

# B1 to C3 is good for London

We urge readers to support the Government's proposals which will unleash London's dynamism. Don't let the bureaucratic tail wag the dynamic dog.

**You know the saying** about not taking business decisions for tax reasons because it will end up being bad for business – as in 'the tail-wagging-the-dog'? Well here in London senior planning officers are, as the Policy Exchange's Richard Ehrman points out in his article on the next page, 'predictably' jumping up and down about the government's proposal to grant permitted development rights for change of use from B1 to C3 - public consultation on which has just ended. No-one, least of all government officials, likes to lose power.

Others are also not in favour of liberty for property owners because they think such deregulation might 'destabilise the property market'. It might do this because the residential created in offices would not have to provide an 'affordable housing' contribution. The owner would not only capture the extra value of residential, because it in the right circumstances it may exceed that for offices by some margin, but he or she would avoid being 'taxed' to provide affordable housing – a substantial incentive which would make conversions very popular and threaten office stocks.

Ample demonstration perhaps that affordable housing policies have already caused untoward price differentials between essential commodities. Not that we don't like affordable housing in mixed schemes but it should be subsidised, not used to raise taxes. Carrot not stick.

We've also had our ear bent by senior planners suggesting new B1-to-C3 residents will mount campaigns to shut down adjacent noisy/smelly businesses once they move in causing extra work for local councillors/officers. And in places like Westminster, new residents in office blocks might cause havoc with the most sensitive policy of all – the dreaded ResPark policy, putting this under pressure. Possibly, but so what?

In the City of London, Peter Rees has mounted a campaign for the City to be excluded because (as he and his members know only too well) the last thing Barbican residents want is more large offices near them. Even more problematic, this NIMBY lust would be augmented by the rights of light new residents would acquire which would cause further obstacles to maintaining the City's role. Given the City's special circumstances this is a reasonable position (*see Opinion by Herbert Smith's Clare Fielding*), but there are areas adjacent to the City that might benefit.

There is also the prospect local authorities will use Article 4 directions to 'red-line' areas out of these new rights. This 'get-out of jail' card should be put back in the box. There is a proposal that listed buildings should be excluded. Why? Many listed buildings have been preserved precisely because they changed use.

Planning in London supports the Government's proposal in principle, with the proviso that parts of the City of London should be excluded, for the following reasons.

London's affordable housing policies have failed to encourage enough new

housing to meet rapidly rising demand. Local and international demand has also exacerbated consequential rises in value, and will keep doing so while low supply is not addressed. Local authorities continue to resist the conversion of business to residential despite the evidence that this boost in values can have rapid regenerative effects. They simply don't want the hassle of new residents moving in for the tail-wagging reasons mentioned above, or possibly because they don't like incomers' perceived voting intentions.

Even if a lot of offices were to be converted to residential, businesses would move elsewhere spreading the benefit to local economies, perhaps nearby or in other London town centres. Residents would replace workers as shoppers. Less people would have to commute to work as a result, and refurbished offices would have to meet new regulations. Green box ticked. Places like Victoria Street in Westminster, for example, might even become pleasant. We wish Land Securities good luck converting City Hall.

In so-called 'fringe' areas like Clerkenwell, there is big demand for resi', while the exodus of B1 workers in the evening leaves the area pretty dead. Why not mix it up even more? And in parts of Manhattan you can switch between uses freely provided you meet fearsome fire regs. Why not here? Is there something different about London's former light industrial buildings?

Developers in the market know - have known since the 1980s - they can sell or let anything they build in the way of housing in London, but the golden goose is being strangled by affordable requirements and other levies which strip out viability. Consent is often a straight fight over financial bribes to impecunious councils (who don't generally maximise their own real estate holdings).

We don't want just housing from the planning system, but we do need more and we're not getting it. Lack of freedom to switch uses locks away capital value that might otherwise be used in the economy and make London more dynamic. Its economy needs investment now. The opportunity cost of suppressing demand can be considerable, as the last change to the Use Classes Order demonstrated. It led to the refurbishment of swathes of B1 in London and elsewhere which were trapped in low value light industrial use (like woolly mammoths frozen in the tundra, a reminder of a bygone age).

London is still growing rapidly despite recession and its shift of gravity eastwards and enhanced global role require more flexibility and dynamism. Those places that welcome it will quickly see economic benefits. Most of all we just need the housing. We urge readers to support the Government's proposals which will unleash London's dynamism. Don't let the bureaucratic tail wag the dynamic dog. ■

See also *Opinion from Michael Bach and letter from Marco Goldsmied*



## Consultation proposals

- Granting new permitted development rights to allow change of use to dwelling houses (C3) from:
  - B1 (business – offices, research and development uses, light industry); and
  - B2 (general industrial) and B8 (storage and distribution)
- Extending existing permitted development rights to allow changes of use of space above A1 (shops) and A2 (financial and professional) to more than the single flat currently allowed

# Business space for housing

We desperately need more housing and more economic growth; the proposed reforms to the Use Classes Order will help boost both argues Richard Ehrman.



Richard Ehrman is Deputy Chairman of the think tank Policy Exchange and co-author of "More Homes: Fewer Empty Buildings". He was formerly a Government Special Adviser and Chief Leader Writer of the *Daily Telegraph*, and has interests in commercial property.

**Local authorities in London** have greeted the Government's proposal to allow conversion from B class commercial use to residential without the need for planning permission with a predictable lack of enthusiasm. No bureaucracy ever likes to have its powers curtailed, but what impact will the proposed reforms have on Londoners?

That first point to make is that because only B class properties will be allowed the new freedom to convert, the vast majority of Londoners probably will not notice the changes at all. No A or D class premises, no shops, restaurants, pubs, theatres, cinemas, schools, gyms or churches, none of the local commercial or voluntary amenities that residents value, will be affected by the proposed reforms.

Nor will the way neighbourhoods look, or at least not without councils having their usual say. The new permitted development right will only apply to the change of use of a property, not to any physical alterations or development. On the whole, changes

from commercial to residential use are unlikely to arouse much concern among neighbours. But extensions, new windows that might overlook, alterations to listed buildings or that might impact on a conservation area, all of these will continue to require consultation and consent just as they do at the moment.

A third fear, that Londoners will have nowhere to work if these proposals go through, is equally misplaced. One of the oddest things about London's

planning system is that each borough likes to see itself as a self-contained economic unit. Nobody else sees them like that. For Londoners, it is absolutely normal to live in one borough and work in another. And although the city is crowded there is no shortage of places to work.

That is true even in the centre, and even for small businesses whom some fear will be the losers if reform goes through. Every year DCLG produces figures for the number of vacant non-domestic hereditaments, based on the collection of business rates and broken down by local authority. Interestingly, the figures for the inner London boroughs are among the highest in England. In the latest list (for 2009-10) Kensington and Chelsea, Hammersmith and Fulham, Islington, Lambeth, Tower Hamlets, Westminster and the City, all had at least a thousand vacant hereditaments apiece.

In each case that amounted to more than 10 per cent of the total stock – and over 20 per cent for the City and Tower Hamlets – which hardly suggests that London's small businesses are about to be made homeless en masse. And if there is some pressure in some areas on accommodation for small businesses, then allowing residential premises to convert to business use, an option the consultation paper also canvasses, should help relieve the strain.

Meanwhile in the City the worry is that, if residential use becomes too established, assembling big sites for mega banks will be harder. The City is always mindful of competition with Canary Wharf, but most of the commercial buildings it wants to safeguard belong to institutional investors who are unlikely to compromise their redevelopment potential by sprinkling them with flats.

What the City needs, along with authorities elsewhere, is more faith in the market to balance out different uses and needs – just as it does in most other areas of economic activity. Councils often argue that by safeguarding >>>

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**Publishing Editors:**  
Brian Waters, Paul Finch and Lee Mallett

**Subscriptions and Advertising:**  
Tel: 0207 834 9471 Fax: 0207 828 8050  
Email: [planninginlondon@mac.com](mailto:planninginlondon@mac.com)

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**Editorial Advisory Panel:**  
Michael Bach, Giles Dolphin GLA, Esther Kurland DfL, Alastair Gaskin & Drummond

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Tel: 0207 834 9471 Fax: 0207 834 9470  
Email: [planninginlondon@mac.com](mailto:planninginlondon@mac.com)

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### The London Planning and Development Forum (LPDF)

The LPDF was formed in 1980 following an all-party inquiry into the development control system. It selects topics to debate at its quarterly meetings and these views are reported to constituent bodies. It is a sounding board for the development of planning policy in the capital, used by both the public and private sector.

Agendas and minutes are at [planninginlondon.com](http://planninginlondon.com). To attend please contact secretary Drummond Robson: [robplan@btconnect.com](mailto:robplan@btconnect.com)

The LPDF is administered by:

**Chairman:** Brian Waters MA DipArch (Cantab) DipTP RIBA MRTPI ACArch PPACA FRSA  
**Principal:** The Boisot Waters Cohen Partnership  
[brian@bwcp.co.uk](mailto:brian@bwcp.co.uk)

**Honorary Secretary:** Drummond Robson MRTPI,  
41 Fitzjohn Avenue, Barnet, Herts EN5 2HN  
Tel: 0208 449 3113 Fax: 0208 440 2015:  
[robplan@btconnect.com](mailto:robplan@btconnect.com)

**Honorary Treasurer:** Alastair Gaskin, Reagh Consulting: [alastair.gaskin@btinternet.com](mailto:alastair.gaskin@btinternet.com)

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>>> places to work, even if they remain empty for years at a stretch, they are doing business a favour by keeping its cost of accommodation in check. But they fail to factor in that unless they also allow enough places for people to live, the high cost of housing and long commutes will just push up wages and other costs instead.

In London, even more than elsewhere, homes are in desperately short supply and the price of buying or renting one has soared. Yet at the same time we have a depressingly low level of house building going hand-in-hand with a large amount of empty B class sites and buildings, a lot of which are also redundant. Many of them would make excellent low cost housing, of just the sort buyers of average means are crying out for. Others could be redeveloped to provide new homes. Only the Use Class system prevents it.

The problem has been apparent for years, yet the planning system obstinately refuses to tackle it. No wonder the Coalition government has lost patience. Because of the dogmatic and inflexible way it is so often applied, the Use Classes Order has become a huge suppressor of enterprise. The proposals ministers have come up with will not solve the housing crisis on their own, but they should make a very useful dent in it. They have also been carefully designed to ensure public acceptability.

It should be a win-win situation all round. We desperately need more housing and more economic growth; these reforms will help boost both. For any local authority, particularly in London, to seek to frustrate or opt out of them would be bizarre. ■

# Shaping a sustainable London

Our communities are too precious to be put at risk by a new philosophy unless housing is all we want from the planning system, says Michael Bach



Michael Bach, London Forum of Amenity and Civic Societies; formerly in Planning Directorate of ODPM with key role in 2005 Use Classes Order

As Michael Caine might have said about the rationale for the Use Classes Order "Not a lot people know that". Description is easy, but what is its rationale, has it changed over time and how could it be used as an effective policy tool?

A quick Internet search suggests that nobody knows. There are plenty of descriptions of what it is, but not of what it is for. It originally (1972) enabled planners to distinguish between different uses and to be able to control changes between different classes on the basis of their respective impacts.

Since the 1980s an increasing number of changes between uses have been permitted without the need for planning consent, which has led to a post-hoc rationalisation that the UCO is a deregulatory tool. The current DCLG discussion paper describes it as "a significant deregulatory tool which removes the need to submit a planning application where the land use impact of the change of use is considered to be the same or less than the existing use."

Even this were an accurate description, it is not a rationale. In practice, the UCO is a significant tool for policy delivery, being used to:

- help manage the mix in the High Street;
- manage the expansion and cumulative impact of specific uses, such as drinking establishments or take-aways; or even
- support the location policies in national planning policy and local plans to get offices (B1(a) Use Class) in town centres or places with high public transport accessibility, whilst light industry (B1(c)) can be supported in industrial areas.

Even more important, as a positive planning tool, is the ability to allocate sites in plans for particular uses.

## Proposals for change

The purpose of the current review is to see if it can be reformed to make it "even more deregulatory and to further remove unnecessary burdens." But before we do that shouldn't we ask whether that is the way to go?

The latest suggestion for deregulation is to enable commercial premises to change into housing without needing planning consent, with the aim of increasing the supply of housing. Whilst it sounds benign it could destabilise the property market. With housing values greatly exceeding commercial values in almost all places, this change would put pressure on all office blocks to be converted to housing. The reason for this is that large housing schemes have to make a contribution toward the need for more affordable housing. Such conversions would not have to do this, making such buildings more valuable than existing housing sites. Developers would cherry pick the best sites for conversion to housing, usually occupied office blocks in the better locations – not vacant commercial buildings. This would create a huge market distortion. Likewise the market forces released would "cleanse" non-residential uses, such as small offices, leaving exclusively residential areas.

## Opportunities for change

How about using the UCO creatively as a tool for policy delivery? What do we currently want to deliver? The Coalition specifically targeted the need to retain post offices, pubs and other local facilities that local neighbourhoods need. A right to buy, or bid for, "community assets" will prove ineffective if some bidders are not bidding on the basis of the existing use value. If the UCO made a clearer distinction by putting post offices in a class of their own (aka sui generis) or reducing some of the "freedoms" for pubs to turn into shops or professional or financial services, or even restaurants, there would at least be a level playing field for all bidders. To save our local communities, whether in London or rural areas, Councils need the powers maintain the range of facilities in local centres.

Finally, there is the issue of localism and communities being able to shape their own place. Likewise, there can be circumstances where the proliferation of particular uses – betting shops, coffee shops or drinking establishments – there may be a need to restrict rather than relax the freedoms in the current UCO.

So, before we throw the baby out with the bathwater, we need to think about a new rationale for the UCO that delivers the policy outcomes we want, rather than show diversity the exit door. Our communities are too precious to be put at risk by a new philosophy unless housing is all we want from the planning system. ■

# Office politics

In its urgency to deregulate the planning system and solve the housing crisis, the Coalition Government has failed to take into account an unintentional threat posed by one of its key proposals to the City's role as the world leader in international finance and business services, argue Clare Fielding and Matt Gilks.



Clare Fielding is a Partner and Matt Gilks a professional support lawyer at Herbert Smith LLP

In its urgency to deregulate the planning system and solve the housing crisis, the Coalition Government has failed to take into account an unintentional threat posed by one of its key proposals to the City's role as the world leader in international finance and business services.

In a widely trumpeted consultation document, the Government proposes to amend the Town and County Planning (General Permitted Development) Order to grant permitted development rights for changes of use from commercial (B use classes) to residential use (C3 use class).

The well intentioned proposal to allow such changes without the need for a formal planning permission is likely to throw the Square Mile's decades of strategic planning for the supply of the highest quality office stock into chaos.

There are good reasons for the City to fear that the introduction of the proposals may precipitate a flight from commercial office space to residential redevelopment. This might even be inevitable, since at the top end of the market there are differences in value of up to 40 per cent.

It is difficult to see how the Government's proposals, if implemented, will become anything other than an obstacle to the City's aim of ensuring sufficient, flexible and concentrated commercial floor space for international business.

A short term move by the markets towards residential development in the City could have the effect of reducing the attractiveness of the capital as a business centre, by lessening office supply and putting upward pressure on rents.

The most vulnerable office stock to a change to residential use is likely to be the small to medium offices, just at a time when the Government is seeking to energise small and medium enterprises.

While the Government proposals do not appear to be intended to enable physical operations without planning permission, the introduction of a Government sanctioned permitted development right for change to residential use means that the principle is automatically conceded. It follows that it would be difficult for the City to resist any associated application for planning permission to carry out physical alterations.

And a rash of residential development across the City would be difficult to reverse, since these new City residents would be likely to stay for some time. So there would be a consequential stagnation in land use, and reduction in opportunities for new office space.

The development of the City since the last half of the twentieth century means that there are already sensitive fault lines between its commercial users and its residents — such as occupiers of the Barbican. It is plain that uncontrolled residential development could precipitate a series of unplanned headaches as the City becomes a reluctant referee between these competing interests.

For example, one danger is that shortly after the high powered residents settle into to their new conversions, there is likely to be a wave of protests about the noise, disturbance and general inconvenience of finding themselves surrounded by a 24 hour world of international business, finance, and late night watering holes.

The Government suggests that to avoid these problems, the new right may easily be reversed by the article 4 direction procedure. Yet the prospect of the City bludgeoning the new right with a blanket ban across the Square Mile would doubtless invite costly legal challenges from its erstwhile beneficiaries.

Article 4 is an unwieldy tool which invites complex and unnecessary compensation cases. Why treat the symptom and not the disease?

It would be far better and more straightforward for everyone concerned if the Secretary of State were to cease playing office politics, and simply exclude the City from his new initiative. ■

# Can localism create a new alchemy between communities?

Best outcomes can only be achieved where business and communities come together says Tony Burton.



Tony Burton is Director of Civic Voice

**Six months is a long time in legislation.** It was only last December that the Localism Bill was published amid a fanfare of radical decentralisation, communities "in control" and a "power shift" to those who know their areas best. New radical rights to draw up neighbourhood plans were unveiled and communities pricked up their ears and wondered.

One Budget and six months of lobbying later things are looking very different. The rights to draw up neighbourhood plans remain. Especially important in London, amendments now mean they can also cross council boundaries and fit what communities want rather than the accidents of administration. But the very purpose of planning itself is now being called into question.

From a focus on communities we are now seeing business put centre-stage. Planning policy is to be "pro growth", the default answer to development is "yes" and neighbourhood forums can be established to prepare plans with the sole purpose of "promoting...businesses". Ministers have even backed a series of business-led neighbourhood plans which trust Business Improvement Districts from which even many businesses are excluded (let alone communities) to take the lead in their area.

At best the promised power shift to communities is becoming clouded. At worst communities are now stepping back with sceptics in the ascendant and the enthusiasm of those with so much to offer their area quelled. Nascent neighbourhood forums are being disbanded, community conversations begun with local councils broken off and civic enthusiasts turning away to other things.

Yet, anyone who has thought for even a moment about how to improve their area knows that the best outcomes can only be achieved where business and communities come together. Nowhere is this truer than in the capital with its complex mix of land use, activity and neighbourhoods. Communities need the economic nous and investment only business can provide and business needs the knowledge and dynamism of communities which can also provide its market and its workforce. Locally there are fabulous examples of civic societies and local chambers of commerce working hand in hand to improve their area, give it a better identity and make it a better place to live and do business.

So where do we go from here? How do we tackle the mismatch in power and resources, build the trust and provide the support which creates a new alchemy between communities and business for the benefit of us all.

Level the playing field – all neighbourhood plans should be for the social, economic and environmental well being of everyone living and working in an area none for business alone

Provide the support – communities need much more support and advice and the business community would do well to consider Ministerial urging to establish a foundation to support communities develop their knowledge of land economics and the development process

Front-runner communities – a programme of community front-runner neighbourhood plans is needed to complement the local authority and business-led front runners and give true expression to a community-led approach

Make development plans sovereign – communities need guarantees that the time and effort they invest in a neighbourhood plan will not be wasted by seeing planning permission given for development which rides roughshod over their efforts – appeal rights for departure applications should be curtailed and a community right of appeal introduced where a local authority grants consent for a conflicting development which has not won community consent

Protect local services – the role of the planning system in supporting diversity in the High Street and a town centre first approach should be strengthened by requiring express planning consent for changes of use away from valued local shops - such as greengrocers and butchers - and services – such as post offices and

**"The [Localism] Bill will enact new rights allowing local people to shape and influence the places where they live, revolutionising the planning process by passing power down to those who know best about their neighbourhoods." – Decentralisation Minister Greg Clark MP on 13th December 2010**

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Despite the cracks, our glass remains steadfastly half full on localism. Savvy businesses too know that their success increasingly relies on the trust and support of their communities. The opportunities are too great to turn away now. ■

*Civic Voice is the national charity of the civic movement. Established in April 2010 it champions and supports the network of hundreds of volunteer-led community based civic societies across England.*

[www.civicvoice.org.uk](http://www.civicvoice.org.uk)



# 'Affordable housing' makes market housing unaffordable

The policy of funding affordable housing out of the land value created by permitting private housing is simply not sustainable in many areas, including parts of London, argues David Parry



David Parry is a partner in Cluttons' Land and development division

The consequences of the financial crisis of 2008 have been far-reaching for the UK property industry, the banking sector in particular being ultra cautious in any lending commitments. Additionally, we have a new government requiring massive public sector cuts.

One of the largest problems we face – a severe housing shortage – is yet to emerge properly. Pre-February 2011, the climate in which we were working was a different story from today's. Banks were willing to continue to lend on the basis that a guaranteed sum was being received from housing associations in

stage payments from the beginning of developments (particularly useful for cash flow purposes) and grants for affordable housing were available on most schemes, which are now in the course of being built.

In February this year the Homes and Communities Agency (HCA) and the Department for Communities and Local government (DCLG) announced its new affordable homes framework. The document highlighted the changes in the affordable housing provision for 2011 – 2015 and attempted to explain how it would help meet the government's ambition to deliver up to 150,000 new homes over the next four years.

Grants were no longer to be available for S106 sites, and were much reduced on others. It introduced the concept of Intermediate Rented tenure as a substitute for Social Rented, to help make up the shortfall (but taking into account future housing benefit caps).

Without grant aid, how viable will house development schemes be? According to our calculations, the majority could now be unviable, as, on an average development site, the deductive cost for each affordable dwelling without grant is likely to exceed £40,000.

In many areas of the UK, new house or flat values hardly exceed £200 per sq ft. If the affordable quota policy is set at 35 per cent for example, and there

are the usual S106 community contributions as well as abnormal infrastructure costs (which most sites will have), there is unlikely to be a positive land value, or a value that exceeds the existing use value. Logically, this means the land won't come forward for development.

In the London boroughs, a 50 per cent affordable housing quota may be untenable except in the more prosperous or fashionable areas of each borough. Medium-sized and smaller developers cannot obtain funding except on the most onerous of terms. Banks aren't keen to lend on apartment schemes except in prime, preferably central London, areas.

The government is suggesting that considerable tracts of public sector land will be released for development. However, even the house building industry that's left, the national house builders, won't be interested if there is no positive land value and insufficient profit for their shareholders.

The policy of funding affordable housing out of the land value created by permitting private housing is simply not sustainable in many areas, including parts of London and the south east. Northern areas will suffer more where development land values have fallen in the past three years, by over 70 per cent in some of the poorer parts.

The new affordable framework has been marketed by the government as being flexible. It is supposed to rely on effective working partnerships between developers and local authorities, but this may prove to be impossible. No matter how good a relationship is, it cannot flourish if it does not take into account the economic climate within which it must survive.

There is bound to be an increase in viability assessments accompanying planning applications for multiple unit schemes. Unfortunately, this leads to yet another increase in consultants costs for the developer, and in effect, a further diminution in land value for the land owner.

Short-term political platitudes and promises are all very well, but we really need to take a closer look at the medium- and long-term to provide sufficient homes. ■

## Next meeting of the London Planning & Development Forum

Week commencing 5 September at Palestra – Hosts: Design for London.



**Discuss:** • The National Planning Policy Framework and its interaction with the London Plan • The London Plan's Implementation Plan in terms of delivery • London Plan Supplementary Planning Guidance on Housing • Relaxation of permitted development rules for changes of use.

Details: [www.planninginlondon.com](http://www.planninginlondon.com)

# Goodall on... the National Planning Policy Framework

Interest has been generated by a suggested draft of the proposed NPPF which has been produced by the Practitioners Advisory Group.

It is important to understand that this draft document does not have official government backing, and that the government will not be producing its own official draft NPPF for consultation until July. Some commentators seem to think that the PAG's suggestions may carry some weight with the government in the preparation of the actual NPPF draft, but this remains to be seen.

It is for this reason that I have not devoted too much time to looking at the PAG's proposed draft of the NPPF. At a quick glance it appears to be a commendable attempt to summarise some fundamental principles derived from existing ministerial policy guidance. As a random sample, I looked at the section on Green Belts and found that the main principles which have become well-established appear to be adequately summarised.

On the other hand, on this admittedly superficial skim through the document, I did not find any material which addressed the issues currently covered by PPS7, relating to development in the countryside – for example the requirement to demonstrate the operational necessity for an agricultural worker's dwelling by reference to the viability of an existing agricultural business, and so on.

My main reservation about the proposed NPPF is that in attempting to replace a very large body of detailed ministerial policy advice with a single concise document, there is a real danger that important points which are cur-

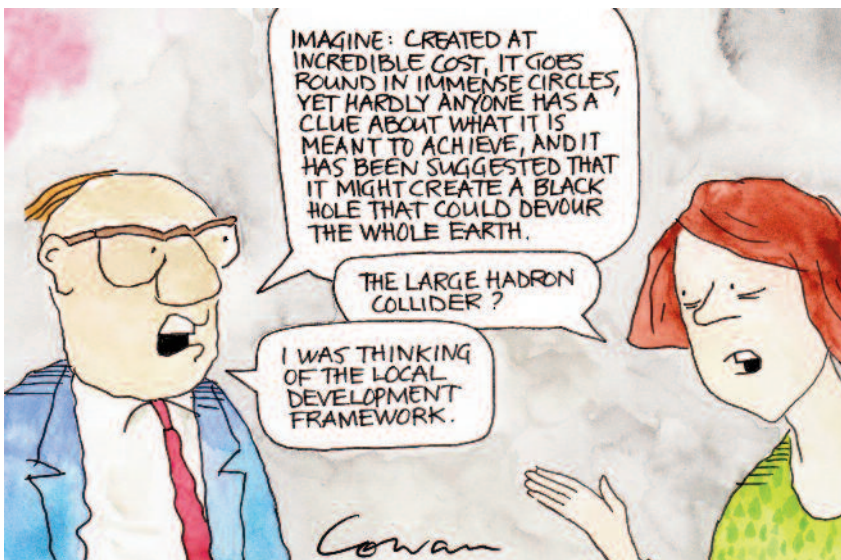
rently covered by specific advice will be left open to doubt, leading to disputes which may be resolved only by litigation – which is precisely why the current policy advice was published in the first place.

There is some current policy guidance which will have to continue to be covered by ministerial circulars or some other form of published policy advice outside the scope of the NPPF, unless this too is expanded to proportions which are similar to the existing body of policy guidance. It would seem, for example, that we are likely to retain circulars such as 03/2009 on the subject of appeal costs. It would also be sensible to retain Circular 11/95 on the use of conditions, and there are quite a few other circulars which are equally impor-

tant and need to be retained. There are also some PPGs or PPSs which will need either to be retained or replaced by corresponding circulars, for example PPS23 on planning and pollution control and PPG24 on planning and noise, among a number of others.

This does call into question the need for the replacement of current policy advice by a National Planning Policy Framework. Current guidance, though admittedly voluminous, serves a useful and indeed essential purpose. I fail to see the advantage to be gained by revamping it in abbreviated form, and a very real danger that in attempting to do so the government may in fact cause confusion and uncertainty, leading to results which are precisely the opposite of what they apparently intend. ■

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