

Consultation Response to “Planning for the Future”

Introduction

1. This is the response of the Environmental Law Foundation (“ELF”) to the government’s consultation paper “*Planning for the Future*”.

About ELF

2. ELF is a charity registered in England and Wales (no. 1045918 and company no. 02485383). Our current President is HRH The Prince of Wales.
3. We help the voice of ordinary people and communities to be heard on matters affecting the environment in which they live. We do this by providing free information and guidance in-house on environmental issues for individuals and communities, also through our university-based law clinics, and via our network of specialist environmental lawyers and technical experts.
4. Through our work, we have a unique insight into how local voices are heard in the planning system. Most of our clients are drawn from local community groups who want assistance participating in planning decision-making.

Summary of ELF’s position

5. In summary, ELF’s key points in response to the consultation are as follows:
 - (i) ELF is deeply concerned by several of the proposals set out in *Planning for the Future*. We are particularly worried about proposals to water down the requirements (at both the Local Plan and individual application level) to carry out important environmental assessments such as under the EIA and Habitats Regulations. In our view, any such watering down would be a clear breach of the government’s promise of a ‘Green Brexit’, where [“not only will there be no abandonment of the environmental principles that we’ve adopted in our time in the EU but indeed we aim to strengthen environmental protection measures and to create new mechanisms to incentivise environmental improvement.”](#)
 - (ii) We are also concerned about the proposal to prevent local people from participating in the planning system at the individual planning application level. In our considerable experience working with local people, the majority feel like their voices are *not heard enough* under the current system. Communities already feel alienated and discouraged by a perceived lack of

local democracy in planning: any reforms should seek to combat this problem, not make it worse. However, we understand that the purpose of these proposed changes is to “fast-track” the planning process by removing a crucial layer of local democracy. We simply cannot support changes to the planning system which reduce community participation and local democratic oversight of planning applications.

- (iii) ELF also has concerns about the increased use of digital technology in the planning system. If digital technology becomes a substitute for local community attendance in person, rather than merely an additional alternative, in our view this would be a retrograde step. It would effectively shut out people who do not have access to the required technology. Moreover, we cannot see how an increased reliance on digital technology could be achieved without a commensurate increase in local authority budgets to cover the additional expense.
- (iv) ELF firmly refutes the suggestion that planning decisions are currently being made that are unduly influenced by those from outside the community- at the Local Plan examination level or the individual application level. This simply does not reflect our considerable experience working with local community groups.

General remarks

Local Plan Examinations

- 6. ELF through its work understands that communities rarely know about, or engage with, the complexity of the Local Plan system. The majority of ELF enquiries and cases relate to individual planning applications. One of our key concerns is that under these proposals, by failing to engage with the Local Plan process local communities will miss out on any further opportunities to have their say about development in their area.
- 7. Approximately 60% of ELF’s enquiries are made by local people seeking assistance on planning applications where there are environmental issues, and from people seeking to challenge bad environmental decisions. **This is the stage at which local people in the vast majority of ELF cases become aware of local land development proposals.** They only become aware of an application when they see a planning notice, or they receive the planning application notice giving them the statutory 21 days to respond.
- 8. By removing this layer of democratic accountability for local people, these proposals will also remove the ability of local people to challenge bad



environmental decisions at the individual application stage. Local people will only be left with the option of challenging the Local Plan. And in our experience, the Local Plan process already presents significant barriers to local community involvement.

Case Study: Local Residents' Association participation in Local Plan Examination

In one current Local Plan Examination, ELF are assisting a local residents' group who are the only voice for local people in the entire examination process.

Our group put in a response to all the draft plan consultations: but when it came to the preparation for the examination, they did not receive notification as the electronic communication was sent to the wrong address. Thus the group did not know about the dates and sessions for the examination. When they finally found out about the dates, they were a month out of time, and had a real battle to be included at the examination stage.

Fortunately, the particular PA to the Inspectors has a reputation for encouraging participation by communities, and she bent over backwards to have our group included in the examination sessions. Our barrister said this is particular to this individual at PINS, and certainly is not his usual experience.

9. The above case study shows that even with legal representation and a sympathetic ear at PINS, it is a struggle for local residents to be effective at Local Plan examinations.
10. In our view, local authorities and PINS require more guidance (and, crucially, more funding) to ensure that local groups can effectively participate in Local Plan examinations, particularly without the benefit of legal representation.

The value of local democracy and participation

11. Local people with local knowledge play a crucial role in ensuring good decision-making at the individual application stage. Their local knowledge and historic memory are vital: they might e.g. know that there are protected species at a site, or remember the contamination of land that took place decades ago, long before records were properly kept.

Case study: Contaminated Land

One example where local memory proved to be a crucial factor in a planning decision can be found on our website here: <https://elflaw.org/past-cases/homes-on-contaminated-site/>.

In this case, an application recommended for approval was refused at Committee for concerns over previous serious land contamination.

The appeal was eventually lost at inquiry, as the Inspector found local people's knowledge of past contamination compelling, and that the applicant had not done enough to deal with those concerns.

If not for the local community knowledge of past land contamination, the development could have gone ahead – with serious impacts to human health.

Streamlining consultation at the application stage

12. ELF notes there is not a specific consultation question on this proposal. ELF also notes the assertion that current consultation requirements *“add delay to the process and allows a small minority of voices, some from the local area and often some not, to shape outcomes.”*
13. ELF has seen few examples where people from the outside area have responded to an individual application: we can recall only one example, and that was in support of the application in question.
14. ELF works at a grassroots level, and whilst we acknowledge there are campaigns against particularly damaging major infrastructure proposals which may attract wider than local objection, for ELF that is not the reality of our grassroots community experience with respect to individual planning applications. If the application is not a major project such as a power station or airport expansion, there is little reason why outside campaigners would bother to submit objections- and even less reason why their voices would attract much weight.
15. Further, in ELF's experience it is dismissive to state that a “small minority of voices” effect outcomes. Those “small minority of voices” are usually the impacted community, who in ELF's experience bring historical memory and a valuable understanding of the local environment in which they live. ELF maintains that encouraging active participation in planning applications from amongst the local community adds value, and ultimately leads to better decisions.



Net Zero

16. ELF welcome the government's commitment to "*facilitate ambitious improvements in energy efficient standards for buildings*" to help meet net zero by 2050. ELF has a current campaign on this which can be found here: <https://elflaw.org/news/the-climate-crisis-cant-wait-what-neighbourhood-and-local-plans-can-do-to-help-by-ruth-mayne-local-resident/>

Enforcement

17. ELF welcomes the reference to moving towards a greater enforcement-based rules system. Local people in ELF's experience are constantly let down by a lack of enforcement in the planning system.

Judicial review

18. Finally, ELF views judicial review as an essential means of ensuring that lawful, robust, and environmentally sound decisions are reached by public bodies. We have responded separately to the consultation on the Independent Review of Administrative Law, but we note that the availability of judicial review as a remedy of last resort is inextricably tied to the question of the overall efficacy of the planning system.

Response to individual questions

19. These are ELF's responses to the specific consultation questions in *Planning for the Future*. We only answer questions which are directly within our expertise and/or which we have a firm view on.

Questions 1-2.

20. ELF considers these questions are aimed at individuals and accordingly does not respond to these questions.

Question 3: "Our proposals will make it much easier to access plans and contribute your views to planning decisions. How would you like to find out about plans and planning proposals in the future?"

21. In our experience many local communities find out about planning applications and planning decisions at a late stage in the process. We consider there should be no "watering down" of existing publication requirements, and that the move



toward digital publication does not allow a move away from advertising in the local newspaper and on-site.

Question 4: “What are your top three priorities for planning in your local area?”

22. ELF’s key propriety is the protection of the environment: but we also highly value community participation in local decision-making, which we note is not listed in the examples given for this question. In our view the planning process is part of our local democracy, and local decision making will be improved by proper and effective participation by local people in the planning system.

Question 5: “Do you agree that Local Plans should be simplified in line with our proposals?”

23. No. We do not agree that Local Plans should be simplified such that development in certain areas is “in principle” acceptable. We consider that permission should continue to be granted at an individual application level, allowing for local democratic participation and a full consideration of site-specific environmental concerns.

Question 6: “Do you agree with our proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally?”

24. No. In line with our commitment to local democracy, we do not believe the case has been made to reduce local flexibility in the content of Local Plans. What is appropriate in one area may be inappropriate in another: and that should be for the local community to decide. Proposals to centrally standardise policy for Local Plan-making means that local planning policy will in some respects no longer be able to reflect local circumstances.

Question 7a: “Do you agree with our proposals to replace existing legal and policy tests for Local Plans with a consolidated test of “sustainable development”, which would include consideration of environmental impact?”

25. No. We do not see the case for the “streamlining” of the existing Local Plan examination system. The test of “sustainable development” is a question for the individual application stage, taking into account all the site-specific circumstances. There will simply not be enough time to consider all those factors at the Local Plan stage: and it requires such detailed consideration before it can be said that development in a particular location is sustainable.



Question 7(b): “How could strategic, cross-boundary issues be best planned for in the absence of a formal Duty to Cooperate?”

26. We have seen no justification for the abolition of the formal Duty to Cooperate. It is hard to see what justification there could be, as it is very important that local authorities co-operate on cross-boundary planning and environmental issues.

Question 8(a): “Do you agree that a standard method for establishing housing requirements (that takes into account constraints) should be introduced?”

27. No. We consider this a further example of centralising control of the planning system and removing local democratic input into the amount of development that is sustainable for an area.

Question 8(b): “Do you agree that affordability and the extent of existing urban areas are appropriate indicators of the quantity of development to be accommodated?”

28. ELF has no strong views on this question.

Question 9(a): “Do you agree that there should be automatic outline permission for areas for substantial development (Growth areas) with faster routes for detailed consent?”

29. No. In particular, ELF has grave concerns over the government’s zoning proposal and the suggestion that there will be no environmental assessments for the Growth and Renewal Areas. A watering-down of environmental protections would be a disaster for the UK, and clearly contrary to previous government promises about a Green Brexit with no reduction in EU environmental standards.

Question 9(b): “Do you agree with our proposals above for the consent arrangements for Renewal and Protected areas?”

30. No- see question 9(a) above.

Question 9(c): “Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime?”

31. ELF has no strong views on this question.



Question 10: “Do you agree with our proposals to make decision-making faster and more certain?”

32. No, because as per our answer to Question 5 above, this would be at the expense of local democracy and local environmental considerations.
33. ELF is concerned by the reference to “*unnecessary assessments and requirements that cause delay and challenge.*” Habitats and EIA assessments are crucial environmental protections which should be maintained, in line with the government’s commitments not to water down environmental law post-Brexit.
34. As for digitalisation, which is suggested as a route to faster decision-making – see our concerns below regarding potential equality impacts.

Question 11: “Do you agree with our proposals for accessible, web-based Local Plans?”

35. Yes, insofar as this does not involve a watering down of existing ways of accessing Local Plans.

Question 12: “Do you agree with our proposals for a 30 month statutory timescale for the production of Local Plans?”

36. No, to the extent that this could be used as a justification for ignoring local voices in order to speed up the process.

Question 13(a): “Do you agree that Neighbourhood Plans should be retained in the reformed planning system?”

37. Yes. ELF considers Neighbourhood Plans are an important and underused feature of the planning system, which are not currently given enough of a role.

Question 13(b): “How can the neighbourhood planning process be developed to meet our objectives, such as in the use of digital tools and reflecting community preferences about design?”

38. Neighbourhood Plans must always be a community-led process, and we are concerned that the requirements of digital tools might provide a barrier to the production of Neighbourhood Plans by local communities. We are also concerned that Neighbourhood Plans might be sidelined under a centralised national scheme of the kind proposed in this Paper.



Question 14: Do you agree there should be a stronger emphasis on the build out of developments? And if so, what further measures would you support?

39. In ELF's view the planning system is not a significant barrier to building new homes: many developers simply do not build the homes for which they have obtained planning permission. Rather than making it easier to obtain planning permissions which may never result in suitable, sustainable housing, the government should instead place a greater emphasis on increasing the supply of council housing. In particular, Local Authorities should be empowered to build and retain additional council houses, in partnership with the local community and in accordance with sustainable design principles.

Questions 15-16.

40. ELF considers these are questions for individuals responding.

Question 17: "Do you agree with our proposals for improving the production and use of design guides and codes?"

41. In our view the production of local design guides and codes should be community-led. We have had success helping local communities draft policies on sustainable design, which should be an important part of any design guide.

Question 18: "Do you agree that we should establish a new body to support design coding and building better places, and that each authority should have a chief officer for design and place-making?"

42. See our answer to question 17 above. Again, in our view the focus should be on sustainable design.

Questions 19-20 (Design and beauty).

43. ELF has no strong views on these questions, other than the trite point that what is "beautiful" to an expert might not be beautiful to the local community.

Question 21.

44. ELF considers this is a question aimed at individuals.

Question 22(e)-(d), 23, 24(a)-(d), and 25 (CIL replacement).

45. ELF has no strong views on these questions.



Question 26: “Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?”

46. We are concerned about the potential consequences of the increased use of digital technology in the planning system. In 2019 the ONS reported that 5.3m people do not have internet access in their homes: mainly vulnerable and disadvantaged groups, including the disabled and elderly. We worry that such groups might be excluded from the planning process if digital participation is deemed to be an adequate substitute for in-person participation. It is not.