



National Planning Forum
INSPIRING PLANNING

National Planning Forum

Planning and Building Control Working Group

IMPROVING THE CONNECTION

September 2010

I. Introduction

- I.1 This ‘thinkpiece’ has been produced by the National Planning Forum following a decision at its meeting in March 2009 to establish a ‘task and finish’ group to consider synergies and recommend action to reduce overlap between planning and building control. This proposal was endorsed by the Executive Board in May 2009 and the first meeting of the Planning and Building Control Working Group took place in early July 2009 – members of the working group are listed at the end of this report.
- I.2 During the preparation of the report Communities and Local Government produced the Future of Building Control : Implementation Plan¹; Part L of the Building Regulations was amended; a change of government took place in May 2010; and in July 2010 the final report of the Penfold Review of Non-Planning Consents² was published. These developments serve to demonstrate how quickly the policy context changes; that standards and regulatory procedures constantly develop; and that the debate about the dynamic relationship between planning and building control continues. This examination of the relationship between planning and building control is of even greater relevance in the context of the Coalition Government’s commitment to localism and the Big Society, the even greater need to reduce the cost and improve the efficiency of public services and the need to re-balance the economy. The report’s recommendations are made as a positive contribution to the Government’s current consideration of these issues.
- I.3 The Working Group was initially tasked with “*considering the extent to which better cooperation between planning and building control services (however organised or delivered) can assist in delivering higher environmental standards and more sustainable outcomes, and in particular to consider:*
- (i) *synergies and distinctions between planning and building control **including enforcement**;*
 - (ii) *means of reducing overlap between the two systems, **improving efficiency** and improving mutual understanding, in particular in relation to new construction methods;*
 - (iii) *implications for policy, practice, staffing, training and inspection; and*
 - (iv) *recommendations of appropriate action for consideration by the NPF Executive Board”.*
- I.4 The Group suggested adding the words in bold because of (i) the importance of achieving compliance, with effective enforcement where needed, and (ii) the potential to make improvements in the efficiency of both services.
- I.5 It is important that any consideration of the relationship between planning and building control by the National Planning Forum is set in the context of CLG’s continuing work to revise the Building

¹ <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1320090>

² <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/p/10-1027-penfold-review-final-report.pdf>

Regulations and reform building control; and so this report presents the Working Group's thinking after first:

- discussing the areas planning and building control procedures have in common and the differences between them;
- explaining the process of establishing sustainability standards and regulatory frameworks for tackling climate change and the different roles, and increasing convergence, of planning and building control as the principle mechanisms to achieve zero carbon objectives in construction and whole life building costs;
- recent developments in Building Regulation and building control reform.

1.6 After a discussion of the Working Group's proposals, the report concludes with observations around the development of shared agendas between planning and building control and recommendations for further action to improve clarity of remit and linkage.

2. Building control and planning

2.1 Building control and planning are in many respects the two sides of the same coin. Both:

- are essential to delivering development to the standard the nation requires
- share the same client/customer base – although the two services are often accessed at different points in the process
- have complex codes, standards, techniques and technologies for achieving sustainability, which are critical to reducing carbon consumption in building construction and management.
- need to achieve efficiencies and improved customer service

2.2 They are candidates for closer, more integrated working; however, despite a number of statements in both planning and building control policy advice, little real progress appears to have been achieved from centrally driven initiatives. The most significant effort has gone into creating partnership building control services and various levels of integrated service and service management at local authority level and by multi-disciplinary consultancies

- “Building Regulations exist principally to ensure the health, safety, welfare and convenience of people in and around buildings, and the water and energy efficiency of buildings.”³
- “Planning should facilitate and promote sustainable and inclusive patterns of urban and rural development by:
 - making suitable land available for development in line with economic, social and environmental objectives to improve people’s quality of life;
 - contributing to sustainable economic development;
 - protecting and enhancing the natural and historic environment, the quality and character of the countryside, and existing communities;
 - ensuring high quality development through good and inclusive design, and the efficient use of resources; and,
 - ensuring that development supports existing communities and contributes to the creation of safe, sustainable, liveable and mixed communities with good access to jobs and key services for all members of the community.”⁴

2.3 Building control ensures compliance in standards of building construction and performance by reference to codes and regulations, which require interpretation and interpolation in order that a proposal can be

³ Communities and Local Government website

⁴ Planning Policy Statement 1: Delivering Sustainable Development
Office of the Deputy Prime Minister, 2005

‘deemed to satisfy’ the Regulations. It is delivered to clients by a Building Control Body (BCB), which may be either a local authority building control service or a private sector Approved Inspector (AI) – certain types of building work can be self-certified as compliant with Building Regulations by a member of a Competent Persons Scheme (CPS) without the need to notify a BCB. As performance standards are raised to meet demanding construction, sustainability and low carbon targets the technical requirements of building control are developing rapidly. There is normally little public debate about building control and in-built mechanisms to challenge decisions are used relatively infrequently. Building control addresses questions of risk, compliance and performance in building design, construction and management in order to deliver safe, sustainable, high performing, energy efficient buildings and structures. It requires a range of technical and professional skills applied in innovative ways in order to assess compliance with the Building Regulations as the Regulations themselves, design objectives and construction methods constantly change as standards rise.

- 2.4 Planning requires that proposals conform to plans, policies and standards; but also judges each case on its merits. It is delivered by both public and private sectors – although decisions on development proposals are only made by public sector authorities. Planning also involves considerable exercise of both judgement and interpretation, but operates within a policy context that is based less on technical performance standards, is more open to interpretation and is accompanied by more public debate and consultation. Traditionally it has an adversarial culture and well-established and frequently used mechanisms for appealing decisions. It is essentially a political process in which judgement of ‘success’ or ‘failure’ is often subjective.
- 2.5 A key difference is that building control approvals or certification can be granted by private sector Approved Inspectors or Competent Person, without recourse to a local authority.
- 2.6 Building control is clear about its role. Future of Building Control: Implementation Plan (CLG September 2009) set out a vision and responsibilities for building control shared by both government and the building control service, represented by the Building Control Alliance.⁵ (see Appendix A)
- 2.7 The planning remit is very broad. The government’s objectives for the planning system were set out in Planning Policy Statement 1:

“Planning shapes the places where people live and work and the country we live in. Good planning ensures that we get the right development, in the right place and at the right time. It makes a positive difference to people’s lives and helps to deliver homes, jobs, and better opportunities for all, whilst protecting and enhancing the natural and historic environment, and conserving the countryside and open spaces that are vital resources for everyone.

⁵ The Building Control Alliance comprises the Association of Consultant Approved Inspectors, Local Authority Building Control, Royal Institution of Chartered Surveyors, Chartered Institute of Builders, Association of Building Engineers. The Construction Industry Council provides the secretariat.

But poor planning can result in a legacy for current and future generations of run-down town centres, unsafe and dilapidated housing, crime and disorder, and the loss of our finest countryside to development.

Good planning is a positive and proactive process, operating in the public interest through a system of plan preparation and control over the development and use of land.

Sustainable development is the core principle underpinning planning. At the heart of sustainable development is the simple idea of ensuring a better quality of life for everyone, now and for future generations.”⁶

- 2.8 The previous government set out four aims for sustainable development in its 2005 policy statement:
- social progress which recognises the needs of everyone
 - effective protection of the environment
 - the prudent use of natural resources; and
 - the maintenance of high and stable levels of economic growth and employment.”⁷
- 2.9 To achieve these objectives government demands efficient process and performance, an integrated approach, an outcome focused service, broader skill sets and meaningful community engagement; and has previously invested in the education and training of planners and in the planning service at local authority level. The current government’s emphasis on localism and the Big Society envisages more decisions being made at local level and much greater community involvement in planning than might have been the case previously.
- 2.10 Similarly, building control’s technical requirements are growing and the industry is developing a unified voice to address its developing future role through the Building Control Alliance, which had a significant role in contributing to the Future of Building Control: Implementation Plan.
- 2.11 Planning’s agenda is wide and its technical requirements are changing and developing – it is not always clear that planners have the skills that are required or that planning is the best mechanism to deliver sustainability outcomes dependent on specialist technologies. Planning is becoming overloaded, in areas such as the requirement of reducing carbon consumption in construction and building performance, delivering renewable energy and designing sustainable urban drainage. Easing the burden by clarifying the remits and relationship between planning and building control bodies in relation to building construction and performance would allow the planning service to have greater focus on other important issues at cross-boundary, local and individual building scales; and building control bodies to develop in-depth expertise in sustainability and low carbon technologies.

⁶ Planning Policy Statement 1: Delivering Sustainable Development, Office of the Deputy Prime Minister, 2005

⁷ Planning Policy Statement 1: Delivering Sustainable Development, Office of the Deputy Prime Minister, 2005

The relationship between planning and building control

- 3.1 This section looks at the parallel and related policy developments in both building control and planning, particularly in relation to achieving low and zero carbon outcomes in construction and building performance and, particularly, at the points at which the two service areas intersect and, at times, overlap.

Building a Greener Future: towards zero carbon development

- 3.2 In *Building a Greener Future: Towards Zero Carbon Development*⁸ the government set out the ambition to “move towards zero carbon development over time” by way of an initial transition to *low* carbon development, through measures that drive down carbon dioxide emissions from homes, buildings and other infrastructure; and ultimately to *zero* carbon, i.e. zero net carbon emissions from new developments.

Within this policy framework, three main policy levers were identified that can affect the energy performance of new development:

- the planning system – which sets out the overall framework for development
 - the Code for Sustainable Homes – which provides the mechanism for developing and demonstrating higher environmental standards; and
 - Building Regulations – which ensure tougher energy/carbon standards for all developments, including new homes
- 3.4 Government envisaged: “a complementary relationship between the planning system and Building Regulations/the Code. In considering the location and design of new development, planning can reduce the need to travel and build in provision for low carbon or renewable sources of energy supply. Building Regulations and the Code are focused on the performance of the buildings themselves.”⁹
- 3.5 Proposals for improving the energy performance requirements of Part L of the Building Regulations were proposed so that “over time all new homes meet the energy/carbon standards set out in the Code” - see table below

⁸ Communities and Local Government 2006

⁹ Ibid

	2010	2013	2016
Energy/carbon improvement as compared to Part L (Building Regulations 2006)	25%	44%	zero carbon
Equivalent energy/carbon standard in the Code	Code level 3	Code level 4	Code level 6

The Code for Sustainable Homes and the Building Research Establishment Environmental Assessment Method (BREEAM)

- 3.6 In December 2006 the government published the *Code for Sustainable Homes – A step-change in sustainable home building practice*¹⁰; intended as a single national standard to guide industry in the design and construction of sustainable homes – “a means of driving continuous improvement, greater innovation and exemplary achievement in sustainable home building”. A rating against the Code became mandatory from May 2008 for all new homes and in November 2009 government confirmed that zero carbon homes would be required as a matter of law from 2016.
- 3.7 There are a number of voluntary sustainability codes and assessment frameworks in place for both domestic and non-domestic buildings including Ecohomes (now replaced by the Code for Sustainable Homes), BREEAM and PassivHaus.
- 3.8 On November 24th 2009, the then housing minister launched a consultation to gather evidence on how the zero carbon standards could be applied to non-domestic buildings from 2019¹¹.
- 3.9 There is no doubt that standards are being raised and targets stretched at a rapid rate. Each of the code or standard regimes involves understanding complex construction and services technologies and mechanisms to assess performance often requiring specialist knowledge. This raises questions of how a particular approach is chosen, the training and skills that are required to implement it and the costs of achieving, procuring and maintaining those skills. Understandably at this stage of the development of low carbon technologies and assessments, there is a danger of confusion within the industry. There are inconsistencies between the Code for Sustainable Homes and the requirements of the Building Regulations. There are a number of codes available on a commercial basis and different codes adopt different technologies to achieve similar performance standards, e.g. Code for Sustainable Homes and PassivHaus. There is an industry view that the setting of standards by government needs to be separated from the commercial market in making assessment techniques and training facilities to meet the standards available. A different approach might be for government to set the performance standard and to allow applicants to choose an appropriate code to assess individual building performance.

¹⁰ http://www.planningportal.gov.uk/uploads/code_for_sust_homes.pdf

¹¹ <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1391110.pdf>

3.10 In August 2010 the UK Green Building Council published the results of its consultation with its members on the future direction of BREEAM¹². The report concluded:

- *A common view voiced by members is that BRE Global should deliver a 'product' that is sensitive to the developing needs of their customers as well as being fit for purpose in moving the mass market forward in terms of integrating sustainability in the lifecycle of buildings.*
- *In many cases members support the direction BREEAM is taking with the 2011 update, for example in line with integrating and recognising European and international standards. It is, however, evident that there is scope for further improvement in driving transformational change within the built environment for future revisions to BREEAM. In particular, around the materials sector; making data available; and improving transparency.*
- *There is evidently a need for sharing building performance data and more work in the field of ensuring building design performance follows through to building operation.*
- *A key area for BREEAM is reviewing guidance to consider new areas for incorporation and setting minimum standards as well as clearly outlining BREEAM's future strategies and direction so that industry is prepared for future changes.*
- *It is clear that several areas require improvement in the operational context of BREEAM, in particular, customer service and moving to online systems. This is important if BREEAM is to continue to respond to market needs.*
- *Through improved investment in systems, services and research it is felt BREEAM can continue to be an effective assessment methodology in the market place and can continue to mainstream sustainable buildings and drive transformational change.*

3.11 In December 2009 Government published a consultation on the Code for Sustainable Homes and the Energy Efficiency standard for Zero Carbon Homes – Sustainable New Homes – the Road to Zero Carbon¹³. This consultation focuses on three main aims:

- Aligning the Code with the latest developments in the zero carbon homes policy.
- Streamlining the standard and processes.
- Resolving problems that have arisen.

Changes to Building Regulations Parts L and F (Conservation of Fuel and Power/Means of Ventilation)

3.12 CLG have recently published amendments to Parts L and F of the Building Regulations¹⁴ as a key step towards achieving the 25% reduction in energy use (from 2006 requirements) and Code level 3 for new dwellings to be introduced in 2010 in accordance with the proposals in Building a Greener Future.

¹² <http://www.ukgbc.org/site/resources/show-resource-details?id=822>

¹³ <http://www.communities.gov.uk/publications/planningandbuilding/partl2010ia>

¹⁴ <http://www.communities.gov.uk/documents/planningandbuilding/pdf/partl2010consultationvol1.pdf>

The 'Merton Rule'

3.13 The London Borough of Merton introduced a planning condition in 2003 requiring developments over a certain threshold to generate at least 10% of their energy needs from on-site renewable energy equipment in order to lower carbon consumption by 10%¹⁵. The policy has been widely adopted by other planning authorities in variety of formats; but is not without its difficulties or controversy largely as a result of difficulties in establishing measurable baselines for energy use and the restricted nature of the condition, which rules out alternative ways of reducing energy use and carbon consumption such as off-site solutions or thermal efficiency measures rather than renewables. In addition it is argued that the 'rule' increases costs for the developer without enabling cost recovery from the building occupier/operator. To a degree the Merton Rule has now been superseded by the Code for Sustainable Homes, which sets more challenging standards.

Planning Policy Statement: Planning and Climate Change - Supplement to PPS 1, Dec 2007

3.14 In 2007 CLG introduced a planning policy statement on 'planning and climate change' as a supplement to PPS 1.¹⁶ It stated that: 'Tackling climate change is a key priority for the planning system'; and went on to set out criteria to be adopted in the planning system through regional spatial strategies, local development documents and determining planning applications to address climate change and the transition to a low carbon economy. (The Coalition Government has signalled its intention to abolish regional spatial strategies.)

PPS1 Climate Change Supplement states that 'Planning has a 'pivotal and significant role' in helping to:

- secure enduring progress against the UK's emissions targets, by direct influence on energy use and emissions, and in bringing together and encouraging action by others;
- deliver the government's ambition of zero carbon development;
- shape sustainable communities that are resilient to and appropriate for the climate change now accepted as inevitable;
- create an attractive environment for innovation and for the private sector to bring forward investment, including in renewable and low-carbon technologies and supporting infrastructure; and

¹⁵ <http://www.merton.gov.uk/living/planning/planningpolicy/mertonrule.htm>

¹⁶ Planning Policy Statement: Planning and Climate Change Supplement to Planning Policy Statement 1, Communities and Local Government 2007

- capture local enthusiasm and give local communities real opportunities to influence, and take, action on climate change.’

3.15 The PPS makes the following comments in relation to the interface between planning and building control bodies:

- *Controls under the planning, building control and other regulatory regimes should complement and not duplicate each other.*
- *Planning authorities, developers and other partners in the provision of new development should engage constructively and imaginatively to encourage the delivery of sustainable buildings. Accordingly, planning policies should support innovation and investment in sustainable buildings and should not, unless there are exceptional reasons, deter novel or cutting-edge developments. Planning authorities should help to achieve the national timetable for reducing carbon emissions from domestic and non-domestic buildings.*
- *It is not necessary to use planning conditions to control those aspects of a building’s construction and fittings that will be required to be in place to meet environmental standards set through the Building Regulations. Planning conditions or planning obligations can be used to secure the provision and longer-term management and maintenance of those aspects of a development required to ensure compliance with the policies in this PPS.*

3.16 **The current situation does not always reflect these ambitions. It is the view of those bodies that have contributed to this paper that on occasions there is a lack of clarity over the respective roles of planning and building control and a failure to ensure that links between the two services are made at appropriate points in the approval and development process to avoid duplication, overlap and conflict and improve service delivery. It would be helpful if the two services identified their shared objectives – around sustainability and low carbon - and had better defined remits and responsibilities.**

Future of Building Control: Implementation Plan, CLG September 2009

3.17 This report was produced after a two year period of consideration and consultation with the industry.¹⁷ The Ministerial Forward states:

It is critical that the building control system is fit for purpose now and in the future because it is central to the Government’s ability to deliver more and better homes and buildings, to address the challenge of climate change and sustainability, and because it performs such an important service for the public at large.

¹⁷ <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1320090>

- 3.18 The Future of Building Control: Implementation Plan was produced following a major consultation exercise, which received 396 responses from right across the industry, including the Building Control Alliance. The report sets out a clear agenda for building control for the next decade. The vision and delivery statement is followed by discussion of the interface between building control and planning and the aim of ‘an integrated and e-enabled building control service’. The section ‘A Better Approach to Regulations and Guidance’ sets out a programme of rolling reviews of the technical parts of the Building Regulations and the accompanying guidance through to 2019 and commitments to improving the presentation of Approved Documents, Supporting Guidance and new Project Guides.
- 3.19 The report also covers proposed improvements to the building notice system, making completion certificates mandatory, a review of procedures around approved inspectors, new and extended enforcement powers and the reform of disputes and handling complaints. Chapter 5 discusses alternative routes to compliance beyond using approved inspectors or submitting an application or building notice to the local authority including both competent persons and pattern books. Competent persons are (normally) tradespersons considered competent to self-certify the compliance of their work and are regarded as a cost-effective way of achieving compliance for appropriate types of work, including discrete installations such as boiler or window replacement.¹⁸
- 3.20 A review of the consistency of competent person’s schemes, particularly in the light of EU regulations, has been carried out and a consultation was issued on December 23rd 2009¹⁹. There are 12 competent person schemes in operation, including on glazing, heating, hot water, plumbing systems and electrical installations in homes. CLG remain committed to the principle of extending competent person compliance, although extension into the areas of structure, fire and drainage will only be considered within the periodic review process CLG are consulting on proposals to bring the service levels of all competent persons schemes up to the highest standards. Proposals include changes to the authorisation procedures and the application process and measures to improve consumer protection.
- 3.21 There is support for developing the pattern book approach whereby contractors register with a company to receive detailed designs on a particular aspect of building work and in return that aspect of work will not be subject to the regular building control check by either an Approved Inspector or local authority.
- 3.22 The Sustainable and Secure Buildings Act 2004²⁰ allowed for the appointment of a single person – an Appointed Person – to act as an interface between building control and the developer, who would be responsible for facilitating the compliance with the Building Regulations on-site. Future of Building Control: Implementation Plan states that CLG do not intend to use the powers available to regulate for Appointed Persons at this time; but do ‘strongly believe that the role of an Appointed Person as the

¹⁸ <http://www.communities.gov.uk/planningandbuilding/buildingregulations/competentpersonsschemes/>

¹⁹ <http://www.communitites.gov.uk/publications/planningandbuilding/competentschemechangesconsult>

²⁰ http://www.opsi.gov.uk/Acts/acts2004/ukpga_20040022_en_1

main contact for building control on-site should be supported and promoted for appropriate development schemes', if only to reinforce the responsibility of the client and to promote an understanding of the regulations. The report recognises the synergies between the aims of the Appointed Person and those of the Construction Design Management co-ordinator, which could potentially be linked, and commits to 'watching closely the upcoming review of the CDM co-ordinator role'.

- 3.23 The final sections of the report make proposals for strengthening building control's performance management and moving towards developing a performance system, in which the emphasis on the priority of meeting carbon saving targets is stressed, 'the Government will be under increasing pressure to demonstrate that we are meeting our targets, for example, carbon savings in buildings as this is one of the key strands for delivering climate change targets. If the industry is not able to show that it can self regulate in this respect then we may be forced to rethink'. The Building Control Alliance's commitment to this agenda is also welcomed and there is a commitment from CLG to work with the BCA and the Building Control Performance Standards Advisory group to agree an expanded and improved set of indicators.
- 3.24 Comments are also made on current performance indicators, systems of benchmarking and peer review, training and proposals for improving evidence of compliance.
- 3.25 The Report's 'Vision for Building Control' is set out in Appendix A – a vision revised from earlier versions to 'reflect more clearly that the building control service is responsible for ensuring delivery of safe, healthy, accessible and sustainable buildings, rather than being directly responsible for ensuring that building work complies with Building Regulations.'
- 3.26 The Future of Building Control: Implementation Plan concludes with an Implementation Plan Milestones Map, which is reproduced at appendix B.
- 3.27 The section 'Building Control and Planning: A Smooth Interface' states inter alia:

Although the planning and building control systems are complementary – focused on ensuring appropriate development and buildings are in the right place, and that these buildings are safe, accessible and sustainable – the consultation recognised that the lack of clarity and effective linkages between the two can cause problems and duplication.

We are committed to making it easier for the users to navigate between the two services. Opportunities should be exploited to work together better and many good examples exist – for instance, pre-submission meetings, joint training and seminars, and commenting on technical parts of planning applications. The Planning Portal, an on-line planning and building control information service, is an important tool to improve the exchange of information between the two services.

Any actions taken will need to reflect the differences between Approved Inspectors and local authorities and ensure that neither is unfairly advantaged or disadvantaged. Yet we do not want to lose out on the opportunity to streamline appropriately with planning and other regulators, such as health and safety, fire and heritage protection.

We are working with the Health and Safety Executive, the Department for Business, Innovation and Skills and the Better Regulation Executive to better understand the interface between building control and the other regulatory regimes. Once we have established in detail the issues which arise where these regimes cross over, and identified areas of duplication and inconsistency, we will work with government colleagues and other stakeholders to determine and take forward any appropriate actions.

3.28 The report discusses ‘an integrated and e-enabled building control service’ and states:

The consultation recognised the importance of ‘right first time,’ seamless and accessible services and argued that e-enabling had the potential to deliver a faster building control service that is more integrated with planning.

The Killian-Pretty Review: planning applications – a faster and more responsive system 2008

3.29 The Final Report of the review conducted by David Pretty and Joanna Killian and produced in November 2008²¹ in response to a brief to ‘consider how, within the context of the Government’s objectives for the planning system and building on the reforms already announced, the planning application process can be improved for the benefit for all involved’ made 17 recommendations grouped into five key themes:

- The process is made more proportionate with more permitted development and streamlined processes for small scale development and streamlined information requirements where full planning permission is required;
- The process is improved particularly in relation to pre-application and post decision stages, where some significant problems currently exist;
- Engagement is made more effective by improvements in the way elected members, statutory and non statutory consultees and the wider community are involved in the process;
- Changes in culture are encouraged by replacing time-based performance targets with a measure of customer satisfaction and by seeking ways to reward better quality applications; and
- Unnecessary complexity is removed by making the national policy and legislative framework clearer, simpler and more proportionate.

²¹ The Killian-Pretty Review: planning applications – a faster and more responsive system: Final Report, November 2008 (published by CLG)

- 3.30 Building control was not within the Killian-Pretty remit and is not mentioned in the report; however, Recommendation 17 states:

Government should substantially overhaul and simplify both the national planning policy framework and the secondary legislation for the processing of planning applications to provide a clearer framework for a more positive approach to development management and to reduce unnecessary complexity and burdens for all parties engaged in the process.

To achieve this there should be (inter alia):

- *consolidation and simplification of the existing legislative framework for processing applications, principally the General Development Procedure Order (GDPO), which removes unnecessary prescription and detail;*
- *as part of the new national policy framework, a clear statement by CLG about the key principles underpinning a move from development control to a development management approach; and*
- *a recognition by CLG, that as a second priority, after completion of the key Development Plan Documents required by Government to be in place by March 2011, local planning authorities should ensure that there is effective, helpful and clear plan based guidance for those proposing householder and minor development.*

Development Management

- 3.31 Following work by the Planning Advisory Service (PAS) and the Planning Officers Society (POS) around promoting ‘development management’ – an integrated approach to using the planning system in a ‘joined-up’ way to deliver development and infrastructure²² Communities and Local Government produced a draft planning policy statement on ‘development management’ for consultation²³ in December 2009.

The PAS/POS report identified five principles that characterise the role of development management compared to development control:

- development management is an integral part of the spatial planning process; it puts spatial development plans into action.
- development management is the end to end management of the delivery chain for sustainable development.
- the development management approach signals a culture change, underlining the role of the local authority as a place shaper in partnership with others.

²² Development Management - guidance and discussion document; PAS and Addison Associates with support from Planning Officers Society (Enterprises) and ATLAS; June 2008

²³ Development management: Proactive planning from pre-application to delivery; CLG Dec 2009 <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1419804.pdf>

- the processes for considering proposals need to be proportionate and appropriate to the impact of the individual development.
- the development management approach will necessitate changes in the structure and allocation of resources within local planning authorities

3.32 In addressing resource gaps in achieving a development management approach the report recommended:

*Make use of other resources and skills which reside within local authorities and partner organisations and foster skills mobility to enable the transfer into the service at relevant stages. **For example, some of the construction issues associated with climate change would be better dealt with by building control.** It is essential that people with these skills are available to add value to sustainability assessments of schemes at pre-application stage.*

3.33 CLG's consultation paper stated that 'existing good practice indicates that achieving success requires local working practices to be based around seven key elements:

- a positive and proactive approach to place shaping
- putting planning policy into action
- front loading
- taking a proportionate approach
- effective engagement
- proactive delivery
- monitoring and review of development management outcomes'

Under the 'proactive delivery' element the document suggests that local authorities '*ensure effective co-ordination and communication within the authority with all services which play a role during the delivery phase, such as building control, enforcement and environmental health.*'

The Penfold Review

3.34 The Penfold Review of non-planning consents was established by the Department for Business, Innovation and Skills (BIS) to gather evidence to assess the role that non-planning consents play in investment decisions and, where any barriers to investment are identified, propose ways to address these. The review aimed 'to identify areas where there is scope to support investment by streamlining the process for securing consents obtained alongside or after, and separate from, planning permission ('non-planning consents'). It did so by:

- a. Identifying non-planning consents which developers and other stakeholders regard as problematic;
- b. Assessing their impact on developers and the development process; and

c. Considering how obtaining such consents could be made simpler and more cost-effective.’

3.35 Building Regulations approval is one of the 86 ‘non-planning consents’ recognised by the Review’s Interim Report which was published in March 2010²⁴. The Interim Report recognised that building regulations approval is not considered a significant delaying factor by the development sector and, in contrast to a number of non-planning consent regimes that are considered for possible amalgamation or simplification, suggests that **the Building Regulations approval regime ‘probably needs to be kept separate from (and follow) planning (approval).’** The Interim Report did, however, recognise, *inter alia*, that improving the interaction between planning and non-planning consents is a key objective is an important objective for the development industry.

3.36 The final report of the Penfold review was published in July 2010²⁵, it recognised four key problems:

- *Non-planning consents are numerous and complex, there is no standard ‘way in’ to them for developers and responsibility for them is fragmented with no-one in Government looking at the landscape as a whole;*
- *Overlaps and duplication between planning and non-planning consents are a source of inefficiency and blur the boundary between the decision of principle about whether development should go ahead (the ‘if’ decision) and detailed decisions about how a development should be built and operated (‘how’ decisions);*
- *Non-planning consents can be critical to some investment decisions and any unforeseen or unnecessary delays they cause increase development costs and can have an adverse economic impact; and*
- *Inconsistency and frustration often characterise developers’ experience of consenting bodies.*

In observing the relationship between planning and building control **the Review ‘believes that clarifying the boundary between planning and non-planning consents will be vital in ensuring that real improvements are made.’**²⁶ A number of relevant recommendations are made including:

Recommendation H – changes to specific regimes

(1) *Government should improve the interaction between planning and on-planning consents in specific instances to clarify what should be viewed as material to planning and non-planning consent regimes, remove duplication and reduce the need for detailed design work to obtain planning by: (inter alia)*

- ***Clarifying the roles of planning authorities (setting objectives and standards) and building control (ensuring objectives and standards are met) in relation to energy efficiency to reduce the need for applicants to carry out detailed design work at the planning permission stage.***

Recommendation I – facilitating integration of planning and non-planning consents

(2) *Government should encourage more local authorities to offer an improved, integrated and end-to-end planning and non-planning consents service by:*

²⁴ Penfold Review of non-planning consents, Interim Report; BIS March 2010

²⁵ <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/p/10-1027-penfold-review-final-report.pdf>

²⁶ Executive Summary p. v.

- *Actively promoting the adoption of existing good practice in development management across all authorities that take planning decisions;*
- *Inviting local authorities that want to attract investment to volunteer to pilot the further integration of planning and non-planning consents by extending the IApp approach offered through the Planning Portal to include more non-planning consents, with the facility for developers to opt for consideration of related consents in parallel with their planning application;*
- *Creating the necessary powers that would enable local authorities to take on a wider role in determining what are currently non-planning consents as part of the planning process.*

CABE: Improving the design of new housing – what role for standards?

3.37 CABE – the Commission for Architecture and the Built Environment – published this statement in June 2010²⁷ in the context of the Coalition Government’s call for a local approach to policy and decision making. It calls for a new, simpler framework for housing design standards that ‘could play an important role in supporting communities to ensure new housing makes a real and positive contribution to the quality of life of people live in and around the new homes, and help developers generate greater value from their products.’ The report opines ‘Any standards framework needs to be flexible enough to allow local decision makers to choose what is best for their locality. It should also place no unnecessary burdens on developers, thereby undermining viability and supply. But above all, a new standards framework needs to be effective, creating consistency and eliminating the worst examples of bad design. **The current regime required by building regulations, planning policy and by funders fails to deliver on any of these objectives.**’ (Author’s emphasis).

3.38 The CABE report sets out a proposal for a ‘robust and comprehensive national standards framework, focusing on standards for both houses and housing; shaped according to a series of aims, which include:

- *Avoid duplication and overlap – we should not have standards that overlap and mean aspects of performance are measured in several places for different purposes.*
- **Clarify what elements belong in planning and what should be included within building regulations.** *For example the requirements in Lifetime Homes for size of parking spaces should be included in planning policy, whereas the detailed requirements for switch heights should be included in building regulations.*
- *Demonstrate clear linkage to an enforcement process. Standards need to be linked with the process that will enforce them.*
- *Prevent unnecessary compliance, for example by requiring information at planning stage showing compliance on detailed items when fundamental issues may be wrong.*
- *Ensure that standards are driven by the public interest. Standards should not be owned by the private sector or single interest groups; however, certification and enforcement may be led by private sector organisations such as NHBC.*

A national framework for housing standards should (then) do three things:

- 1. Create a single set of measures by which developments can be designed, judged and developed through the planning system, under the oversight of elected local representatives.*

²⁷ <http://www.cabe.org.uk/files/improving-the-design-of-new-housing.pdf>

2. *Specify the standards, to be delivered through the planning system, into two areas, addressing:*
 - a) *housing layouts and the wider development; and*
 - b) *the design of individual homes*
3. *Identify those that should be delivered through building regulations or included in them in future.*

The Planning Portal

- 3.39 CLG's Planning Portal²⁸ provides comprehensive guides to both the planning and building control processes for both professional users and members of the general public. The two services are presented and accessed in a parallel and cross-referenced format. Advice on the requirements of the two services is presented by project or development category and there is a strong emphasis on helping members of the public understand the differences between the two regimes and the points where one or the other or both procedures are required.
- 3.40 One efficiency improvement might be a single planning and Building Regulation application form linking Building Regulation requirements to IAPP; however, under current arrangements, this procedure could only be applied to local government inspection regimes and alternative arrangements would be required for Approved Inspectors.
- 3.41 Another improvement that is recommended by some is to rename the Planning Portal to demonstrate that its advice is wider than just the planning regime and covers a number of aspects of development, e.g. 'the Planning Portal – all aspects of Development Management', 'The Development Portal', 'the Planning and Development Portal', 'the Planning and Building Control Portal' or 'the Planning and Construction Portal'. An argument against this idea is that the current title achieves high levels of recognition and seems to be well understood by the public.

²⁸ <http://www.planningportal.gov.uk>

The Working Group Proposals

4.1 The Group identified five priorities for investigation and possible action. These broadly address the issues of:

- clarity of role and purpose within and between planning and building control, and
- linkage and efficiency in the connection between building control and planning

The five priorities are:

- a. **Ensuring better clarity in defining the roles and responsibilities of building control and planning** - this is needed because of the increasing importance and complexity of the technologies and performance standards in delivering sustainable buildings; the increasing emphasis and expectation on both services to prioritise sustainability outcomes; and the consequent potential for confusion and/or duplication of roles. Account needs to be taken of issues currently not adequately covered by either system (e.g. on-site and offsite renewables), as well as issues such as signing-off completion, that are not adequately addressed by both services.
- b. **Establishing a better, more integrated service for small scale proposals** to improve the quality, efficiency and effectiveness of both services and better deliver their shared objectives. Service improvement measures might include:
 - creating a single application form for small scale developments.
 - issuing a single decision notice for small scale proposals except those for heritage assets. building control planning.
 - training specialist officers to deal with both planning and building control requirements for small scale projects.
- c. **Establishing stronger links between planning and building control to ensure a more integrated approach to the use of building technologies in larger and more complex developments** - ensuring building control advice is received at pre-application discussion and early design stage for complex and large projects through the Development Management approach. Potentially this could be extended to a requirement that for certain types of proposal building control bodies become a statutory planning consultee.
- d. **Unlocking the potential for dealing more effectively with completion and, if necessary, enforcement** – particularly by capitalising on building control bodies' role in monitoring the progress of the build scheme at its key stages.
- e. **Rethinking CDM to reduce complexity and tackle whole life issues** - in order to consider the implications of ensuring sustainability over the whole life time of a building.

These five propositions are discussed below.

(a) Ensuring better clarity in defining the roles and responsibilities of building control and planning

- 4.3 There has been an increasing tendency over the last few years for planning to take more account of, and seek to control, a number of issues which hitherto have been the sole preserve of Building Regulation. Arguably, this can be linked to the requirement for planning to prioritise the achievement of sustainability outcomes and to consider wider issues than merely “place and space”.
- 4.4 While this approach is clearly explained in paragraph 30 of Planning Policy Statement 1²⁹ the same paragraph goes on to state that planning policies should not replicate, cut across, or detrimentally affect matters within the scope of other legislative requirements, such as those set out in Building Regulations for energy efficiency. It can be reasonably assumed that “Building Regulations for energy efficiency” is merely an example of the type of issues that planning policies should not “replicate, cut across, or detrimentally affect” rather than being the only area where such an approach is inappropriate.
- 4.5 The problem of planning policy being continually expanded to deliver more and more diverse objectives was recognised by the Killian Pretty Review (Nov 2008) which concluded that “there needs to be a clearer recognition of the limits of the planning system and a greater focus on what it can realistically achieve” and that government should “remove duplication with other regulatory regimes” (Recommendation 16) and by the Penfold Review Interim Report (March 2010).
- 4.6 There are other examples of planning’s ‘boundary’ being extended:
- Transport (mostly around seeking to influence modal choice through, for example, developer contributions to subsidise public transport services, parking standards fluctuating between maximum and minimum provision, and green travel plans but also through road layout and design often in conflict with highway safety or adoption standards)
 - Building design (through initiatives for housing development such as Building for Life, one criterion of which is an assessment of whether the buildings exceed current Building Regulations and aesthetic considerations that have little or no regard for the impact of such requirements on Building Regulations or technical requirements)
 - Energy generation and use (the application of “Merton Rule” style policies for onsite energy generation and targets for a proportion of energy use to come from renewable sources)
 - Housing policy (control over tenure, subsidy levels, mix and size of dwellings)

However, the one thing that these examples appear to have in common is the inability of planning policy to control or enforce the ongoing compliance of the original objective.

²⁹ Planning Policy Statement 1: Delivering Sustainable Development ODPM 2005

- 4.7 In addition, there is evidence of situations where developers receive conflicting advice from planning and building control; particularly, in the case of listed buildings and buildings in conservation areas in the case, for example, of means of escape and double glazing.
- 4.8 While this paper is specifically about the duplication and overlap of planning policy with Building Regulations the above problems in other policy areas will need to be similarly recognised and addressed.
- 4.9 With regard to Building Regulations it would appear that there is little benefit in seeking to merge the two very distinct regimes. In fact the case for even greater distinction has never been greater given the ever increasing technical requirements of buildings to meet increasingly challenging performance targets; albeit in the context of recognising the complementary nature of the two services.
- 4.10 It would be too simple to argue that Building Regulations should be about the building itself; while planning should be about the context and impact of that building; As recommended by the Killian Pretty Review, any future changes to either the Building Regulations or the planning policy regimes should be rigorously tested against a set of challenging criteria to ensure that there is no duplication or confusion over where the policy objective should sit.
- 4.11 While both Planning Policy Statement 1³⁰ and The Future of Building Control : Implementation Plan³¹ recognise the complementary roles of planning and building control they both focus primarily on the perceived role of each more or less independent service. Building a Greener Future : towards a zero carbon future³² neatly expresses the relationship between the two services around the Code for Sustainable Homes as:
- the planning system – which sets out the overall framework for development
 - the Code for Sustainable Homes – which provides the mechanism for developing and demonstrating higher environmental standards; and
 - Building Regulations – which ensure tougher energy/carbon standards for all new homes

So while there has been recognition of complementary roles, shared objectives and (implicitly) the danger of overlapping responsibilities the reality is that until the recent publication of the CABI report Improving the Design of New Housing – What Role for Standards? and the Penfold - Review of Non-planning Consents in the summer of 2010, relatively little attention has been paid to:

- Defining shared sustainability objectives and outcomes for the two services in relation to individual buildings.

³⁰ Planning Policy Statement 1: Delivering Sustainable Development
Office of the Deputy Prime Minister, 2005

³¹ <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1320090>

³² www.communities.gov.uk/archived/publications/planningandbuilding/buildinggreener

- Understanding the areas where service responsibilities overlap leading to duplication, confusion and, on occasions, wrong information.
- Exploring areas where there is good practice in joint working to achieve shared outcomes and the lessons that can be learned from these experiences.

(b) Establishing a better, more integrated service for small scale proposals

4.12 There is agreement that an integrated or common application regime for both planning and building control applications, particularly for smaller scale development would provide a better service to customers and should lead to efficiency gains, particularly in freeing up specialist officers for more strategic work. Potentially this could lead to jointly issued consents.

4.13 Some consultants argue that further integration could include compliance certification for planning proposals by 'approved agents', who would be able to process applications for submission with a recommendation to the local planning authority for a decision. This would introduce the benefit of competition, which achieved the transformation of building control 25 years ago, into development management. While this procedure (with both Approved Inspectors and local authorities as authorised building control bodies) has operated within building control since 1985 it would be a radical departure for planning, where only local authorities (and a small number of non-departmental public bodies) have full processing powers. There is a view that this proposal potentially raises important issues of probity, professional judgment and conduct; but this system has operated successfully for building control, where an approved agent – backed up by indemnity insurance - receives a fee for making an objective judgment on behalf of the client, for many years.

4.14 The difficulties that arise in relation to a common application, determination and consents regime for small scale proposals are mainly concerned with:

- I. The definition of 'small scale', where currently the planning regulations recognise 'permitted' development, 'householder' development and 'minor' developments³³ and the Building Regulation definition of 'building work' for which approval is required embrace a range of both 'building' and 'service installation work' including: (1) the erection or extension of a building; (2) an alteration project involving work which will temporarily or permanently affect the ongoing compliance of the building, service or fitting with the requirements relating to structure, fire, or access to and use of buildings; (3) the installation or extension of a service or fitting which is controlled under the regulations; (4) the insertion of insulation into a cavity wall; (5) the underpinning of the foundations of a building; (6) proposals to change the building's fundamental use. As a consequence:

³³ 'Minor' development is defined for planning purposes as 'For dwellings, where the number of dwellings to be constructed is between 1 and 9 inclusive. Where the number of dwellings to be constructed is not given in the application, a site area of less than 0.5 hectares should be used as the definition of a minor development. For all other uses, a minor development is one where the floorspace to be built is less than 1,000 square metres or where the site area is less than 1 hectare.'

- Some small scale, often internal, work is not recognised as ‘development’ by planning requirements; but requires Building Regulation approval.
- ‘Permitted’ development, which has received permission by virtue of the General Permitted Development Order and comprises small scale development in certain circumstances which may require building approval.
- ‘Householder’ development, defined as ‘development within the curtilage of the dwelling’, may or may not require planning permission depending on the definition of permitted development; but is likely to require Building Regulation approval.

It would appear to be possible to introduce an integrated regime for householder applications subject to planning policies and appropriate design and development guides being in place; but there may well be difficulty in setting an ‘upper’ limit as many planning permissions for ‘minor’ development require consideration of complex issues and embrace a wide range of proposals. A distinction that might be more practical for planning purposes could be that between ‘compliant’ and ‘non-compliant’ proposals, i.e. those which are either permitted development or in accordance with Local Plan policies – in this case, the definition of ‘small scale’ would no longer be relevant and all proposals which depart from policy would be determined by the LPA.

2. Training and developing staff and putting in place the necessary policies, guides and possibly ‘pattern book’ examples to assist them – in a similar process to that used under the Building Regulations. There is a debate about how an integrated service might be delivered. The options are by separate, qualified building control and planning staff working closely together; by either planning or building control staff trained in the skills required to handle small scale proposals in the ‘other’ discipline; specialist staff ‘jointly trained/skilled’ in the two disciplines and able to provide a holistic service to applicants – mainly householders – with small scale proposals.

Private sector qualified architects, planners and building surveyors may have the range of skills required, suggesting a possible opportunity for the use of Approved Inspectors and increased use of self-certification (the Warranty based system referred to in 4.34), which would reduce the need for much low-level administration from local authorities.

- 4.15 Although there are many examples of both jointly managed local authority planning and building control services and some consultancies providing an inter-disciplinary service, there does not appear to be any systematic information on how many, if any, local authorities are currently using an integrated application process or individual staff or teams to address both building control and planning issues for small scale developments. A way forward would be to identify any such authorities and to use their experience to research the possibility of integrating applications, technical appraisal and subsequent consent.

(c) Establishing stronger links between planning and building control to ensure a more integrated approach to the use of building technologies in larger and more complex developments

- 4.16 At present the interface between planning and building control varies from authority to authority. Although services are frequently jointly managed it is not clear how much interaction and co-operation takes place. For example, is there experience of building control officers monitoring the implementation of planning permissions and to what extent are planners aware of the technical requirements that are included in the Building Regulations for different types of building? Rather than better joint-working it can be the case, where inter-authority building control services have been established that engagement with individual planning services becomes more difficult. As the planning system is obliged (for various reasons) to consider matters that more realistically fit into the later, working drawing stages of project design, the need for closer engagement and co-ordination increases.
- 4.17 So for example, many local planning authority application validation lists now have detailed information requirements built in, such as the need for structural surveys, sound insulation, Code for Sustainable Homes ratings and even BREEAM evaluation. Technical requirements (flood risk assessment, green travel plan, arboricultural statement, landscape study, etc) are mostly dealt with by reference to expert advice available to the case officer when considering a planning application (for example the Environment Agency for flood risk and the Highways Authority for traffic management, both of which may be statutory consultees).
- 4.18 Many of these technical requirements are often far too detailed for the early design stages, so it is important for planners to liaise with building control bodies to better understand general performance requirements instead of getting bogged down with detailed technical matters when considering a scheme approval in principle.
- 4.19 Because the impact on design of requiring, say, a workable strategy for means of escape in case of fire or a Code for Sustainable Homes rating of 4/5 may not be understood by the planning case officer, the planning and building control regimes need to work more closely together so that building control advice is received at an early stage in the design process. One way of achieving this might be for building control to become a statutory planning consultee.
- 4.20 A stepped regime could be developed for all applications, working from outline permission, when the Building Regulation advice would be more general, through detailed construction approval including full technical information, to monitoring during construction (allowing for alterations if appropriate without the need to start again at the beginning). By this method the technical requirements would be integrated into the design at an early stage and the planning officer – or approved agent / development manager - would be aware of the impact of any design changes that may be recommended.
- 4.21 From a planning perspective the development of closer integration on major projects – whether a

statutory requirement for consultation or a best practice recommendation – should be relatively easily achieved by the incorporation of building control bodies into development management teams as proposed by the Planning Advisory Service and Planning Officers Society.

- 4.22 In an ideal system, reflecting the best practice of designers who consider all these issues as an essential part of the development process, it might be possible to bring planning and building construction approvals together within a local government context, thus reducing the amount of regulation overall in line with current Government initiatives; however, unless fundamental changes were made to the planning system to allow approvals to be granted by private consultants it might be argued that a joint-consenting regime within local government disadvantaged Approved Inspectors providing a private sector service.

(d) Unlocking the potential for dealing more effectively with completion and, if necessary, enforcement

- 4.23 There are two main types of planning enforcement:

- A. failure by the developer to observe the limits set by approved drawings and/or conditions;
- B. starting work or using land without any permission.

A. **‘Failure to observe’:** This is limited within building control by checking approved drawings on site and issuing a Building Notice; but currently there are no similar mechanisms of monitoring/control of the execution of a planning permissions, where enforcement takes place only if an interested party notifies the planning department. There is no early check in the planning process, which could ensure that the works could be altered to comply with the permission.

B. **‘Starting without permission’:** There is no official check on this - both departments act on information received. If a breach is identified the usual approach is to suggest that the developer submits the appropriate application and in the meantime stops work. Under planning regulations it is possible to insist on this by the issuing of a stop notice which, if violated, will be decided in the magistrates’ court. Alternatively, the developer may stop work and then go through the appeals system to find out if he can proceed. However, it is lawful, although potentially high-risk, to carry out development and seek subsequent retrospective planning permission.

- 4.24 There are obvious points for joint working in cases of criterion A. Building Inspectors already check construction at certain stages - they could incorporate a check on planning drawings also, although this would attract an increased fee; however, (arguably) planning applicants would be interested to pay for a certificate of compliance.

- 4.25 Most planning authorities send out a standard letter to developers notifying them of the need to make an application under Building Regulations before starting work, and vice-versa, but this is not always the case.
- 4.26 Hopefully, site checks will ensure that developers keep to the approved drawings. If they challenge, or if their application is refused they have the right to appeal. This can involve legal advice and the procedures are more specialised, limiting scope for continuing joint working.
- 4.27 Criterion B could use staff for either building control or development management to check out sites where unauthorised works have been reported. Ideally, retrospective submission would result in ratification of the unauthorised works, and there would be liaison between the two departments on the content of the drawings and action on site. In the event of an impasse the developer could still go to appeal and the main impetus for action by the local authority would change, as it would involve lawyers, culminating, if constantly challenged, in the magistrates' court. The potential role of local authority officers providing a 'site checking' service is clearly compromised in those cases where the Building Regulation requirements are being met by Authorised Inspectors.
- 4.28 Listed Building enforcement action follows a similar pattern except that the criteria for referral to the Magistrates' Court are stiffer and easier to define and therefore result in conviction. More recent decisions in case law have clouded what originally was simply defined, particularly in relation to demolition, so it is necessary for all engaged in this work to be fully briefed at regular intervals by a legal advisor.
- (e) Rethinking CDM to reduce complexity and tackle whole life issues**
- 4.29 This proposal has been put forward by the Association of Consultant Approved Inspectors (ACAI) and has raised concerns that it would be difficult to ensure adequate standards of inspection in practice; that building inspection should remain the responsibility of specialist 'chartered' inspectors; that there are examples from abroad of 'warranty' based systems failing; and that the proposal is beyond the remit of the Working Group. Nevertheless, as recognised earlier in this report, *The Future of Building Control : Implementation Plan* recognised the synergies between the aims of the Appointed Person and those of the Construction Design Management (CDM) co-ordinator, which could potentially be linked, and committed CLG to 'watching closely the upcoming review of the CDM co-ordinator role'.³⁴
- 4.30 The issue has been addressed in the Donaghy report³⁵ which proposed that 'there should be a Building Regulation or an amendment to an existing Regulation, imposing a duty of care on persons carrying out work to do so safely'. This would extend their enforcement from the safety of what is built to include the safety of the building process.

³⁴ <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1320090> paras. 5.17-5.22

³⁵ *One Death is Too Many : Inquiry into the Underlying Causes of Construction Fatal Accidents* Report to the Secretary of State for Work and Pensions. Rita Donaghy July 2009

- 4.31 The legislation for doing this is arguably already in place by virtue of section 9 of the Sustainable & Secure Buildings Act³⁶ which amended The Building Act 1984 to create the concept of an ‘appointed person’. An extract of the amendment is attached as annex A but in summary – ‘the appointed person in relation to any work shall have such duties in relation to the planning and management³⁷ of the carrying out of that work as may be prescribed for purposes connected with facilitating compliance with the requirements of Building Regulations in relation to that work’
- 4.32 The current CDM role could be abolished and replaced by this new function. The role of Approved Inspector could also be incorporated, with the opportunity to further repeal legislation. It would then be possible to combine the Approved Inspectors Initial Notice with the current F10 construction commencement notice – to become an Appointed Persons notice. It would be illegal to commence construction work without an Appointed Persons notice – with exclusions for certain small works carried out by Competent Persons – e.g. window replacement etc.
- 4.33 The role could be extended further still by the appointed person addressing the Fire Risk Assessment, Energy Performance Certificates, Display Energy Certificates, and Disabled Access Statements etc. CDM and such roles might be optional depending on the qualifications of the Approved Inspector.
- 4.34 An even more radical proposal might replace the existing system of ‘permit’ in its entirety with a warranty based system at the time of construction and a MOT type system requiring annual inspection of key safety systems – such as smoke detectors, boilers, ventilation fans etc. This will becoming increasingly important as we become more reliant on technological solutions to achieve Building Regulations compliance, to deal with the consequential need to maintain these systems.

³⁶ http://www.opsi.gov.uk/Acts/acts2004/ukpga_20040022_en_1
³⁷ Author’s emphasis

Improving the connection – proposals and recommendations

- 5.1 A major difficulty in any proposal to improve the connection, and thereby the quality of service and outcome, of building control and planning is the different decision-making jurisdictions – planning, where decisions can only be made by local planning authorities; and building control, where decisions are delivered through building control bodies, which can be either a local authority or a private-sector Approved Inspector. There is no doubt that this difference represents a formidable barrier to improved joint working on a consistent basis. Nevertheless, it is the view of the members of the NPF Working Party, which includes representation from all the sectors, that this difficulty should not stand in the way of exploring improvements to deliver a better quality of service, improved outcomes and efficiency gains.
- 5.2 The Working Group is agreed that it is unrealistic to pursue a course of fully integrating the two services in a single step, with the possible exception of training specialist officers in local government to provide advice and take decisions on small scale householder proposals that require both planning permission and a building control approval. Indeed, the increasing range of considerations, targets, standards, methodologies and technologies that both services are required to take on board, particularly in relation to sustainability, reduced energy consumption and low-carbon construction, makes it imperative that they both continue to develop within their own specialisms. We are encouraged by the considerable investment made in recent years in addressing both planning and Building Regulation reform, particularly in the light of the adaptation and mitigation imperatives imposed by the challenge of climate change. We recognise that the pace of change is and will continue to be rapid and that there is a challenge for both individuals and organisations in continuously improving the skills base to address the new challenges.
- 5.3 However, we agree fully with CLG's assertions in both planning and building control policy documents that the two services play a complementary role in delivering high quality, sustainable, low carbon development. We also recognise that as policies and techniques to address a low carbon future develop, the need for closer collaboration between building control bodies and planning services can only increase. While the complementary, parallel, 'two sides of the same coin' relationship is recognised and supported, the Working Party believes that steps can and should be taken to improve the connections and links between the two services to address the new challenges and deliver the gains set out in para. 5.1.
- 5.4 The proposals set out below to improve the connection between building control and planning are grouped under two headings:
- Improving clarity of role and purpose
 - Improving the links to achieve better service outcomes

If implemented these proposals would contribute to achieving more efficient, effective, simple and customer orientated service delivery outlined in the Killian-Pretty Review, proposals for a development management approach, the Future of Building Control Implementation Plan and the Penfold Review.

Improving clarity in the of role and purpose of planning and building control

a. Shared objectives – build on the work of the Future of Building Control: Implementation Plan and Planning Policy Statement 1 to set out a clear statement of shared objectives for both building control and planning, including delivering sustainable low carbon development.

b. Clear roles – clarify and distinguish the roles and responsibilities of the two services in relation to sustainable outcomes, particularly in relation to evaluating competing technologies, advising on the range of solutions to deliver sustainability targets and ensuring that design outcomes and sustainability technologies are compatible and mutually reinforcing.

c. Improve the position and recognition of building control within local authorities – there is a perception that building control is the ‘poor relation’.

d. Increase knowledge and awareness – (joint) training for officers in both disciplines to increase knowledge and awareness of each other’s roles and responsibilities and to improve the skills base in relation to low carbon outcomes of both disciplines. LABC Training has developed a one-day course for delivery which is one potential mechanism to encourage debate and greater understanding.

Improving the links to achieve better service outcomes

e. Develop skills, procedures and organisation in joint working – through demonstration projects and highlighting best practice:

- Within local authorities develop a one-stop shop approach to both planning and building control applications for small-scale, ‘householder’ proposals. Explore the possibility of Approved Inspectors certifying the compliance of planning proposals with the local plan or as permitted development alongside certifying compliance with the Building Regulations.
- Co-ordinated processing and determination of planning and building control applications especially for small-scale proposals through a co-ordinated, ‘parallel’ processing or via a single officer trained to deal with both disciplines. Potentially this ‘combined service’ could be delivered by consultants qualified as Approved Inspectors and with the requisite professional planning qualification - although currently decisions on planning applications can only be made by elected local planning authorities.

- Joint monitoring, compliance and enforcement of projects under construction.

f. Pursue the Development Management approach to major and complex development proposals – explore:

- Effective involvement by building control bodies at pre-application, outline and detailed design stages in the consideration of development proposals through the planning process. (New flexibilities in setting charging regimes by local authority building control may encourage this practice within the local authority sector.)
- The potential for building control bodies becoming a statutory consultee to the planning process for certain categories of planning application.

g. The Planning Portal - consider whether renaming the Planning Portal would deliver improved use of the service by both planning and building control customers if it were re-named to reflect its wider purpose.

Appendix A

Future of Building control: Implementation Plan – Vision Statement

“Our vision is for a building control system which ensures buildings are safe, healthy, accessible and sustainable for current and future generations.

To deliver this vision the Building control Alliance and Communities and Local Government want to see a building control system which:

- is based on objective and fair standards developed through consultation and supported by clear guidance to aid compliance in common building situations
- works with the customer to help them achieve a building project which meets both their expectations and building standards designed for the public good
- works hand-in-hand with other regulatory systems to provide a coherent service to customers
- ensures that the level of inspection is appropriate to the risk and need
- gives local authorities the powers needed to enforce building standards
- ensures all building control bodies regularly assess and continually improve their own performance and effectiveness
- is served by a professional, well-trained and managed building control service which uses resources effectively and efficiently
- offers an effective means of resolving disputes about compliance
- includes communication and awareness raising in respect of both its purpose and the roles, responsibilities and expectations of its stakeholders
- monitors building performance and compliance levels to demonstrate its impact on the delivery of compliant buildings.

We need to be clear with customers that the building control service will:

- provide a checking service to help achieve compliance with building standards
- support and advise customers on how to end up with the result they want, but will not be a substitute for professional design and construction advice
- help with aspects of quality (workmanship and materials) where these affect compliance with building standards, but not where they do not affect compliance
- ensure that all building standards which are set in the interests of the wider public good have been complied with at completion.

We need to be clear with customers that the building control service will not:

- be responsible for compliance – *that is the duty of the person carrying out the work*. If work is found not to comply with building standards the person responsible could be prosecuted and the owner of the building may be required to put the work right
- manage every stage of the construction process on-site – that is a matter for the contracts and arrangements between the client and builder
- address issues such as the finish and aesthetics of the final project where these are not relevant to compliance with building standards – these are a matter for designers, developers, builders and, to some extent, new home warranty providers
- deal with contractual problems between client and builder – this is a matter of contract law.”³⁸

³⁸ Future of Building control: Implementation Plan CLG, September 2009

Appendix B

The Future of Building control Implementation Plan Milestones Map

IMPLEMENTATION PLAN MILESTONE MAP - Delivering improvements to the Building Control System to raise compliance, reduce burden and enhance customer service

Proposal	2009	2010	2011	2012	2013 (and beyond)
Chapter 1 - A New Future for Building Control					
Vision and delivery statement	Issue consolidated Building Regulations 2000 and Building Approved Inspector statement (July)	Issue consolidated Building Regulations 2000 and Building Approved Inspector statement (July)	Issue consolidated Building Regulations 2000 and Building Approved Inspector statement (July)	Issue consolidated Building Regulations 2000 and Building Approved Inspector statement (July)	Issue consolidated Building Regulations 2000 and Building Approved Inspector statement (July)
Building control and planning - A smooth interface	3-year joint LA/BC to address data transfer issues between CPs and LA/BC	3-year joint LA/BC to address data transfer issues between CPs and LA/BC	3-year joint LA/BC to address data transfer issues between CPs and LA/BC	3-year joint LA/BC to address data transfer issues between CPs and LA/BC	3-year joint LA/BC to address data transfer issues between CPs and LA/BC
Chapter 2 - A Better Approach to Regulation and Guidance					
Periodic review - A new way of updating the guidance	Confirm initial periodic review programme (Aug)	Confirm initial periodic review programme (Aug)	Confirm initial periodic review programme (Aug)	Confirm initial periodic review programme (Aug)	Confirm initial periodic review programme (Aug)
The periodic review	Consult on changes to Parts L&F (June)	Consult on changes to Part J (Oct)	Consult on changes to Parts E, Part H, Part M, Part N, Part P and Regulation 7	Consult on Parts A&C, Part F&I and Part H. Possibly consult on Part E, Part K, Part M, Part N, Part P and/or Regulation 7	Consult on Parts A&C, Part F&I and Part H. Possibly consult on Part E, Part K, Part M, Part N, Part P and/or Regulation 7
Better guidance and new project guides	Project specific guidance available on the Planning Portal	Project specific guidance available on the Planning Portal	Project specific guidance available on the Planning Portal	Project specific guidance available on the Planning Portal	Project specific guidance available on the Planning Portal
Chapter 3 - Modernising Inspection and Enforcement					
New approach to risk assessment and improvements to the building control system	Consultation on changes to LA charge to introduce flexibility, accuracy and transparency (April)	Consultation on changes to LA charge to introduce flexibility, accuracy and transparency (April)	Consultation on changes to LA charge to introduce flexibility, accuracy and transparency (April)	Consultation on changes to LA charge to introduce flexibility, accuracy and transparency (April)	Consultation on changes to LA charge to introduce flexibility, accuracy and transparency (April)
New and extended enforcement powers					
Chapter 4 - Reform of Disputes and Complaints					
Alternative dispute resolution scheme and reform of statutory procedures	Launch of Building Control Alternative mediation scheme	Launch of Building Control Alternative mediation scheme	Launch of Building Control Alternative mediation scheme	Launch of Building Control Alternative mediation scheme	Launch of Building Control Alternative mediation scheme
Handling of complaints					
Chapter 5 - Alternative Ways to Comply					
Compliant person scheme	3-year joint LA/BC to address data transfer issues between CPs and LA/BC	3-year joint LA/BC to address data transfer issues between CPs and LA/BC	3-year joint LA/BC to address data transfer issues between CPs and LA/BC	3-year joint LA/BC to address data transfer issues between CPs and LA/BC	3-year joint LA/BC to address data transfer issues between CPs and LA/BC
Chapter 6 - Strengthening Performance Management					
Developing and delivering a performance system	BCPSAS publishes 2007/08 indicators report (June)	BCPSAS publishes 2008/09 indicators report (Oct)	BCPSAS publishes 2009/10 indicators report (April)	BCPSAS publishes 2010/11 indicators report (April)	BCPSAS publishes 2011/12 indicators report (April)

The NPF Planning and Building Control Working Group

Mike Hayes CBE	Chair and Rapporteur, Royal Town Planning Institute, NPF Vice-Chair (Professions) – stepped down 31.12.09
Brian Waters	Chair, Association of Consultant Architects/London Development and Planning Forum, NPF Vice-Chair (Professions) from 01.06.10
John Anderson	Commonwealth Association of Planners
Simon Birch	Environment Agency
Patrick Brown	British Property Federation
James Carr	Royal Institute of British Architects
Graham Jones	Planning Officers Society
Chris Kendall	Communities and Local Government – Planning Portal
Tony Mulhall	Royal Institute of Chartered Surveyors
Steve Quartermain	Chief Planner: Communities and Local Government
Lorna Stimpson	Local Authority Building control
Andy Rogers	Association of Consultant Architects
Stephen Tapper	Planning Officers Society
Anna Thompson	Local Authority Building control
Brian Waters	London Planning and Development Forum/Association of Consultant Architects
John Walker	Planning Officers Society
Andrew Whitaker	Home Builders Federation
Geoff Wilkinson	Association of Consultant Approved Inspectors
Kay Powell	Secretary to the National Planning Forum - stepped down 31.12.09
Mike Hayes CBE	Secretary to the National Planning Forum – from 01.01.10

The National Planning Forum

www.natplanforum.org.uk

The National Planning Forum (NPF) was re-launched in 2003 as the largest cross-sectoral forum focussing on spatial planning in England with a mission to inspire planning and planners.

Since then it has taken a leading role in supporting more creative planning, facilitating culture change and championing the need for a national spatial framework.

Its membership comprises representatives of the five main sectors involved in spatial planning – business, local government, the professions, government agencies, non-governmental organisations and the voluntary and community sectors; including:

GOVERNMENT AGENCIES (includes sponsor Departments)

Communities and Local Government
Audit Commission
Commission for Architecture and the Built Environment
Commission for Rural Communities
Department for Environment, Food and Rural Affairs
Environment Agency
English Heritage
Homes and Community Agency Academy
Homes and Community Agency Advisory Team for Large Applications
Health and Safety Executive
Natural England
Planning Inspectorate
Planning Portal
Regional Development Agencies Network
Sustainable Development Commission
Sport England

BUSINESS

Arup
British Chamber of Commerce
Association of Town Centre Management
British Property Federation British Retail Consortium
British Urban Regeneration Association
Confederation of British Industry
Country Land and Business Association
Future Cities Forum
Home Builders' Association
Home Builders' Federation
National Farmers' Union
National Retail Planning Forum
Tesco
The Guardian

LOCAL GOVERNMENT

Association of Directors of Environment, Economy, Planning and Transport East of England Regional Assembly
Greater London Authority
Local Government Association
Local Authority Building control
National Association of Local Councils
North West Regional Assembly

Planning Advisory Service
Planning Officers' Society
Planning Officers' Society Enterprises
South East of England Regional Assembly
South West Regional Assembly
Society of Local Authority Chief Executives

PROFESSIONS

Association of Consultant Architects (Planning Advisory Group)
British Institute of Agricultural Consultants
Chartered Institute of Housing
Commonwealth Association of Planners
Conference of Heads of Planning Schools (Liverpool University)
Institute of Historic Building Conservation
Institution of Highways and Transportation
Law Society (Planning and Environmental Law Committee)
London Planning and Development Forum
Planning and Environment Bar Association
Planning Magazine
Planning Summer School
Positive action Training Highway (PaTH)
Royal Institute of British Architects
Royal Institute of Chartered Surveyors
Royal Town Planning Institute
University of Westminster

THIRD SECTOR

Campaign to Protect Rural England
Civic Voice
Groundwork UK
Friends of the Earth
Heritage Link
National Housing Federation
Planning for Real
Planning Aid England
Royal Society for the Protection of Birds
Shelter
The National Trust
The Princes' Foundation
Town and Country Planning Association
The Theatres' Trust

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