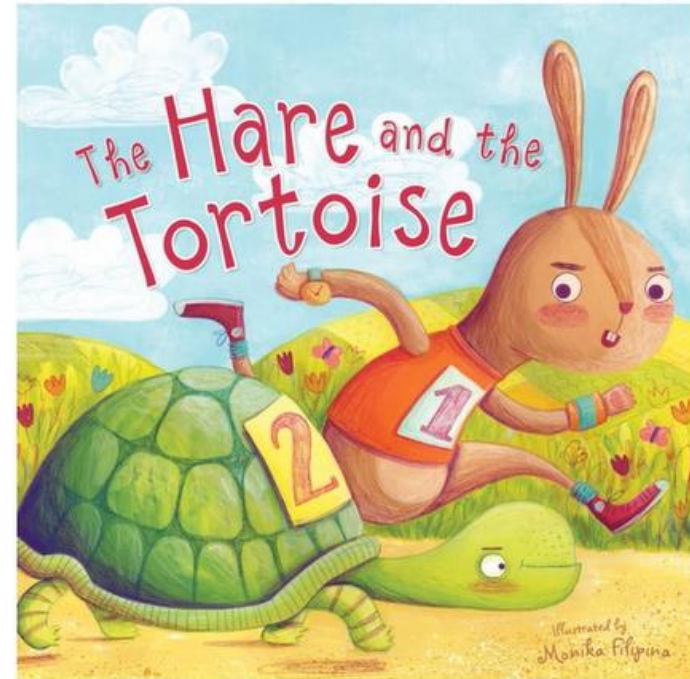
Part 11 INFORMATION ABOUT INTERESTS AND DEALINGS IN LAND

- s. 219 Power to require provision of certain classes of information
- s. 220 The beneficial ownership purpose
- s. 221 The contractual control purpose
- s. 222 The national security purpose
- s. 223 Requirements may include transactional information
- s. 224 Use of information
- s. 225 Offences
- s. 226 Enforcement of requirements
- s. 227 Interpretation of Part 11

*“This Government anticipates collecting information on a range of transaction types for a range of purposes.
i. To meet the 2017 housing white paper land transparency commitment by collecting and publishing data on contractual arrangements used by developers to control land, such as rights of pre-emption, options, and conditional contracts”.*

Tracking of and reacting to build out rates

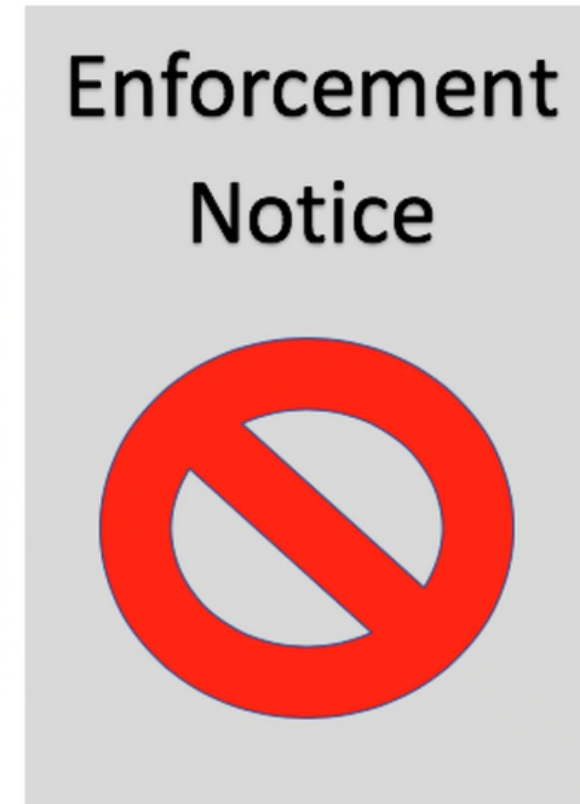
- Powers for LPAs to decline to determine applications in cases where it is shown the developer has a history of non-implementation – another development is “unreasonably slow”
- Developers must provide LPAs with a progress reports
- Power to make regulations in force
- Government publishing data on developers of sites over a certain size
- National policy may state that proposed delivery trajectory is a material consideration in planning applications, such that applications with trajectories that propose a slow delivery rate may be refused in certain circumstances
- A separate consultation on proposals to introduce a financial penalty against developers who are building out too slowly is anticipated



LURA enforcement provisions commencing soon

Several new provisions will come into force from 25th April 2024, including:

- Period for taking enforcement action is to be extended to ten years in all cases, subject to transitional provisions – currently four years for operational development and for change of use to single dwelling
- fines payable for non-compliance with a breach of condition notice or for non-compliance with a section 215 notice will be increased
- can issue temporary stop notices that have effect for up to 56 days – currently up to 28
- will not be permitted to appeal against an enforcement notice if permission was previously refused for the relevant development within the last two years
- provisions allowing the Secretary of State to dismiss appeals if the appellant is judged to be causing undue delay in the progression of an appeal



New Section 73B – “Applications for permission not substantially different from existing permission”

- Live consultation on its application in practice and relationship with S73
- Will be the preferred route to vary an existing planning permission for making non-substantial changes to decisions
- This includes the description of development
- Only permitted if the LPA is satisfied that the changes will not create a substantially different effect from that of the existing permission
- The “not substantially” test will not be set out in prescriptive guidance – local judgment needed
- Cannot amend s73 permissions – but can take account of them
- Government hopes that it might address Hillside/Dennis issues – doubts about this



<https://iStock.com/illustration/success-plan-b-strategy-business-882592/>

Planning data

- LPAs will need to comply with specific technical data standards
- It includes any data collected or processed by the LPA for any purpose relating to planning or development in England
- If an applicant fails to comply with the requirement to submit data in accordance with the approved standard the LPA can reject the submission
- Aim is to make it easier for individuals to access and for public authorities to share information.

```
each: function(e, t, n) {
  var r, i = 0,
      o = e.length,
      a = N(e);
  if (n) {
    if (a) {
      for (; o > i; i++)
        if (r = t.apply(e[i], n), r === !1) break
    } else
      for (i in e)
        if (r = t.apply(e[i], n), r === !1) break
    } else if (a) {
      for (; o > i; i++)
        if (r = t.call(e[i], i, e[i]), r === !1) break
    } else
      for (i in e)
        if (r = t.call(e[i], i, e[i]), r === !1) break;
  return e
},
trim: b && !b.call("\ufeff\u00a0") ? function(e) {
  return null == e ? "" : b.call(e)
} : function(e) {
  return null == e ? "" : (e + "").replace(C, "")
},
makeArray: function(e, t) {
  var n = t || [];
  return null != e && N(Object(e)) ? x.merge(n, "string" == typeof e ? [e] : e) :
},
isArray: function(e, t, n) {
  var r;
  if (t) {
    if (n) return e.call(t, e, n);
    for (r = t.length, n = n ? 0 > n ? Math.max(0, r + n) : n : 0; r > n; n++)
      if (n in t && t[n] === e) return n
  }
}
```

- Streamlining **compulsory purchase powers** to give local authorities clearer and more effective powers to assemble sites for regeneration and make better use of brownfield land
- a new type of **locally-led Urban Development Corporation**, with the objective of regenerating its area
- **High street** flexibilities – pavement licensing and ‘high street rental auctions of selected vacant commercial properties’

Infrastructure Levy

LURA provisions broad and similar to CIL primary legislation

Current (draft) design of secondary legislation:

- Would include affordable housing contributions – and right to require on site
- To be introduced very slowly
- The IL rate is a percentage of the final development value
- No charge for development value under a certain threshold
- Rates and thresholds can vary – set in the same way as a CIL schedule
- Calculated around the point of completion/sale
- Estimated on submission and on commencement
- MCIL retained in London
- CIL retained in Wales



Lee Rowley



Conservative

North East Derbyshire

 Commons

Answered on

14 November 2023

The Levelling Up and Regeneration Act introduces powers to create the new Infrastructure Levy which aims to generate more funding for infrastructure, such as GP surgeries, to mitigate the impacts of new development.

The Act includes provisions to require local authorities to prepare Infrastructure Delivery Strategies which will set out the strategy for delivering infrastructure and spending Levy proceeds. The Act also enables authorities to require the assistance of infrastructure providers, including Integrated Care Bodies, in devising these strategies and development plans.

We have committed to consult further on the design of the Levy, before we draft regulations.

Observations

Government is **reasserting and enhancing the status of local plans** at the heart of the planning system.

Positive measures

- Digitising the planning process
- Enhanced status for local plans and a more streamlined plan-making process
- Simpler neighbourhood planning statements
- Stronger powers to drive developers to build out e.g. commencement and completion notices
- Stronger enforcement powers
- New powers to set up development corporations outside mayoral areas

But ... devil in the detail and much of the detail is still to come...

Concerns

- More PD rights – economic impacts; unsuitable new homes
- New Infrastructure Levy (IL)
- LPA resources
- Missed opportunity to strengthen policy on climate change

More thought needed

- Replacing the Duty to Co-Operate with a more 'flexible' arrangement



Questions?