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Dear Colleague

**PLANNING AND COMPULSORY PURCHASE BILL: FURTHER TRANSITIONAL ADVICE FOR
DEVELOPMENT PLANS**

As you know, addressing the problems caused by absent or out-of-date development plans is a central goal of the planning reforms. This has been made all the more important by the Communities Plan published on 5 February. In particular, it is important that the housing numbers proposed in regional planning guidance are translated into local plans and UDPs if the plan-led system is not to be a barrier to tackling both high and low demand.

On 5 December 2002, ODPM issued guidance to local authorities on the implications of the Planning and Compulsory Purchase Bill for development plans and regional planning guidance. This guidance explained our proposals for transitional arrangements for local plans and unitary development plans currently in preparation, as set out in the Bill.

However, comments from authorities, stakeholders and the Planning Inspectorate have indicated that there was considerable uncertainty over what would be the length of the prescribed period for determining whether plans would need to go through an additional deposit stage. This uncertainty was undermining the ability of authorities to project plan their workloads effectively.

As a result, we have sought to simplify the arrangements by removing the prescribed period and using commencement of Part 2 of the Act as the point for determining the route a draft plan follows to adoption or approval. Any draft plan for which an Inspector had been appointed at that point would continue under the current arrangements. It should be borne in mind that this change is subject to the drafting of any relevant amendment to the Bill.

You will be aware that events outside our control have resulted in some delay in the Bill progressing through its parliamentary stages. This in no way means that Government is less committed to its planning reforms but does mean that we now expect commencement of Parts 1 and 2 of the Bill to be in June/July 2004.

The attached note sets out the revised transitional advice. In large part it is unchanged from that published on 5 December.

Lisette Simcock

PLANNING AND COMPULSORY PURCHASE BILL

TRANSFERRING TO THE NEW SYSTEM

Introduction

1. The objectives which underlie the transitional arrangements set out in the Bill are:
 - to move as quickly as possible from the system of regional planning guidance, structure, local, waste, minerals and unitary development plans to one of regional spatial strategies (RSS) and local development documents (LDDs);
 - whilst maintaining continuity in the development plans system as a framework for development control, and
 - minimising transitional costs.
2. The key date in the transitional arrangements will be that of commencement of Parts 1 and 2 and clause 37 (definition of development plan) of the new Act. Subject to Royal Assent this is now expected to be in June/July 2004.

General transitional arrangements

3. It will not be possible to take any of the formal steps leading to adoption of LDDs until commencement of the relevant provisions of the Act. In the meantime it will be necessary to continue to rely on development plans that have been adopted or approved before commencement. Accordingly, under paragraph 1 of Schedule 5 to the Bill, it is proposed that, with one exception, whatever constitutes the development plan in an area will retain development plan status (in this note referred to as 'saved') for three years from commencement of the new Act. The only exception is street authorisation maps which are currently in force by virtue of paragraph 4 of Part III of Schedule 2 to the TCPA. Although some of these maps still exist, they are now so out of date that they will not be 'saved' beyond commencement of the Bill (under paragraph 1 (10)). This three year 'saved' period will also apply to draft plans, once adopted.
4. During this three-year period, the local planning authority would bring forward new Development Plan Documents to progressively replace the policies in the 'saved' plan in accordance with their Local or Minerals and Waste Development Scheme. Under paragraph 1 of Schedule 5, policies in a development plan document can replace these saved plan policies. Other local development documents cannot replace 'saved' policies, as they would not form part of the statutory Development Plan. The policies in any 'saved' structure plan will be progressively replaced by revisions to the RSS.

Structure plans

Existing plans

5. Structure plans will be saved for a period of three years as above. During this period, regional planning bodies (RPBs) will consider whether elements of the saved plan should be saved for a longer period. Where an RPB proposes to do so, it will put its case

to the Secretary of State (the Government Office) who will consider whether to direct that these policies should be saved for a further period in accordance with criteria to be set out in guidance. The likely criteria are:

- there is a clear central strategy;
- the policies have due regard to the Community Strategy for the area;
- the policies are in general conformity with the RSS for the area; and
- the policies are necessary and do not merely repeat national or regional policy.

6. Subject to the above all structure plans will cease to be part of the development plan at the end of three years.

7. During this three-year saved period the structure plan will still be part of the development plan and will be a relevant consideration in the preparation of LDDs. Although the requirement to be in general conformity will have gone, structure plan authorities will be able to make representations where they consider the development plan document is inconsistent with the 'saved' structure plan. The person appointed by the Secretary of State is bound to take this into account although he or she will need to consider whether this would bring the development plan document out of general conformity with the RSS.

Plans in preparation

8. A number of structure plans are being altered or replaced but are unlikely to have completed the process to adoption by commencement of Part 1 of the new Act. It is important that work undertaken on these, as with other development plans, is not wasted. It is also important to ensure that scarce strategic planning expertise is not devoted to structure plan reviews when it could be better spent on tackling sub-regional issues as part of an RPG/RSS revision. That is why it is important that structure plan authorities, and other strategic planning authorities, discuss with RPBs how best to tackle sub-regional issues.

9. Under paragraph 2(2) of Schedule 5 where a structure plan has not reached statutory deposit stage (under section 33(2) of TCPA 90) before commencement of Part 1 of the Bill, all preparation on the plan will cease and it will have no effect. However, the work that has gone into plan review might contribute to an RSS revision. This will depend on how relevant it is to addressing strategic sub-regional issues which frequently cut across county boundaries. This reinforces the need for close liaison with the RPB as referred to above to ensure that work adds maximum value to the planning process.

10. Where a structure plan has reached statutory deposit stage by the time of commencement of Part 1 of the new Act, it may continue to be prepared according to the relevant provisions of Part 2 of TCPA 90. Once adopted, the three-year 'saved period' starts from that date. Alternatively, it may not be taken further forward beyond the deposit stage if strategic planning expertise would be better spent on tackling the sub-regional issues referred to in paragraph 9 above. In the latter case, much of the work in reaching deposit stage might be valuable in informing the RPG/RSS process. In these circumstances the structure plan authority would withdraw the draft plan.

Local plans, UDPs, waste and minerals plans

Existing local plans

11. Regulations will require that within a prescribed period from commencement of the Act, local planning authorities (LPAs) should submit to the Secretary of State a Local, Waste or Minerals Development Scheme setting out their timetable for producing local development documents over the following three years. LPAs will then bring forward the local development documents to comply with those schemes. As the LPA brings forward development plan documents, they will adopt them incrementally, replacing any corresponding policies of the 'saved' plan.

12. We will make clear in guidance that the Local Development Framework (or folder of local development documents) should also contain the 'saved' plan or plans of that authority in order to be a comprehensive folder of all relevant development plan and other local development documents. Where development plan policies replace policies formerly contained in the saved plan, the development plan document should record this. The person appointed to conduct an examination can then consider this as part of his or her examination of the development plan document and recommend accordingly. We will advise in guidance that, to avoid any confusion, the LPA should indicate in the 'saved' plan which policies no longer apply because they have been replaced by an adopted or approved development plan.

13. There may be some saved policies which are compliant with LDF principles and which the LPA wishes to continue beyond the three year saved period. If so, the LPA will need to demonstrate to the Secretary of State that these adopted policies are so compliant. The criteria will be set out in guidance. The likely criteria for judging whether the local plan, UDP or minerals and waste local plan policies should continue beyond three years are expected to be along the following lines:

- where appropriate, there is a clear central strategy;
- the policies have due regard to the Community Strategy for the area;
- the policies are in general conformity with the RSS for the area (or SDS);
- there are effective policies for any parts of the authority's area where significant change in the use or development of land or conservation of the area is envisaged; and
- the policies are necessary and do not merely repeat national or regional policy.

14. The Secretary of State will either decide that the policies meet the criteria and should be extended beyond the three year 'saved' period, or that they do not. In the former case the Secretary of State would use his power of direction. Where the latter occurs, the LPA will need to consider whether it should bring forward revised or new policies in a revised or new development plan document.

15. At the end of the three-year period the 'saved' plans will cease being part of the development plan unless the policies have been extended by the Secretary of State as above. Exceptionally, the Secretary of State might use his direction-making power notwithstanding some conflict with the criteria outlined above. This would be if he or she considers it would be in the interests of proper planning and where the LPA was able to put forward an acceptable timetable for the preparation of the relevant replacement development plan documents. An example might be Green Belt boundaries where if this

element of the saved plan were to lose development plan status, it would seriously undermine government policy.

Plans in preparation

16. As with structure plans the transitional arrangements will vary according to the stage in the present plan adoption process that has been reached before commencement of Part 2 of the new Act.

17. Where proposals for the alteration or replacement of a plan have not reached first statutory deposit stage before commencement of Part 2 of the Act, the preparatory work on that plan would cease. However, the work undertaken might assist in the preparation of LDDs in accordance with the local planning authority's Local or Minerals and Waste Development Scheme.

18. Where first statutory deposit stage has been reached before commencement of Part 2 of the Act, the position will vary depending on the following circumstances:

(a) if the LPA is not under a duty to hold an inquiry or other hearing, or alternatively if the inspector for such an inquiry or hearing has been appointed before commencement of Part 2 of the Act, the proposals will continue under current procedures. In other words plans which have reached first deposit and where there is no need for an inquiry or hearing, continue under current procedures. Plans where there is an appointed inspector before the commencement of Part 2 would also continue to the LPI or hearing and, where appropriate, adoption or approval under existing procedures. Note that this differs from the position set out in the Bill as introduced. The Government proposes to simplify the existing arrangements by making appointment of an inspector before commencement of Part 2, and not by the start of a period prescribed in regulations, the test of whether the plan should proceed under current procedures. This is subject to the eventual drafting of any relevant amendment to the Bill;

(b) however, where the plan has reached first deposit, an inquiry or other hearing is required but there is no appointed inspector, the proposals will continue under current procedures, but subject to certain important changes. The Inspector's report will be binding upon the LPA and there will be no possibility of a modifications stage. We consider that binding reports are a crucial element of the planning reforms.

19. PINS may not be able to process requests to appoint an inspector which were received later than 12 weeks before commencement of Part 2. Therefore, later requests run the risk that an inspector may not be appointed before commencement. LPAs should maintain close contact with PINS on the progress of their draft plans and ensure that the Inspectorate has the maximum amount of information as early as possible on which to assess requests for the appointment of Inspectors. In general, this will include:

- the relevant documents - a minimum of Deposit Draft Plan and Revised Deposit Draft Plans, statement of consultations undertaken and environmental/sustainability appraisal, plus any published proposed changes;
- the month/year the authority requires the inquiry to start in;

- the numbers of objections to the original Deposit; number of objections to Revised Deposit/withdrawals because of Revised Deposit and anticipated duration of the inquiry. If the Revised Deposit is not over at the time of the request, this information should be forwarded immediately on its completion;
- the main areas of objection and any unusual or predominant issues that may be apparent; and
- the situation with regard to the appointment of an inquiry Programme Officer with full details if an appointment has been made. A Programme Officer should be in position at least on a part-time basis from the completion of the Revised Deposit.

20. The above assumes a Revised Deposit stage which may not of course occur in all cases.

21. Where the plan has reached first deposit, an inquiry or other hearing is required but there is no appointed inspector, the changes will also have the following effects. For plans that have reached first statutory deposit, there will be no revised deposit stage. Rather the entire plan, including any changes the authority wish to make, will need to be re-deposited to allow for representations to be made (including objections) on the basis that there will be no modifications stage. Plans that have reached the revised deposit stage will also need to be re-deposited for this purpose.

22. There will be no requirement that plans which have reached first statutory deposit stage should comply with the requirements for development plans documents as set out in the new regulations under the new Act. Clearly given that the plan will have reached this stage under the existing regulations that would be unreasonable. It will not be desirable to seek to significantly restructure the draft plan to follow the LDF format. To do so would be likely to require major changes to numbering and structure and be likely to cause unacceptable confusion to readers and delays at the public local inquiry. Nevertheless, there may be scope to consider whether the level of detail in draft policies and reasoned justification accords with LDF 'good practice' principles. These have been set out in the Planning Green Paper and the '*Making Plans*' guide issued by ODPM in July 2002 (see section 2.1 of the latter). They will be further exemplified in a revised version of that guide concerned with the process of producing LDF-compatible development plans and in the new "*Better Planning Policies*" guide which the Planning Officers Society and others are working on concerned with the policy content of these plans.

23. Applying the circumstances set out in paragraph 19 above where the LPA has reached at least first deposit but has not got as far as the inquiry or other hearing, the LPA could find itself in one of the following main stages:

Where the LPA has placed the plan on first deposit but has not finished considering whether to propose changes, the plan may need to be revised once the LPA has considered the objections. Even if there are no changes made, the plan will need to be re-deposited to allow for objections to all the alterations or to the replacement plan on the basis that there will be no modifications stage. The inspector's report will be binding upon the LPA.

Where the LPA has finished considering what changes to propose but has not placed its plan on revised deposit, instead of a revised deposit stage, the plan will need to be re-

deposited. This will be to allow for objections to be made not only to the proposed changes but also to all the alterations or to the replacement plan on the basis that there will be no modifications stage. The inspector's report will be binding upon the LPA.

Where the LPA has placed the plan on revised deposit but an inspector has not yet been appointed the plan will need to be re-deposited. This will be to allow for objections to be made not only to the proposed changes but also to all the alterations or to the replacement plan on the basis that there will be no modifications stage. The inspector's report will be binding upon the LPA.

Where an inspector has been appointed the plan can continue to inquiry or hearing and adoption under existing procedures. The inspector's report will make recommendations and the present modifications procedures will apply.

24. Once plans in preparation at commencement have been adopted, the three-year 'saved' period would begin.