

Understanding Planning Law and National Planning Policy

“finding your way around the planning jungle”

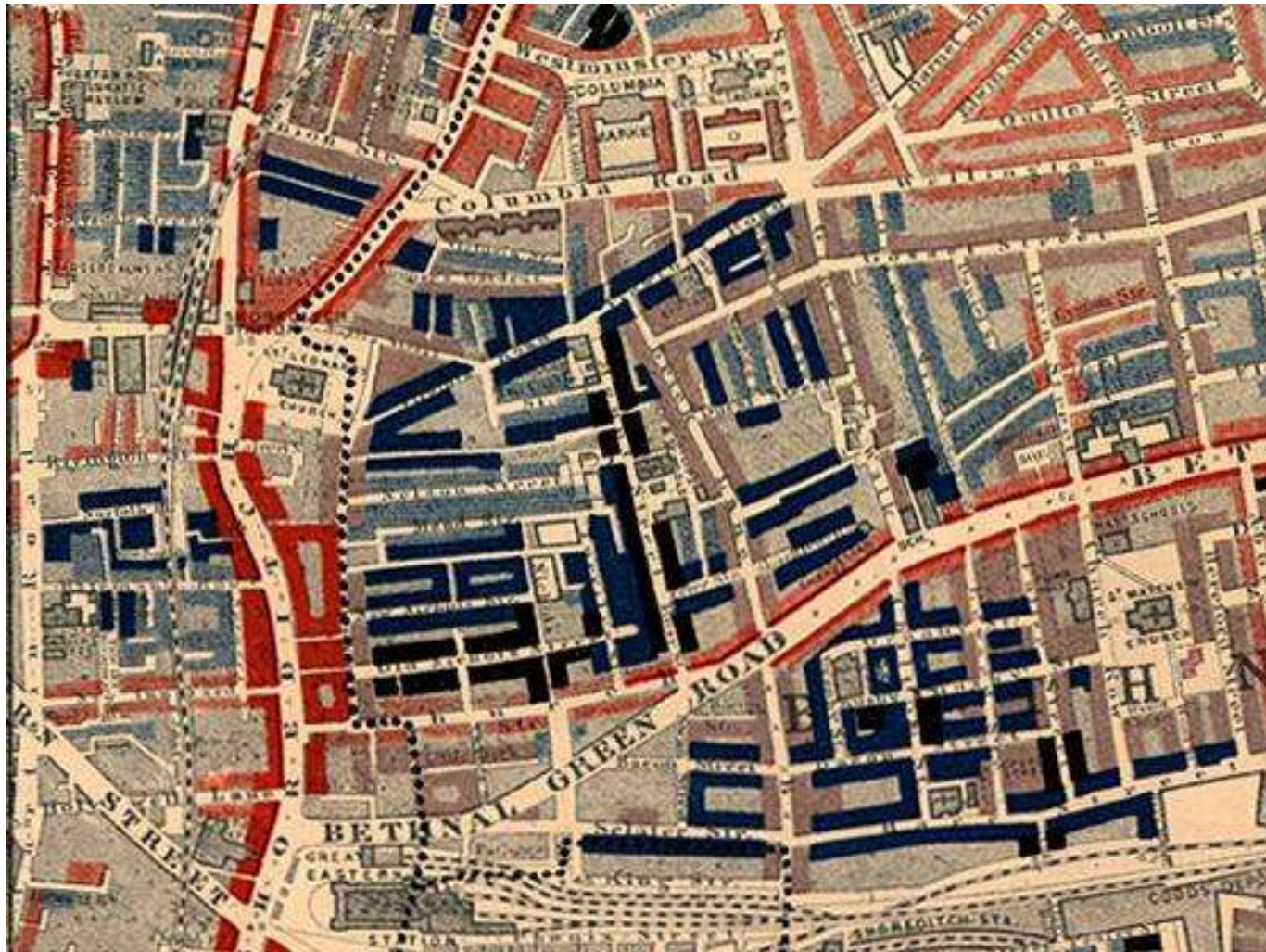
Wednesday 22 January 2020

Lewis Herbert and John Dagg

Scope of Section One

- Earlier legislation – still the best?
- Local development plans
- Role and limits on neighbourhood planning
- NPPF 2012 and Presumption in favour of sustainable development
- 2018 changes
- Localism Act 2011 ended strategic planning but now returning

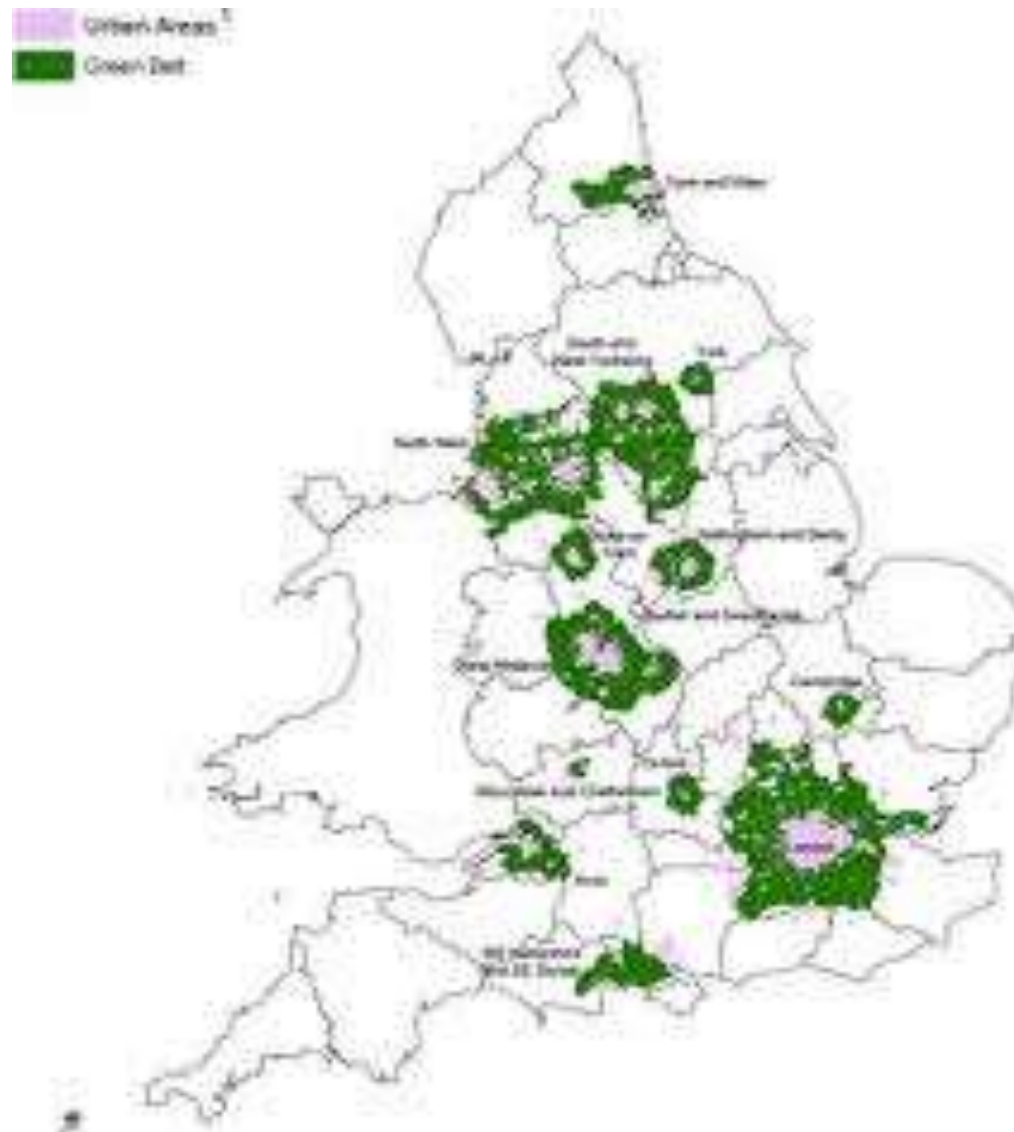
Charles Booth Map of 1889



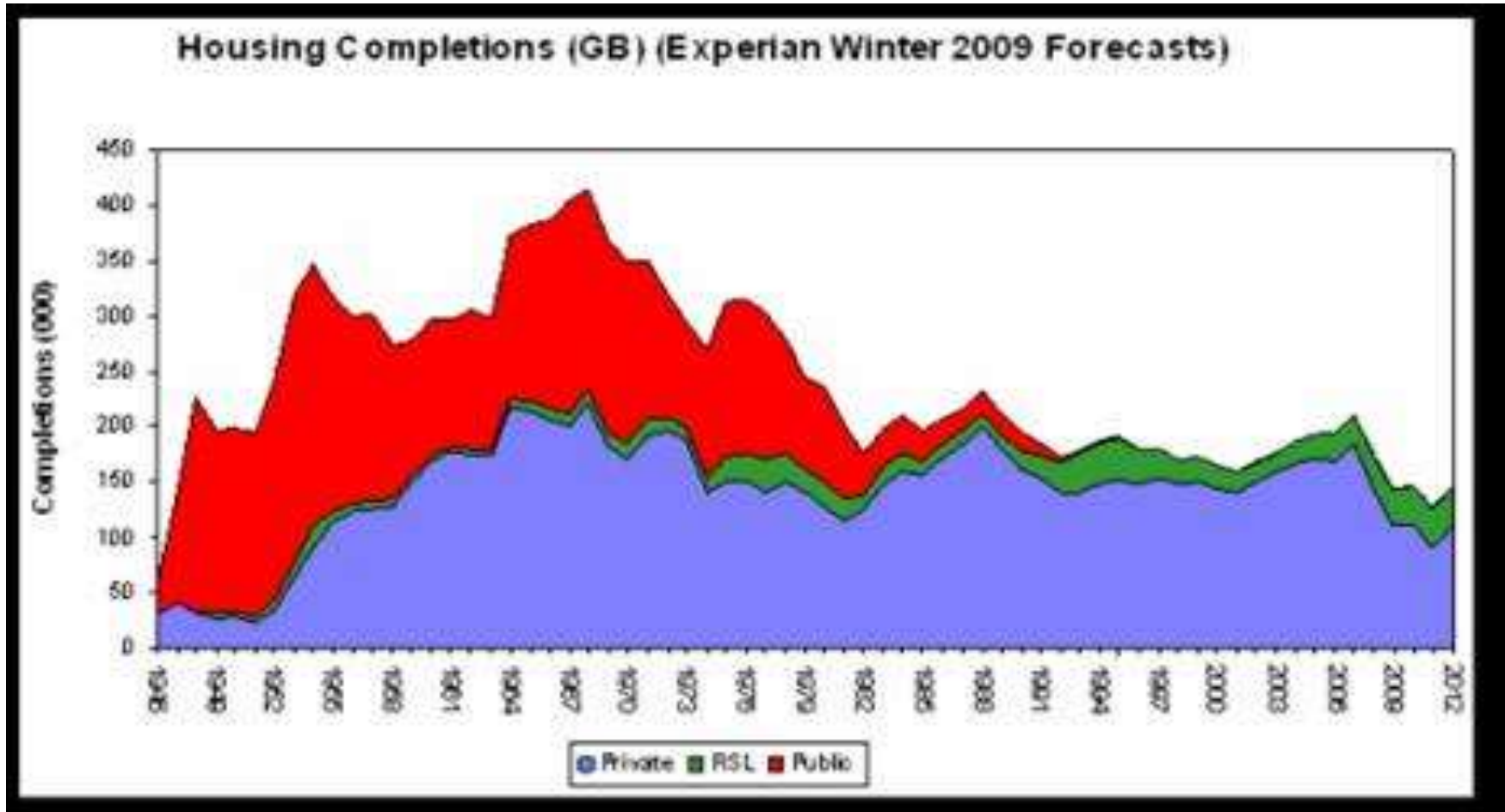
Modern planning started in 1947

- 1946 New Towns Act
- 1947 Town and Country Planning Act
- Nationalised the right to develop land with or without compensation – beginning of Compulsory Purchase
- Defined development
- Introduced requirement for planning permission and permitted development
- Contained proposals for a 100% development charge that never happened

Green Belts



Post war house completions

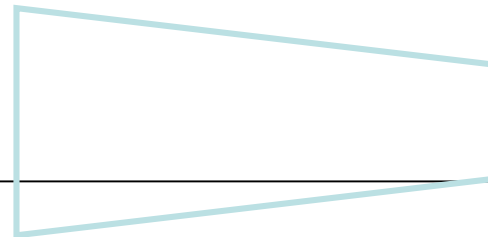


Legislation, Policy and guidance

- The Planning Acts and Statutory Instruments
- The National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Development Plan
 - Local Plans and other development plan documents
 - Neighbourhood Plans

National Planning Policy Framework (NPPF) 2012

- Brought together all the existing policy into one policy document
- Pro-growth
- Golden thread – presumption in favour of sustainable development
- Plan-led system



NPPF and plan-making

- Local plan must show how objectively assessed development needs can be met (especially for housing). Not capacity based.
- In a (locally) sustainable way
- Take into account local circumstances and market signals....to inform judgements about demand
- Only where there would be significant and demonstrable adverse affects which outweigh the benefits when assessed against the framework as a whole – should a development need not be met

National Planning Practice Guidance

- Web based resource introduced March 2014
- Companion to NPPF
- Frequent updated – sign up for e-mail alerts
- Prone to change
 - 8 sections of guidance published Oct 2014
 - and many more since

(and planning is now even more complex)

Neighbourhood plans

- Gives communities power to develop a shared vision for their neighbourhood
- Prepared by town/parish councils or neighbourhood forums and will have statutory status
- Must be in general conformity with the strategic policies of the Local Plan
- Should not promote less development than set out in the Local Plan

NPPF, plan-making and delivery

- Local plan must show how objectively assessed development needs can be met in a (locally) sustainable way
- Take into account local circumstances and market signals... to inform judgements about demand
- Only where there would be significant and demonstrable adverse affects which outweigh the benefits when assessed against the framework as a whole – should a development need not be met

Local Plan remains crucial

“If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise”.

Section 38, Planning & Compulsory Purchase Act 2004

The “primacy” of the Development Plan depends on it being:

- up to date
- in accord with national planning policies

This is not changed by the Localism Act or the NPPF!

NPPF and decision making

- Local planning authorities should:
 - **approve development proposals** that accord with statutory plans without delay; and
 - **grant permission** where the plan is absent, silent, indeterminate or where relevant policies are out of date.....*unless*
 -*adverse impacts of allowing development would **significantly and demonstrably** outweigh the benefits, when assessed against the policies in the Framework taken as a whole*

Strategic Planning, Duty to Co-operate, and new “Statement of Common Ground”

- Regional Plans were scrapped and strategic planning halted in 2011
- Duty to co-operate was introduced to address join up of Local Plans but hasn't really worked, as Inspectors on several Plans have said
- Statement of Common Ground
- Government including Treasury now support strategic planning again, and it's working well

Five Examples of 2018 NPPF changes

1. Affordable Housing

- Paragraph 63

- confirmed thresholds of 10 or less dwellings or a combined floor space of 1,000sqm, with an optional lower threshold of 5 or less in designated areas.
- key difference here is the term major developments. The glossary contained in the revised NPPF confirms major development to be the same description as provided by the DMPO, that being 10 dwellings or more, or sites over 0.5 hectares in size.

In authority areas where policy is up to date (and in line with previous guidance) it is likely those thresholds will continue to be applied. However, anywhere else it would seem that Government policy has changed on the matter and this could see authorities re-evaluating current applications. At the very least it affects proposals about to be submitted.

2018 NPPF changes

2. The Tilted Balance

- Formerly known as paragraph 14, the tilted balance in the revised NPPF is provided by paragraph 11 (c) (d).
- For decision-taking this means:
- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Delivery Test indicates that the delivery of housing is substantially below (less than 75% of) the housing requirement for the past 3 years.

2018 NPPF changes

3. Former Paragraph 55

- One of the more noted paragraphs in the original NPPF was paragraph 55 as this provided the provision for the building of a dwelling of exceptional quality (a “Grand Designs” policy). In the revised NPPF paragraph 55 now relates to planning conditions with the former being covered now by paragraph 79.
- Paragraph 79 contains much of the previous tests for the avoidance of new isolated homes in the countryside including the “exceptional quality” clause. However, the Government has added a new circumstance when permission can be granted, this being when the development would involve the subdivision of an existing dwelling.

2018 NPPF changes

4. Efficient use of land

- The revised NPPF contains a whole new section (section 11) entitled “Making effective use of land”. Paragraph 118 of the NPPF sets out 5 points that planning policies and decisions should do to promote and effective use of land. One such point is to give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs. There is also support for “upward extensions” to utilise airspace above existing residential and commercial premises where this is consistent with the prevailing height and form of neighbouring properties.
- Paragraph 121 looks for local authorities to take a positive approach to applications for alternative uses on land which is currently developed but not allocated. This includes the use of retail and employment land for homes in areas of high housing demand.
- Paragraphs 122 and 123 sets out the provisions for achieving appropriate densities. There is a clear steer to avoid low densities in areas where there is an existing or anticipated shortage of land for meeting identified housing needs.

2018 NPPF changes

5. Green Belt

It seems that the Government is still not ready to commit to any significant changes in Green Belt policy.

However, there are two main areas that differ from the original:

- The provision of limited affordable housing for local community needs (rural exception sites) as an exception to being inappropriate development. The term limited is undefined but it seems that here the Government has decided that affordable homes do not have the same impact on the Green Belt as market homes.**
- The confirmation that material changes of use of land are not inappropriate within the Green Belt.**

Scope of Section Two

- Expanding Permitted Development freedoms
 - householder applications (& housing targets)
 - commercial incl office to residential
- Law on Committee and councillor behaviour and obligation against predetermination
- Useful planning blogs
- House of Commons Library excellent June 2019 planning summary

What is development?

Town and Country Planning Act 1990 s55
except where the context otherwise requires-

“the carrying out of building, engineering, mining or other operations in, on, over or under land, OR the making of any material change in the use of any buildings or other land”



Domestic Permitted Development

- **For dwellings this used to be just small house extensions and no formal application is required**
- **Recent government legislation (Came into force 30th May 2013) extended these 'permitted development' (PD) rights to cover larger rear single story extensions to detached houses (up to 8m.) and terraced houses (up to 6m.) although a new neighbour consultation scheme or 'prior approval' process has to be administered by the planning authority**

Examples of Commercial Building Permitted Development

- Used to be limited on commercial development
 - Government changes (with some conditions) include:
 - Offices to change to dwellinghouses
 - Offices, hotels, residential institutions, assembly and leisure buildings to change to state-funded schools
 - Change of use from shop, financial/professional services, restaurants, drinking establishments, hot food take-away and office to flexible use within A1, A2, A3 or B1
 - Industrial premises to extend by 10% in Conservation Areas; 25% near SSSI's and 50% in other cases (max 500²m in Conservation Areas and 1000 ²m in other cases)

33 Barnards Yard
Ref BARN33
Rear Elevation



Planning Portal's interactive house

<https://interactive.planningportal.co.uk/detached-house/outside>



PLANNING PORTAL MINIGUIDES

[Conservatory](#)

[Extensions \(single storey\)](#)

[Extensions \(two storey\)](#)

eg windows in two storey extensions

<https://interactive.planningportal.co.uk/mini-guide/loft-conversion/7>

[Loft Conversion](#)

[Outbuildings](#)

[Porches](#)

Household PD Planning Blog

Planning Jungle

<https://planningjungle.com/>

PERMITTED DEVELOPMENT

General Permitted Development Order (GPDO)

Part 1 of the GPDO (i.e. householder permitted development legislation).

Including 1,206 appeal decisions

Does your council subscribe to it? More than 250 councils do.
It is largely the work from one former Lambeth planning officer

Standards in planning are important

- Planning manages the right to develop land
- It involves balancing private and public interests
- Getting it wrong is costly (time, money, reputation and long lasting impacts)
- Need to demonstrate, at all times:
 - Fairness
 - Openness
 - Impartiality

Councillors can be pre-disposed but not pre-determined

Localism Act 2011 – section 25

- **Makes it clear that councillors are entitled to campaign on issues, express views etc. without disqualifying themselves from decision-making PROVIDED they can demonstrate absence of "bias" or "predetermination".**
- **Applicants do write in on this, sometimes right**

Councillor conduct and role

- **As a Ward Councillor...**
...they can support or oppose an application and represent the views of constituents
- **As a Planning Committee Member...**
...they still can, but must still retain an open minded disposition; if not it could compromise their (impartial) role on the committee.

‘Avoid favouring a person, company, group or locality or putting yourself in a position where you appear to do so’
- **Applies to policy making as well**

Material considerations include...

- **Financial considerations**
- **Overlooking/loss of privacy**
- **Loss of light or overshadowing**
- **Parking, highway safety and traffic**
- **Noise**

- **Effect on listed building and conservation area**
- **Layout and density of building**
- **Design, appearance and materials**
- **Disabled person's access**
- **Nature conservation**
- **Previous planning decisions**

Councillor Behaviour - Rules & Codes

- Nolan Report (Standards in public life) 1997
- Local Government Act 2000
- Local Authorities (Model Code of Conduct) (England) Order 2007
- Local codes for planning
- Killian & Pretty – role of councillors
- Localism Act 2011
- Probity in Planning 2013

Examples of Other Planning Blogs

Lichfield and Partners

<https://lichfields.uk/blog/>

Martin Goodall

<http://planninglawblog.blogspot.com>

Andrew Lainton blog on Local Plans

<https://andrewlainton.wordpress.com/>

Feedback please

Please connect to Poll Everywhere
and answer two questions

<https://pollev.com/katewilde961>

And feel free to email
planningskills@essex.gov.uk
with comments or suggested future training
content

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**QUESTIONS
AND
DISCUSSION**