

The Z word

Should we adopt a Zone based approach to development consenting? asks Simon Ricketts

Aren't we bored now with Zoom meetings? They are no substitute for the real thing. But there is another topical Z word. Should we adopt a Zone based approach to development consenting? Again, is this any substitute for the real thing?

The Government seems to have determined that it has a once in a lifetime opportunity, to (according to Robert Jenrick) "rethink planning from first principles" with a shake-up designed to accelerate the process. "The time has come to speed up and simplify this country's overly bureaucratic planning process," he said last month "This government is thinking boldly and creatively about the planning system to make it fit for the future." (England's planning system set for shake-up *Financial Times*, 10 June 2020). And you may ask yourself, well: How did I get here?

Go back to the *Policy Exchange's paper Rethinking the Planning System for the 21st Century* (27 January 2020): "The Government should announce a clean break with the land use planning system introduced in 1947 that largely continues in the same form today. This reform programme should focus on the following issues:

- Ending detailed land use allocations. The planning system should not try to systematically control what specific activity can take place on individual land plots based on fallacious projections of housing and commercial 'need'. Local planning authorities have proved ineffective and inefficient at micro-managing land markets. In this regard, the supply of new homes, offices and other types of land use should no longer be capped by local planning authorities in local plans or by site allocations.

- Introducing a binary zonal land use planning system. Land should be zoned either as development land, where there is a presumption in favour of new development, or non-development land, where there is not a presumption and minor development is only possible in more restricted circumstances. Land zoned as development land will include existing urban areas and new urban extensions made possible by infrastructure improvements. In this new system:

- Zones should, in general, have no reference to what specific land uses are allowed on individual private land plots. Market conditions should instead determine how urban space is used in the development zone. Land and buildings in the urban area would then be able to change use without requiring the permission of the state (as long as rules on separating certain harmful uses are not broken, as detailed below).

- Zonal designations should be separate from any concept or calculation of 'need'. Instead, they should be dependent on metrics that determine whether land has good access potential, whether new development would cause environmental disturbance; and the potential for an existing built development to expand. Zones should be updated on an ongoing basis and would need to be

periodically reviewed by the Planning Inspectorate.

- These proposals do not negate the need to separate certain harmful uses that have a negative impact on neighbours, for instance a quarry next to a children's play park. Nor do the proposed reforms negate the need to protect certain uses, for instance for their natural or heritage value. These incompatible and protected uses should be clearly defined in the local plan."

In February 2020 co-author Jack Airey became no 10's housing and planning special advisor.

Robert Jenrick publishes his pamphlet *Planning For The Future* (12 March 2020), setting out a range of proposals which are to form the basis of a Planning White Paper, then promised for Spring 2020 but now of course delayed.

The pamphlet picks up on some of the themes of the Policy Exchange work and particularly on the Z word, but in more cautious terms: "Expand the use of zoning tools to support development – the government will outline further support for local areas to simplify the process of granting planning permission for residential and commercial development through zoning tools, such as Local Development Orders. The government will trial the use of templates for drafting LDOs and other zonal tools to create simpler models and financial incentives to support more effective use. The government has also launched a consultation on a new UK Freeport model, including on how zoning could be better used to support accompanying development."

(I comment on the proposals in my 21 March 2020 blog post *What To Do?*).

So what is actually happening? In a House of Lords debate on 8 June 2020, there was this exchange: "Baroness Wilcox of Newport (Lab) [V]

I declare my interest as noted in the register. Can the Minister confirm the reports across the weekend media that the Government are intending to take planning decisions away from councils and give them to development corporations? This is extremely concerning after recent developments in Tower Hamlets, which resulted in the developer not having to pay between £30 million and £50 million in the community infrastructure levy?"

Lord Greenhalgh: "The situation at the moment is that there is a planning commission that has started under my right honourable friend Chris Pincher, the planning Minister. I cannot make any further comments about what the noble Baroness has read in the media."

There is nothing else in the public domain about this "planning commission", although of course, as referred to in this exchange, there has been much speculation in the media. Back to that 10 June FT piece:

"Downing Street has set up an advisory panel that includes Bridget Rosewell, the national infrastructure commissioner who >>>



Simon Ricketts is a Partner in Town Legal LLP

Rethinking the Planning System for the 21st Century

Policy Exchange

Jack Airey and Chris Doughty
Foreword by Professor Edward Glaeser



recently headed a review into accelerating planning appeal inquiries, property developer Sir Stuart Lipton and barrister Christopher Katkowski.

The other members are Nicholas Boys Smith, founder of Create Streets, co-chair of the Building Better, Building Beautiful Commission, and Miles Gibson, head of UK research at advisory group CBRE."

The piece speculates: "Ministers hope that the reforms can be agreed in time for a wider economic announcement in July by Rishi Sunak, the chancellor, which will also include extra infrastructure spending."

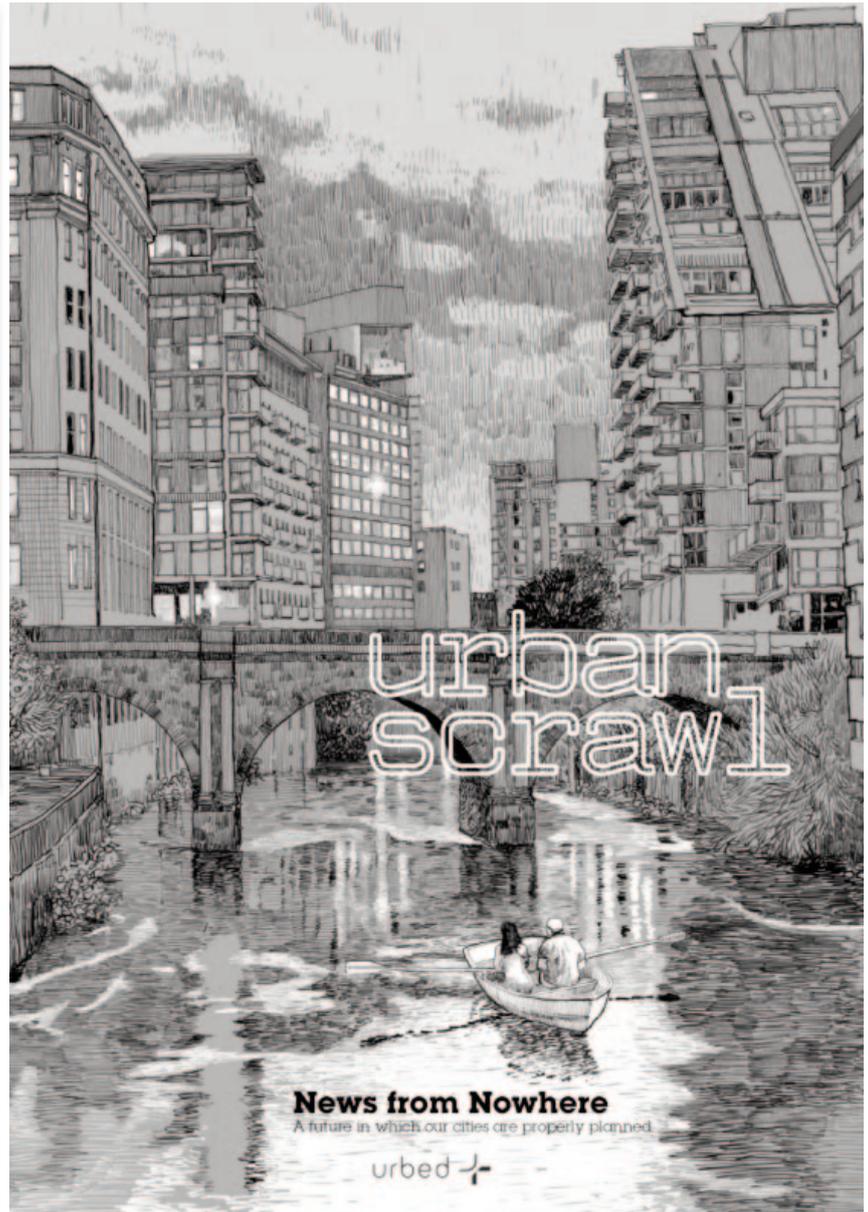
If we are talking about fundamental changes to the planning system, of course reforms cannot be "agreed" in time for July. But might we expect this delayed Planning White Paper by then? I suspect that separately and ahead of the white paper we will see legislation in relation to shorter-term responses to the current crisis, including the extension of planning permission time limits and changes to PD rights.

In the meantime, the think tank onslaught continues. The prompt for the 10 June FT piece was the publication by the Policy Exchange of a series of essays: *Planning Anew: A collection of essays on reforming the planning system for the 21st century*. There are pieces by Bridget Rosewell CBE, Professor Robert Adam, Charles Dugdale, Warwick Lightfoot, David Rudlin, John Myers, Jamie Ratcliff, Reuben Young, Dr Sue Chadwick, William Nicolle and Benedict McAleenan.

The essays are diffuse in their themes and I would be wary of drawing too much from them.

There are some eye-catching comments from Bridget Rosewell: "It's clear that we can't stop humans planning, or probably being planners. But we must abolish the Plan as a shibboleth, a straitjacket and an industry.

"Abolishing the current planning edifice does not remove the



need for frameworks for permissions. Tensions still exist and must be resolved. My review of Planning Inquiries showed that they could be done twice as fast just by applying sensible rules, most of which already existed, to manage the process. Other planning disputes are often also resolvable without having a complicated set of rules including local plan preparation and examinations in public."

Urbed's David Rudlin's contribution, *News from Nowhere: the future of planning and cities*, addresses zoning full-on. It is a fantasy piece, looking back from a 2050 utopia that had been delivered in part by a change to a zoning system in 2020. To give you a flavour:

"Clara and William transferred to a water taxi, heading down the Irwell, canyoned by the towers of Manchester and Salford that William remembered being thrown-up in a brief moment of madness in the late 2010s. As they passed into the Ship Canal, Clara explained that the new spatial planning system had allowed for the much more balanced growth of the conurbation. The inner areas of Manchester and Salford had been developed with mid-density neighbourhoods of housing, apartments and workspace >>>

resembling the cities of continental Europe. Higher density nodes, like those he had seen from the train, had been promoted around transport interchanges and local centres. There were still plenty of suburbs, of course, like the one where Clara lived with her family that they would visit later, but the overall structure of the conurbation made much more sense and was far more sustainable.

This had happened as a result of the new planning structure introduced in 2020. It had been based on a three tier system that >>> had finally given some clarity to the way that the country had been planned, as well as rejuvenated the role and status of planners like Clara. The top tier was a National Spatial Plan, the middle was City Region / County Spatial strategies and the third was district-level zonal coding plans, but more of that in a moment"

The piece (and indeed the interesting debate about it when David Rudlin guested on *Have We Got Planning News For You* on 18 June 2020) illustrates the problem with the current debate, because surely what is contemplated (and flagged in March by Robert Jenrick), whilst no doubt "radical", is not an across-the-board move to a system of comprehensive zoning plans – and so there is the risk that we all have a theoretical debate in one side of the room and fail to engage with the more practical reality that may be emerging across the way. I sensed the same impractical utopianism in another think tank piece just published: *Planning for the future: How flexible zoning will end the housing crisis* (Anthony Breach, Centre for Cities, 19 June 2020).

Because the real debate is not a straight-forward one. How can we focus so much on the Z word before considering:

- what are the Government's policy objectives, and how does it prioritise as between them?
- in which ways does the Town and Country Planning Act system play its part in meeting those objectives?
- in what ways can the operation of the existing system be improved and in what ways are changes required, so as not just reflect current policy objectives but as a resilient engine to be applied towards whatever may be future political priorities? Or is the idea to lock the engine into a specific political direction?
- how do we guard against unintended consequences and against new blockages forming, if for instance the stress point between the potential for profit and the restriction on certain forms of development moves exclusively to the process of arriving at the zoning plan or scheme? That stress point is where there is the potential for delay, political difficulties and legal challenge. (In our present system of course we have multiple stress
- to what extent would a form of zoning (ie a greater level of predictability being given via the rule-setting and policy-forming stages in return for, at the project stage, less flexibility and less room for political discretion) be better or worse than the current system at achieving those policy objectives?

It's difficult because those policy objectives will surely not just not include the Covid-accentuated need for housing and economic activity, but the need for communities to continue to have an appropriate level of influence over outcomes and the need not to rule out, through rigid prescription, unexpected forms of development which may be in the public interest but simply not anticipated by the plan?

For a really good, detailed analysis of zoning, different models, the pros and cons and potential application to our English system I recommend Jennie Baker's blog post *Should zoning be*

introduced in England? (Lichfields, 14 May 2018). I also strongly recommend that you read Zack Simons's #planoraks blog post *Welcome to Euclid!* (16 June 2020), which, aside from examining the landmark 1926 US Supreme Court case on zoning, *Village of Euclid v. Ambler Realty Co.*, pulls us back to the guidance that the Planning Advisory Service have already published on preparing Local Development Orders, surely one of the prime mechanisms within our existing system for taking a more zoning-based approach (as is specifically mentioned in that passage from *Planning For The Future*).

Personally speaking, surely there are also two other opportunities to expand the use of existing mechanisms, so as to move more towards what might be termed a zoning-based approach to planning, if this is what is required.

First, there is the potential to expand the use of the permission in principle route, introduced in the Housing and Planning Act 2016 but currently far too narrow in its scope. What about building on the existing regime by placing an enforceable duty on LPAs to identify land that is appropriate for permission in principle specifying the location, land use and development parameters?

As suggested in a paper by Field, Somerville and Bischoff, *Permission in Principle under the Housing and Planning Act 2016: Considering an Australian Approach* [2017] JPL 338, such 'zoning' overlay permissions in principle could either be promoted by local planning authorities as part of their local plan/ separate mini-development plans, by neighbourhoods through neighbourhood plans or alternatively requested by landowners/ promoters if certain defined criteria are met.

Secondly, the whole Use Classes Order/General Permitted Development Order system is already a form of zoning. Any further liberalisation in relation to, for instance, "high street" uses, is utilising an existing form of zoning. It might be said that recent >>> problems in relation to permitted development have been as a result of the GPDO not being sufficiently prescriptive in relation to building specifications (or perhaps the lack of sufficient protections by way of the Building Regulations) and as a result of the ability to dodge affordable housing or other social infrastructure requirements, rather than through any more fundamental flaw in the basic concept.

As we try to make sense of all this you need some fresh air; there is another topical four letter word beginning with Z. Zoos They are now open. ■

– Simon Ricketts (*Personal views, et cetera*)

