



planning advisory service



# Chief Planners Conference

14<sup>th</sup> & 15<sup>th</sup> March 2019

[www.pas.gov.uk](http://www.pas.gov.uk)

# Agenda for today

- **Opening:** Anna Rose, PAS
  - **Session 1:** Sara Dilamode, Citiesmode
  - **Session 2:** Chris Poulton, MHCLG
  - **Session 3:** Sarah Richards, PINS
  - **Session 4:** Simon Ricketts, Town Legal LLP
-

# Planning in 2019

Anna Rose, Head of PAS

---

# Session 1

**Sara Dilamode, Citiesmode**

---

# Innovation and inspiration for good Development Management

March 2019

Sara Dilmamode - Urban Planning Director

The logo for CITIESMODE is displayed on a dark grey rectangular background. The word "CITIESMODE" is written in a bold, sans-serif font. "CITIES" is in white, "MODE" is in yellow, and the letter "O" is replaced by a yellow lightbulb icon with a white filament.

CITIESMODE

~~Innovation and inspiration for~~  
good Development Management  
March 2019

Sara Dilmamode - Urban Planning Director

CITIESM<sup>💡</sup>DE

# Day 2: The Warm Up Act

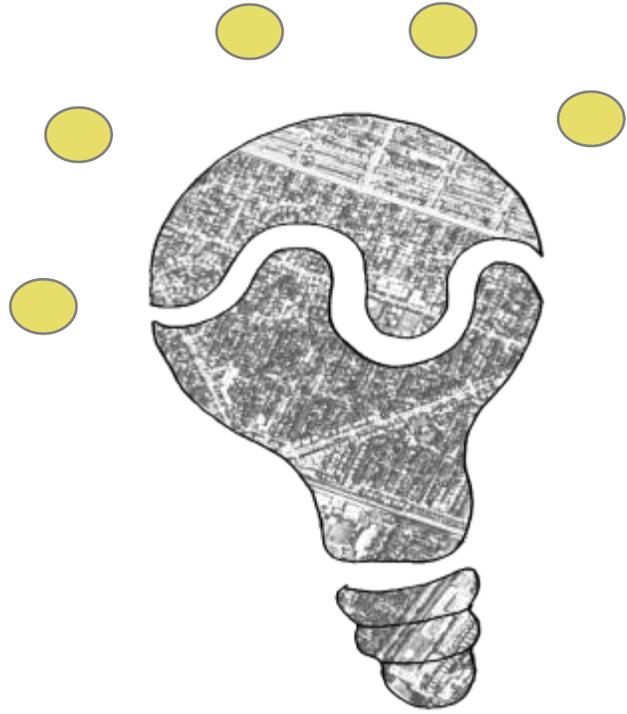
---

09:15 AM

The opening act will usually be an up-and-coming artist with a smaller following than the featured artist.

The opening act's performance serves to "warm up" the audience, making it appropriately excited and enthusiastic for the headliner





How many planning  
leaders here today  
are from DM  
background?



## DM: processes planning applications

Development management services across England are responsible for determining the planning applications that their authorities receive either:

- granting permission for development (along with any conditions or planning obligations) or
- refusing permission and giving reasons for this.

DM services are usually also responsible for ensuring compliance with permissions and enforcing against breaches of planning control.

# ~~DC-DM~~ Officers

**Fear & suspicion**

2000-2005

**Grudging Respect**

2006 - 2010

**Admiration**

2010 - 2019



## DM: creating places

Development management officers are responsible for taking a development from a proposal to an approved plan which can be delivered.

Development management services enable the delivery of well-designed homes; places of work; and important infrastructure such as new transport facilities and schools.

Development management teams make this happen.

What does a good  
development  
management service look  
like and what are local  
authorities across the  
country doing to ensure  
that they are going to  
deliver one?



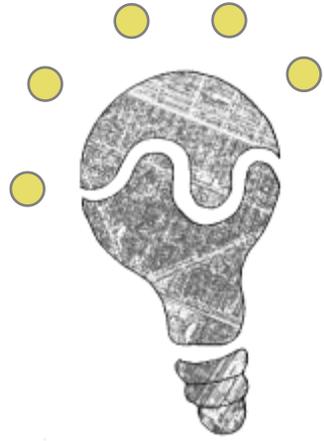
# Delivering a good and effective Development Management Service

Research 2018/19

Kieron Hyams – Arup

Sara Dilmamode - CITIEMODE

CITIEMODE ARUP



What makes a DM  
service good (or not)?

# Dimensions of a good development management service



Speed: Top performers with a large number of applications

Planning authority 2016 - 2017	ONS code	Major decisions	Major decisions within 13 weeks	% within 13 weeks or within agreed time	% of application on hand for year end 2017
Wiltshire (3rd largest district)	E06000054	388	146	97.2	14%
County Durham 6th largest	E06000047	241	75	95.4	7%
Cornwall (2nd largest district in England)	E06000052	537	205	93.1	10%
Leeds	E08000035	394	105	93.1	8%
East Riding of Yorkshire (5 <sup>th</sup> largest district in England)	E06000011	321	130	91.3	8%
Kirklees	E08000034	189	43	92.1	6%
East Lindsey	E07000137	191	115	99	8%
Vale of White Horse	E07000180	166	28	91	1%
Doncaster	E08000017	154	50	95.5	-1%
Coventry	E08000026	148	126	100	16%

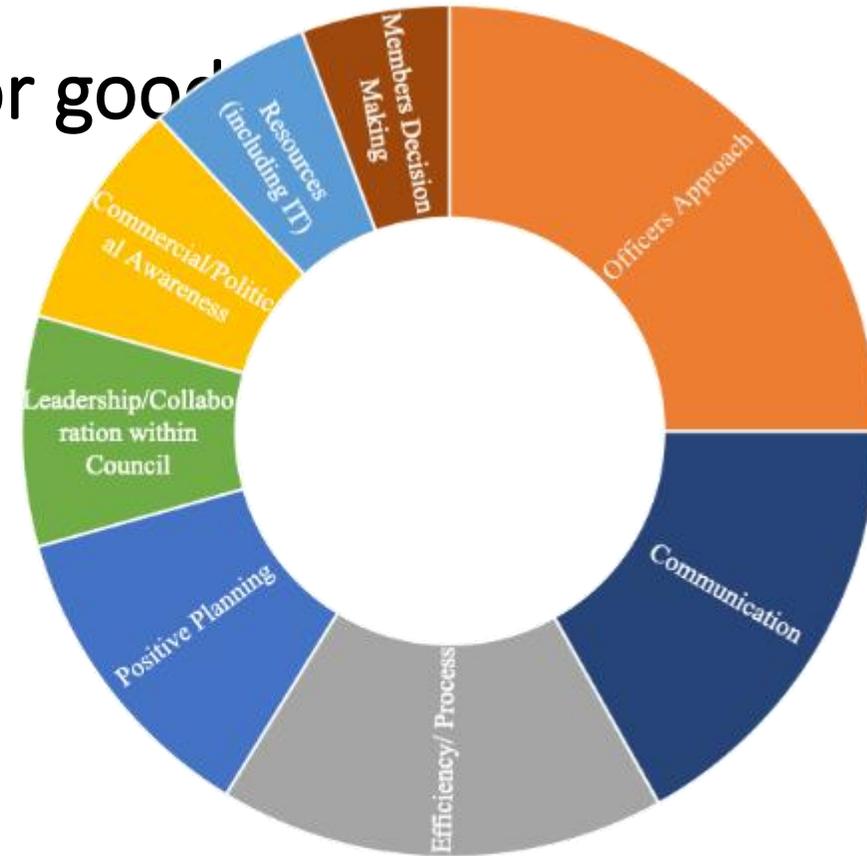
			within 13 weeks	decisions	decisions within agreed time	
Coventry	E08000026	148	126	22	22	100.0
Sedgemoor	E07000188	96	57	39	39	100.0
North East Lincolnshire	E06000012	88	29	59	59	100.0
Rutland	E06000017	79	57	22	22	100.0
St. Helens	E08000013	78	25	53	53	100.0
Rotherham	E08000018	74	37	37	37	100.0
Haringey	E09000014	67	15	52	52	100.0
Ipswich	E07000202	57	34	23	23	100.0
Bury	E08000002	55	21	34	34	100.0

# Arup Survey – a closer look quality dimensions

- The internal survey was sent to Planning Leaders and Senior Management across the Arup UK offices
- Overall 22 responses were received
- 32 different case study recommendations

# ARUP Survey: Most important for good

1. Officers Approach
2. Communication
3. Efficiency /Process
4. Positive Planning
5. Leadership

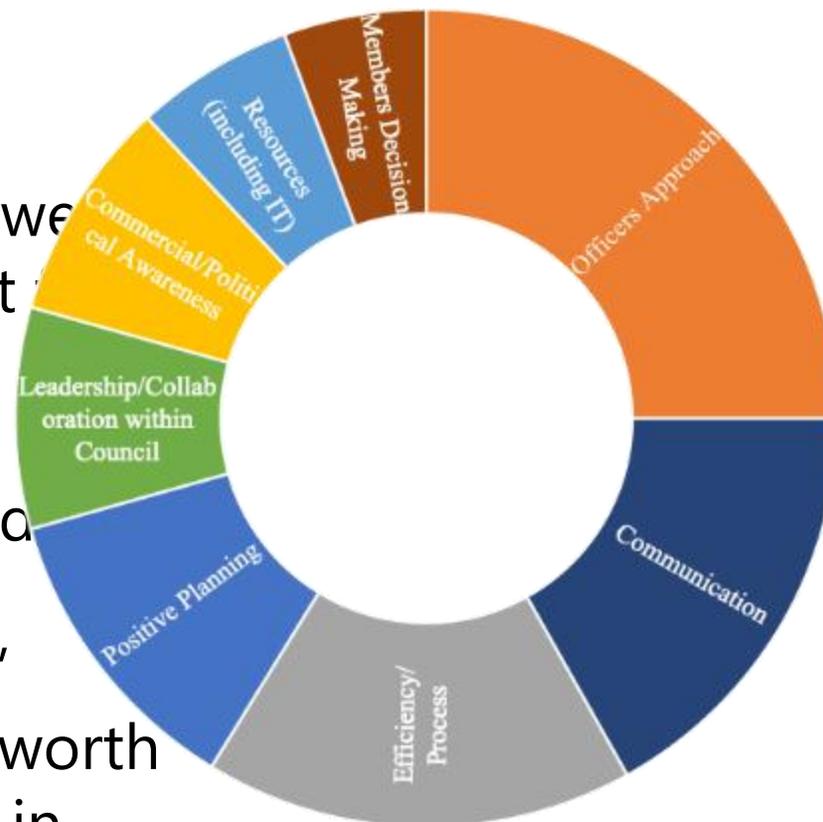


# Arup Survey: Key messages

Leadership emerges more strongly when we unpick the data on what's most important for good DM relating to 42% of responses

A wide range of examples and some stood out as distinctive:

- Cambridge PPA approach and 'RAG' system and also Richmond/ Wandsworth responsiveness / speed of feedback in PPA context
- North East Lincs flexible validation approach
- Bath and NE Somerset Member engagement
- Copeland Council leadership



## Expert Focus Group

- Well attended with officers from across the Country from Cheshire to Plymouth
- Attendance from Home England
- Good representation from the private sector CBRE, TRA, Indigo and Interpolitan



# Focus group

Speed /  
Efficiency

the speed with  
which decisions  
are made

Quality

the quality  
of decisions

Delivery

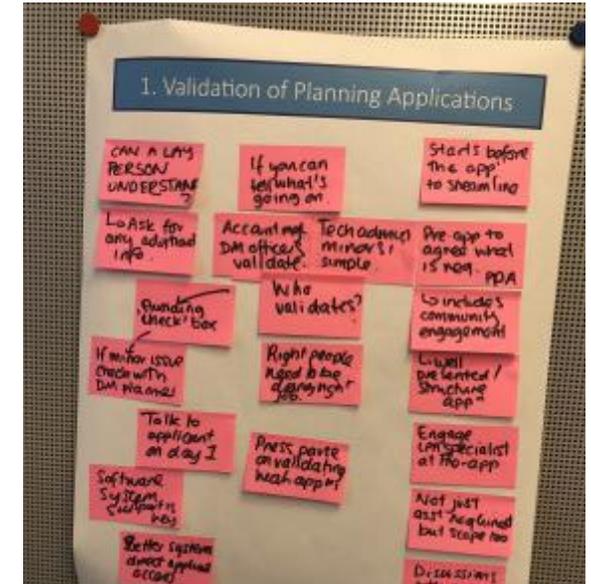
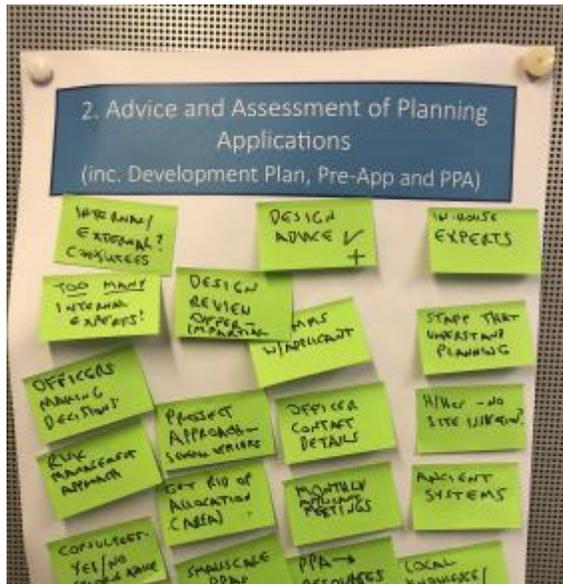
whether and the  
speed at which the  
development  
starts on site

**Exercise 1 – Which DM ‘service areas’ have the most impact on (1) quality of decision making, (2) speed, and (3) delivery?**

**Exercise 2 – What does ‘good’ look like, and where have you seen this implemented?**

**Whole group discussion – what factors increase (1) Quality of decisions, (2) speed of decisions, and (3) delivery of development on site?**





“Pinch Points”: the post it notes were flying



**Pre-application advice – consistency and clarity esp. re design**

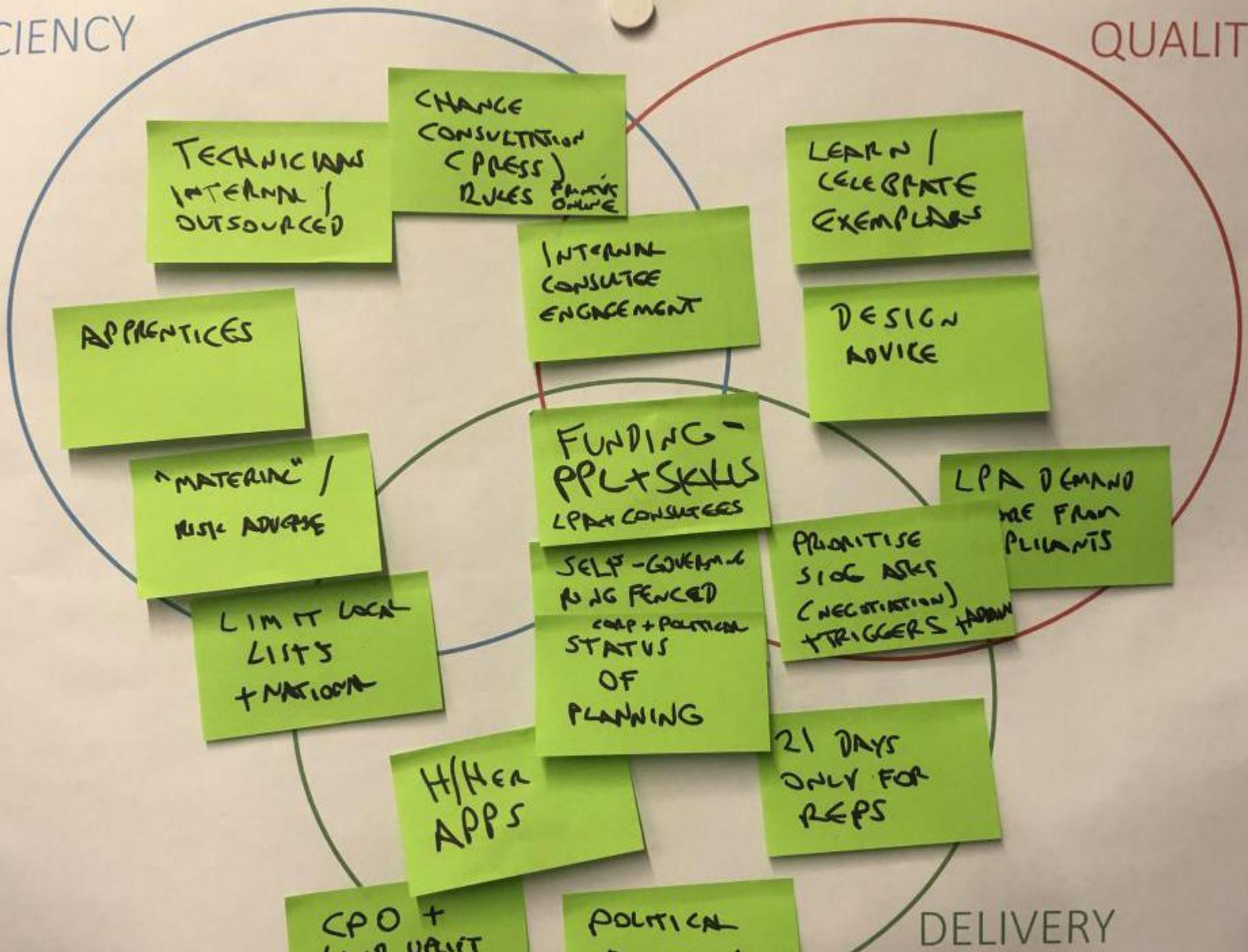
**Validation of application – requirement to validate and more general issue of delay**

**Responses from Stat consultees – delayed and ‘post box’ approach to internal consultees**

**Sign off bottle necks (and delay in S106 sign off)**

EFFICIENCY

QUALITY



DELIVERY

## Accelerators

Leadership  
and management

Talented DM  
officers

## 'Pinch Points'

Pre-Application (design advice)

Validation

Engagement with internal and statutory consultees

Decision making – sign off

# Case study selection

Brought together stats, survey and the findings from the focus group to select authorities

- Different dimensions speed, quality and delivery (some related to all)
- Geographical spread
- Focus on pinch points – pre-app design advice, validation etc
- Leadership and management – a cross cutting category but with some specific case examples



## *Range of interventions*

*Small scale  
tweaks*



*Large scale  
change and  
investment*

Relevant to range of authorities:  
scale of authority and resource level

# Examples of good DM approaches

---

---

## Case studies

**Southwark Council Graduate Scheme**

**Oxford Trainee Planner Scheme**

**Brent 'Team Approach' to Major Applications**

**Bassetlaw Delivery Officers**

**Eastbourne Council Project Zero**

**Doncaster Council Case Allocation and Key Accounts**

**Camden Council Officer Reports**

**Cambridge City Council Pre-Application 'RAG' Assessment**

**Epping Forest District Council Quality Review Panel**

**Cheshire West and Chester Householder Pre-application**

**Copeland Council – Leadership investment**

**West Lindsey Council – Peer Review of reports**

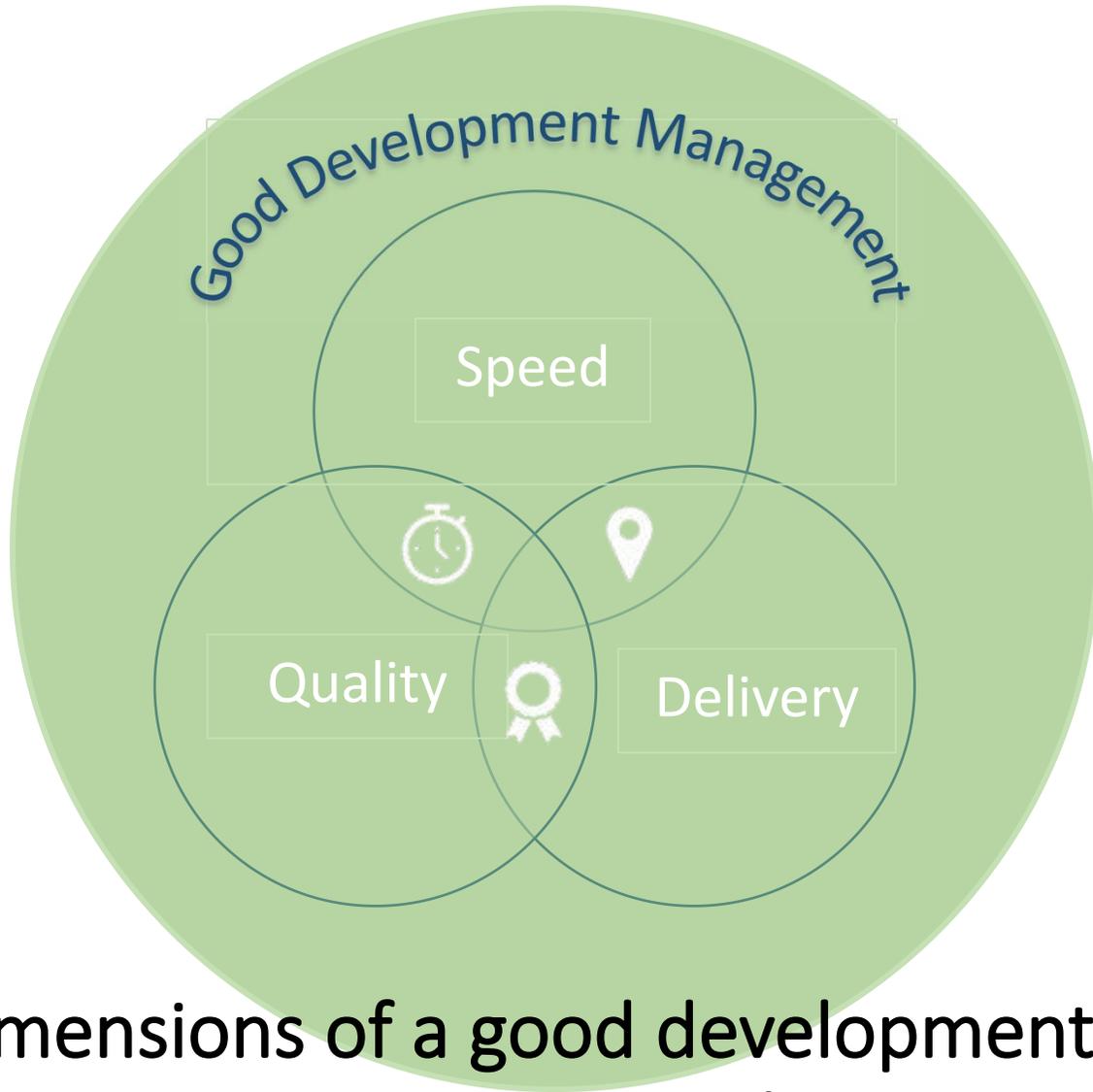
**Coventry Council Engagement**

---

~~Innovation and inspiration for~~  
*Inventive and intelligent approaches*  
good Development Management *from*  
*fantastic DM officers across the country*  
March 2019

Sara Dilmamode - Urban Planning Director





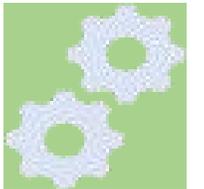
Dimensions of a good development management service

## Types of improvement programme:

People



Process  
(-)/ (+)



Empowerment



**PEOPLE: Grow  
your planners**

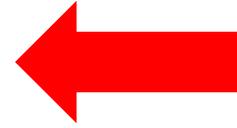


Southwark Council  
Graduate Scheme

Oxford Trainee Planner  
Scheme

Brent Team Approach

Bassetlaw Delivery  
Officers



# Brent

## Brent 'Team Approach' to DM

### Wanted to...

- Build capacity to deal with major planning applications
- Create better relationships between case officers and applicants, improving developer confidence

### Action

- Form a 'project team' of a senior officer and junior officer(s)
- Split case work according to level of responsibility and experience
- Ensure learning on the job to grow, motivate and ultimately retain junior planners

### Learning/ risks

- Resource impact of processing a high volume of minor applications
- Building senior officers' leadership skills and confidence in junior staff
- Successfully transplanted private sector model

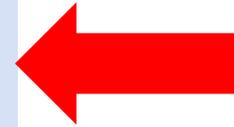
**PROCESS:  
Subtract the  
unnecessary**



Eastbourne Council  
Project Zero

Doncaster Council Case  
Allocation and Key  
Accounts

Camden Council Officer  
Reports



# Doncaster

---

## Doncaster Council Case Allocation and Key Accounts

### Wanted to...

- Address backlog of validation
- Build better relationships with developers
- Broaden case officers' experience

### Action

- Case officers receive file from day one – validation through to decision
- Validation team support with more straightforward cases
- Use of work flow software to support new way of working

### Learning/ risks

- Use of key account officers to ensure consistency of service to frequent applicants
- Work flow software highlights critical time checkpoints
- A more strategic approach to communication which is less dependent on individual officers

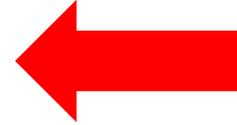
**PROCESS: Invest  
in processes that  
add value**



Cambridge City Council  
Pre-Application 'RAG'  
Assessment

Epping Forest District  
Council Quality Review  
Panel

Cheshire West and  
Chester Householder  
Pre-application



# Cambridge

---

## Cambridge City Council Pre-Application 'RAG' Assessment

### Wanted to...

- Address feedback from developers that implied inconsistent and unclear pre-application advice
- Reduce lack of continuity between pre-application and application stages

### Action

- Introduce RAG assessment to prioritise issues and to ensure clarity
- Training and empower staff

### Learning/ risks

- Internal consultees involved in process early on to resolve issues upfront; and to build officer confidence around issues
- Need confidence in rating red – provide greater detail on suggested amends

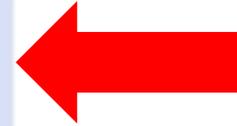
**EMPOWER: Yes,  
they plan!**



Copeland Council  
Leadership

West Lindsey Council –  
Peer Review

Coventry Council  
Engagement



# West Lindsey

---

## West Lindsey Council – Peer Review

### Wanted to...

- Reduce bottleneck in process by reducing senior officer time taken up with application sign off, which caused delays

### Action

- Establish planning peers – senior and junior officers sign off reports

### Learning/ risks

- Cost/benefit analysis showed benefits, despite it seeming counterintuitive

# A useful lens for assessing and improving DM performance?



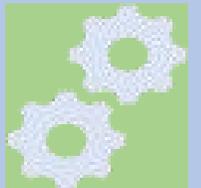
Dimensions of a good development management service

## Types of improvement programme:

People



Process  
(-)/ (+)



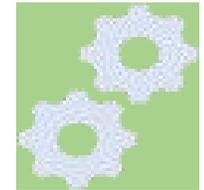
Empowerment

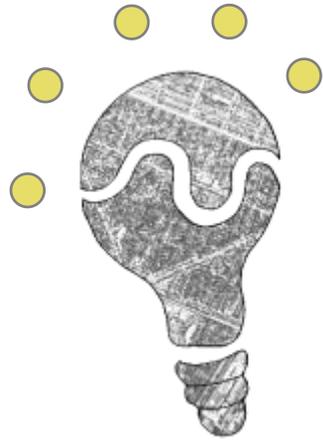


Types of improvement project

# Lessons: A DM improvement framework

1. Assess where you are on speed, quality and delivery
2. Focus on your people: Critically examine your approaches to recruitment and work allocation
3. Now look at your processes: Review your processes to see if they can be amended to help you perform better
4. It's not just about "bums on seats" or even streamlining process. Your officers need to feel empowered to plan
5. And don't forget Members – they have an important role. Although not a primary focus of the cases studies presented, it's essential to bring your elected members on any improvement journey with you.





Any  
questions?



Contact me:

[sara@citiesmode](mailto:sara@citiesmode)

# Session 2

**Chris Poulton, MHCLG**

---



Ministry of Housing,  
Communities &  
Local Government

# Community Infrastructure Levy, Planning Obligations, and Viability

Supporting housing delivery through developer contributions

**Heads of Planning – March 2019**

Chris Poulton

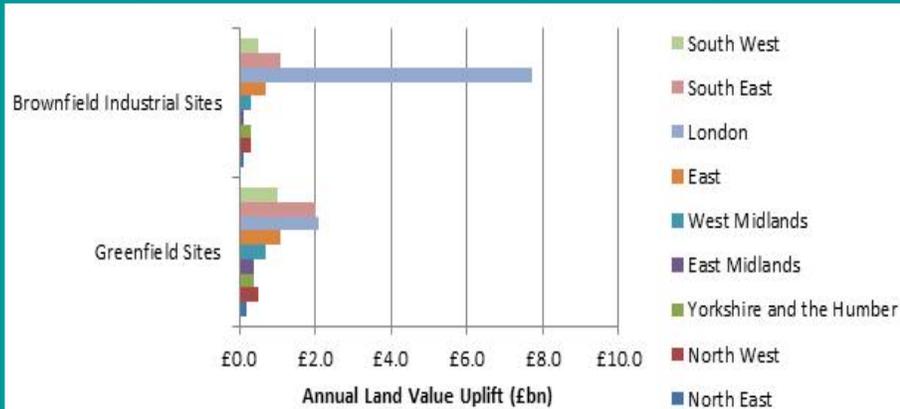


# High quality infrastructure and services are vital to support housing and growth

## Manifesto commitment

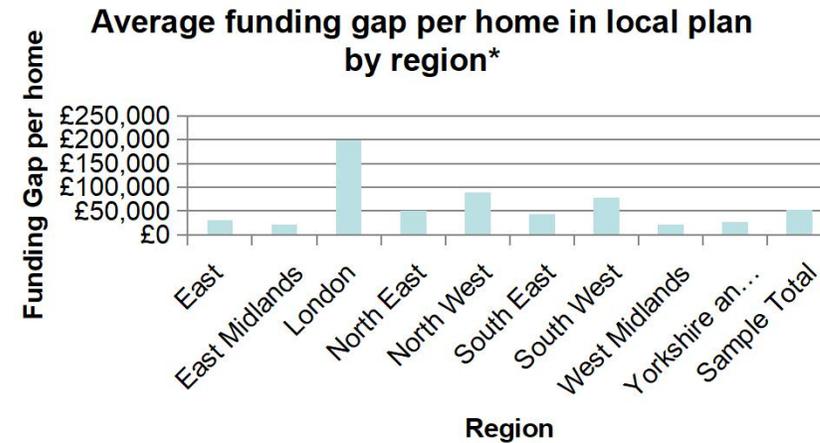
'We will work with private and public sector house builders to **capture the increase in land value** created when they build to reinvest in **local infrastructure, essential services and further housing**, making it both easier and more certain that public sector landowners, and communities themselves, benefit from the increase in land value from urban regeneration and development.'

## Increases in land value can be substantial, although this varies by site type and region



## Communities require funding for infrastructure

Key locations for delivering homes and jobs report **significant infrastructure challenges** e.g. Bristol reports a gap of £276m per 30,000 homes.



\* Estimates from adopted Local Plans



# Developer Contributions



Section 106 planning obligations  
(S106)

Community Infrastructure Levy  
(CIL)



Negotiated legal agreement

Fixed-rate charge



To make a specific development acceptable

To deal with cumulative infrastructure impacts



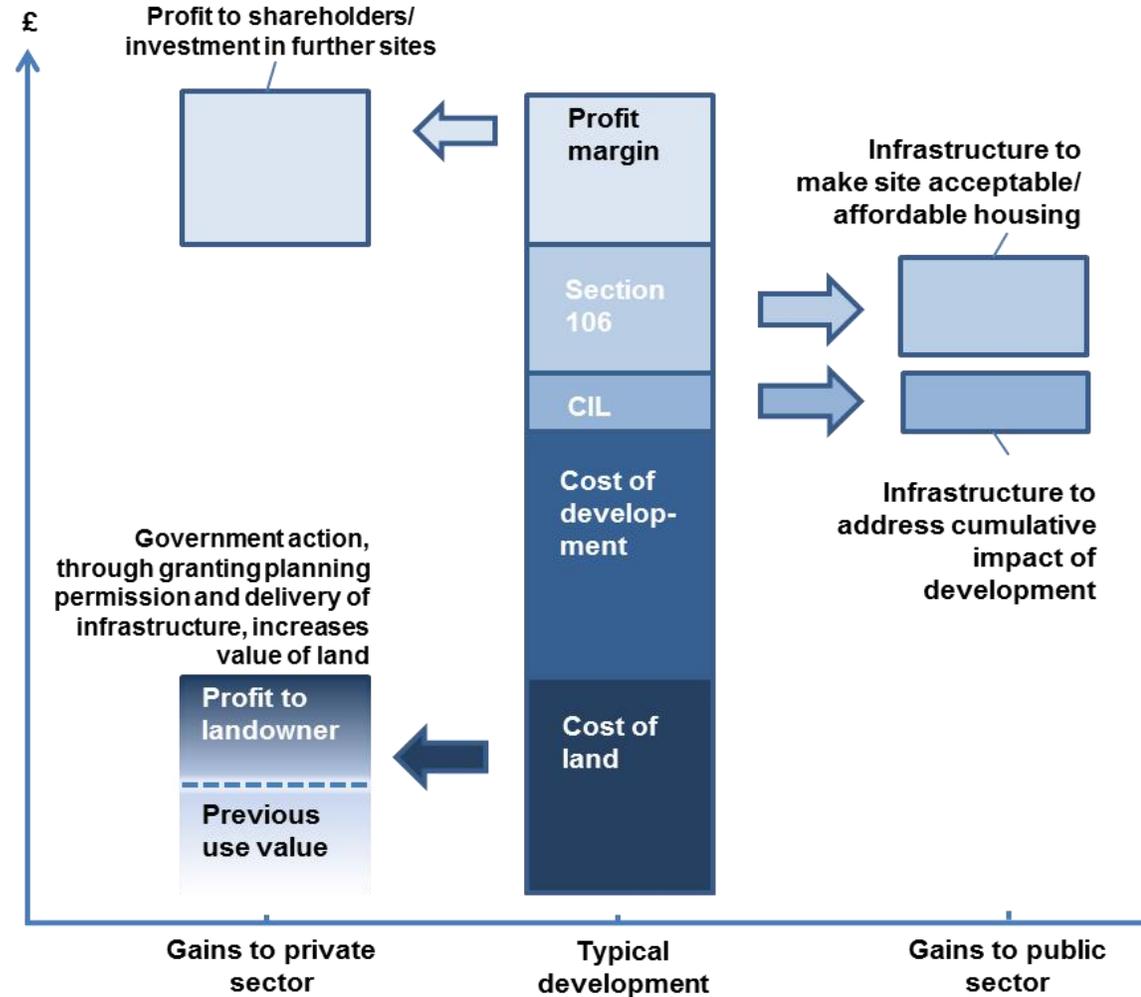


Viability assessment is a way of striking a balance between the

aspirations of  
developers and  
landowners, in terms of  
returns against risk

aims of the planning  
system to secure  
maximum benefits in  
the public interest  
through the granting of  
planning permission.”







## Context: Value of developer contributions

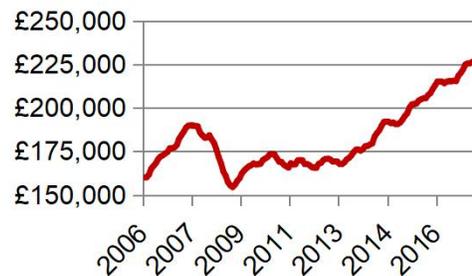
 **£6bn**

developer contributions  
agreed in 2016-17...

...in real terms, **the same** as in 2007-8

 **£6bn**

Average house prices, UK



**£5.1bn**

2016/17: estimated  
agreed through S106

**£4bn**

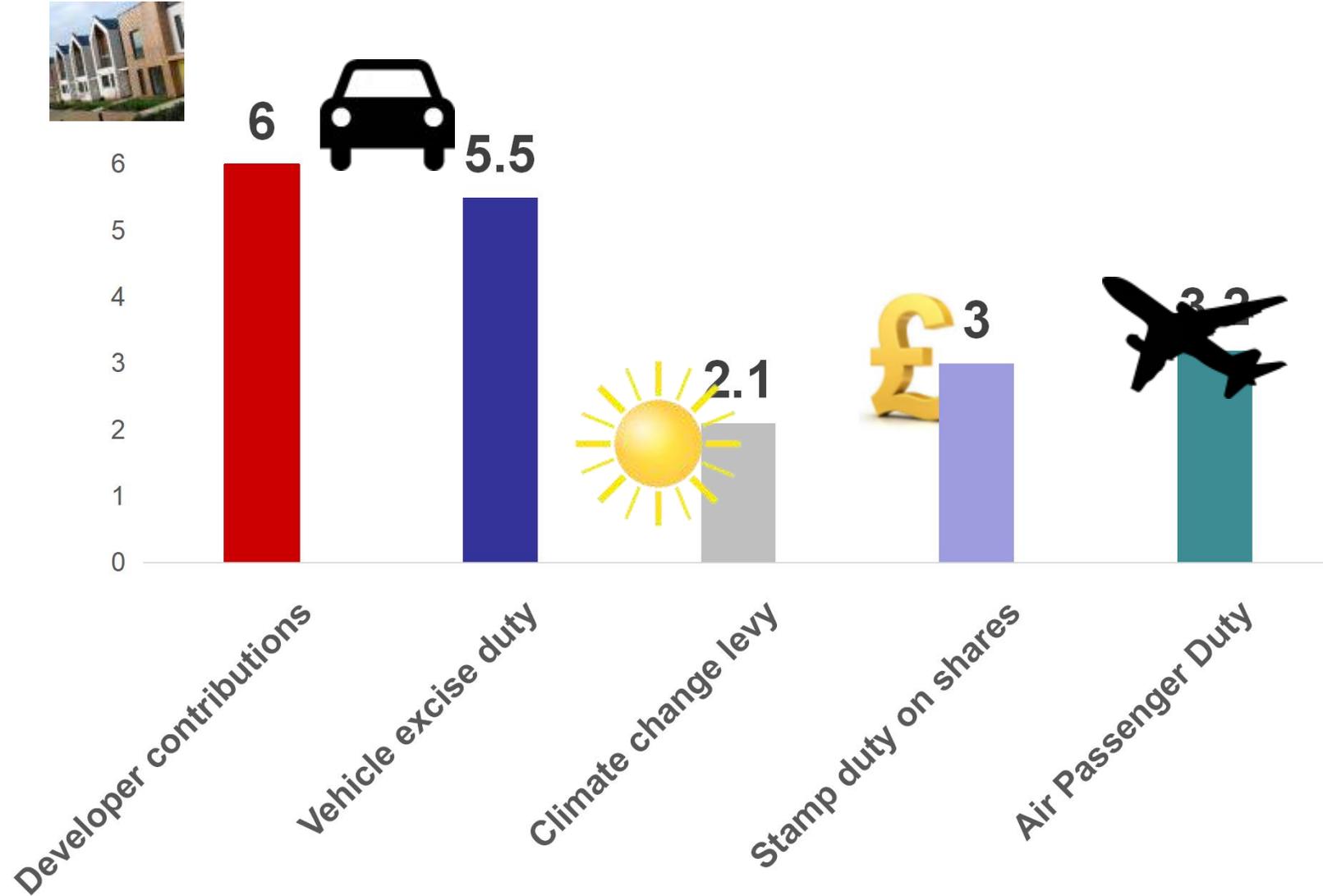
of this was for  
affordable housing,  
enough for around  
**50,000 homes**

**£0.9bn**

CIL levied in 2016-17



## Context: Value of developer contributions





## Context: The CIL Review

Patchwork of CIL  
and non-CIL  
authorities

Rates set at a lowest  
common  
denominator

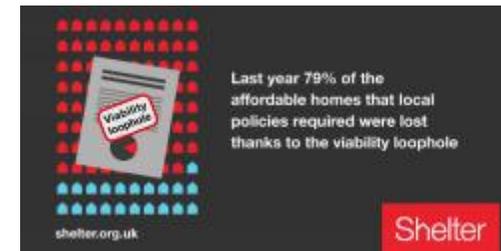
Complex to set &  
operate (including  
pooling)

CIL is not market  
responsive

Lack of transparency  
for CIL and s106



**Delay**      **Uncertainty**  
**80%**      **65%**



**SHAMEFUL GREED** Developers are using a legal loophole to build less affordable homes than required in order to protect their profit margins

The worst offenders were cities with major housing shortages including the borough of Kensington and Chelsea, Manchester and Birmingham

By Matt Dathan, Political Correspondent  
1st November 2017, 2:22 am | Updated: 1st November 2017, 6:33 am

01392 490749 **S106** MANAGEMENT

HOME WORK HOME ASSESS CASE STUDIES FAQS SERVICES CONTACT US

Looking to avoid providing Affordable Housing?

Looking to minimize your Section 106 payments?

Affordable Housing and Section 106 payments aren't always inevitable, we can advise you how to avoid or significantly reduce them

Call us now for a free phone consultation on 01392 490749

Click here to find out **HOW IT WORKS**



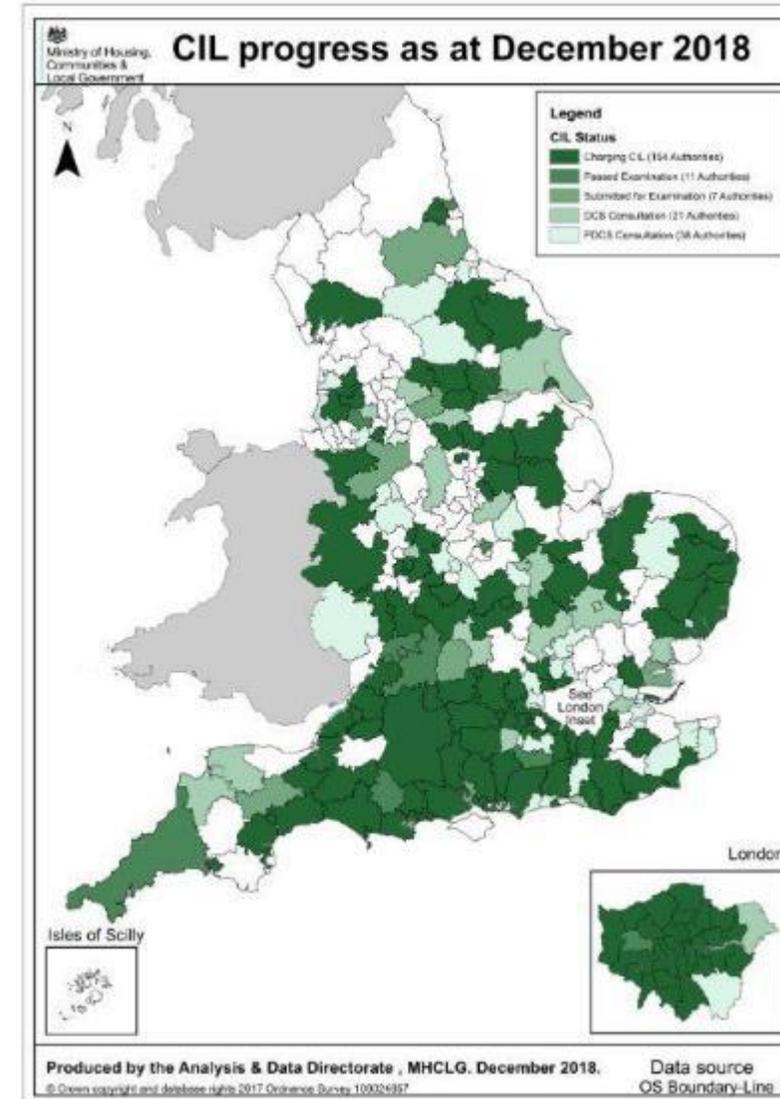
**2/3**

of potential CIL  
authorities in  
England are  
charging, or  
introducing, CIL

**4,000** permissions  
granted with planning  
agreements

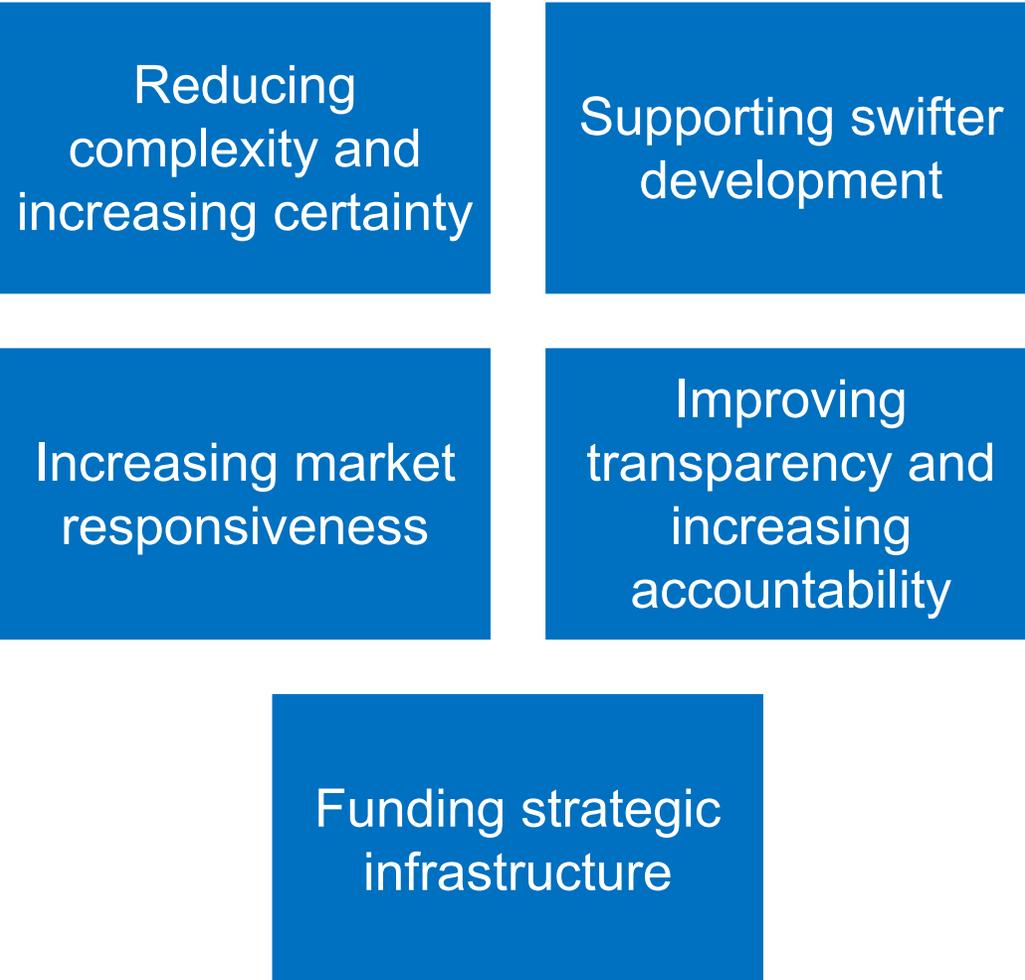
**6,500** only paid CIL

2016-17 (39% auth's charging CIL)





## Reforms to developer contributions: Objectives





## Reforms: Reducing complexity and increasing certainty



One consultation stage  
to introduce CIL

Guidance on evidence  
requirements

Lifting the pooling  
restriction  
(in its entirety)

Improvements to the  
operation of CIL



## Reforms: Swifter development

Focus viability at  
plan-making stage

Clear policy  
requirements for  
infrastructure and  
affordable housing

Proposals complying  
with plan do not need  
viability assessment

Standardised approach  
to viability assessment





## Reforms: Increasing market responsiveness

Guidance on zonal rates  
to take account of  
differences in land value  
uplift

Consultation on changes  
to index CIL





## Reforms: Transparency and accountability

Open-book viability  
assessments – published

Replace Regulation 123  
lists with Infrastructure  
Funding Statements

Ensuring authorities can  
collect fees for monitoring  
s106 agreements

Open data tools for  
reporting developer  
contributions





## Reforms: Funding Strategic Infrastructure

Introducing a strategic  
infrastructure tariff  
(SIT) for Combined  
Authorities

Encouraging groups  
of authorities to pool  
CIL for strategic  
infrastructure

Longer term proposals  
to extend SIT





## Next Steps

Consultation on draft regulations now closed – responses are being analysed.

Parliamentary process: secondary legislation

Guidance

Digital tools to improve transparency



# Session 3

**Sarah Richards, PINS**

---



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

# The Planning Inspectorate is changing – what does this mean for councils?

Sarah Richards – CEO, The Planning Inspectorate

**PAS Chief Planner event – Birmingham 15 March 2019**



# What is and what is not changing?

## **What is not changing**

- Approach to quality of decisions
- Our values of transparent, fair and impartial

## **What is changing**

- Increasing focus on performance across all casework
- Implications of Rosewell Review
- Technology change



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

### Total planning applications decided

= 431k

Granted  
= 379 k

Refused  
= 52 k



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

### Total planning appeals decided

= 15.2 k



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

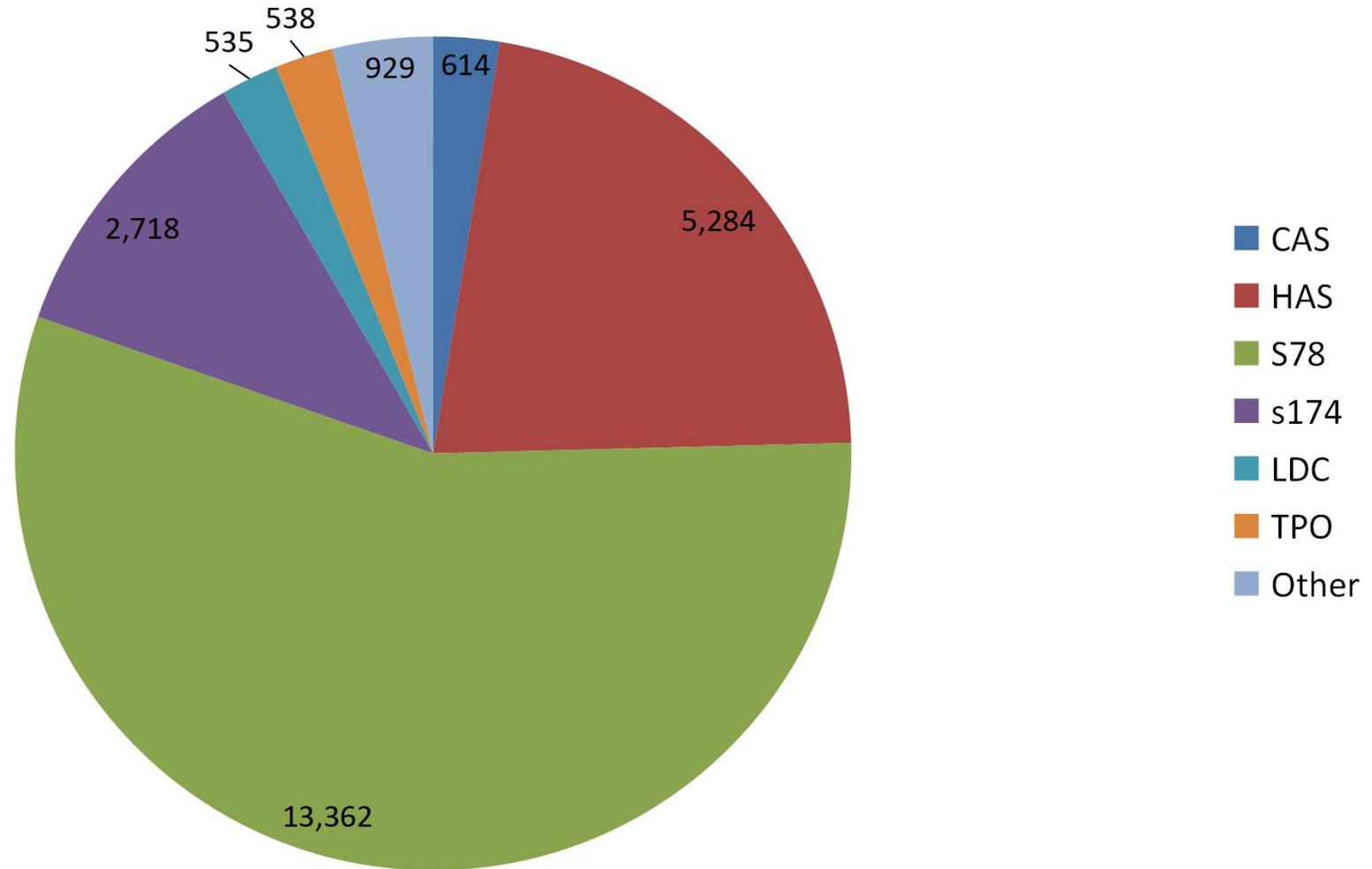
### Total planning appeals allowed

= 5.1 k





## 2017/18 total appeals – 23,980





The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

# Improving performance



# Performance

## Reasons

Demand/supply

LPs/NSIPs

## Measures

Recruitment

New MI/BI systems

Improved use of inspectors (charting)





The Planning Inspectorate  
Yr Arolygiaeth Gynllunio



**29 Weeks**

the average valid-to-decision time for s78 written rep appeals, which is close to the 30 week projected Baseline performance and on track to hit 18 weeks by September 19 (last month 27.6 This month 28.7)

Pg2

**£1.5m**

budget for 2018/19 FY approved



**£11.3m**

£5.7m of 2019/20 requirement has been approved, the balance is awaiting consideration and a decision from MHCLG.

## Amber-Green

overall **Delivery Confidence**  
Assessment of the programme

- All NSIs now delivering casework
- Interviews complete, reached target for APOs and B1, but gap for B2 and B3 Pg5
- Programme plan and milestones on track. However SWP on hold.
- Full funding for the project has still to be released, although there is part funding for inspector recruitment



**9,527**

the number of Planning appeals currently in hand. Last month 9,457, next month projection 8,576

Pg2

**126**

candidates to be offered salaried positions in APO, B1 & B2 roles. An excess on APO's and B1, but shortfall on B2 and B3 FTC

**100**

Will be new, external recruits



## Projects



MiPINS

Resourcing



Tactical Deployment



Inquiries review



Productivity

Strategic Workforce planning



Projects in flight. Strategic Workforce Planning on hold (picked up separately by HR). MiPINS next stage started – delay due to ITMP and resource, Inquiries review and Tactical deployment started Feb

Pg6

Pg5





# What does this mean for you?

- Appeals started and Inspectors allocated in shorter timescales
- Less downtime before Questionnaires and Statements are required
- Reduction in time from an appeal being received to the 'event' and from then to the decision being issued
- Quicker decisions in all areas of appeal casework from this autumn onwards through to spring 2020
- More certainty for when your scarce resources will be required
- Published targets that focus on averages as well as ranges and actively managing outliers
- Reduction in the need for you to chase progress and less complaints for you to redirect or manage



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

# Rosewell Review



# Rosewell Review

## **3 principal areas of improvement :**

- Earlier and more directive engagement
- Clear timescales
- Technology to improve efficiency and transparency

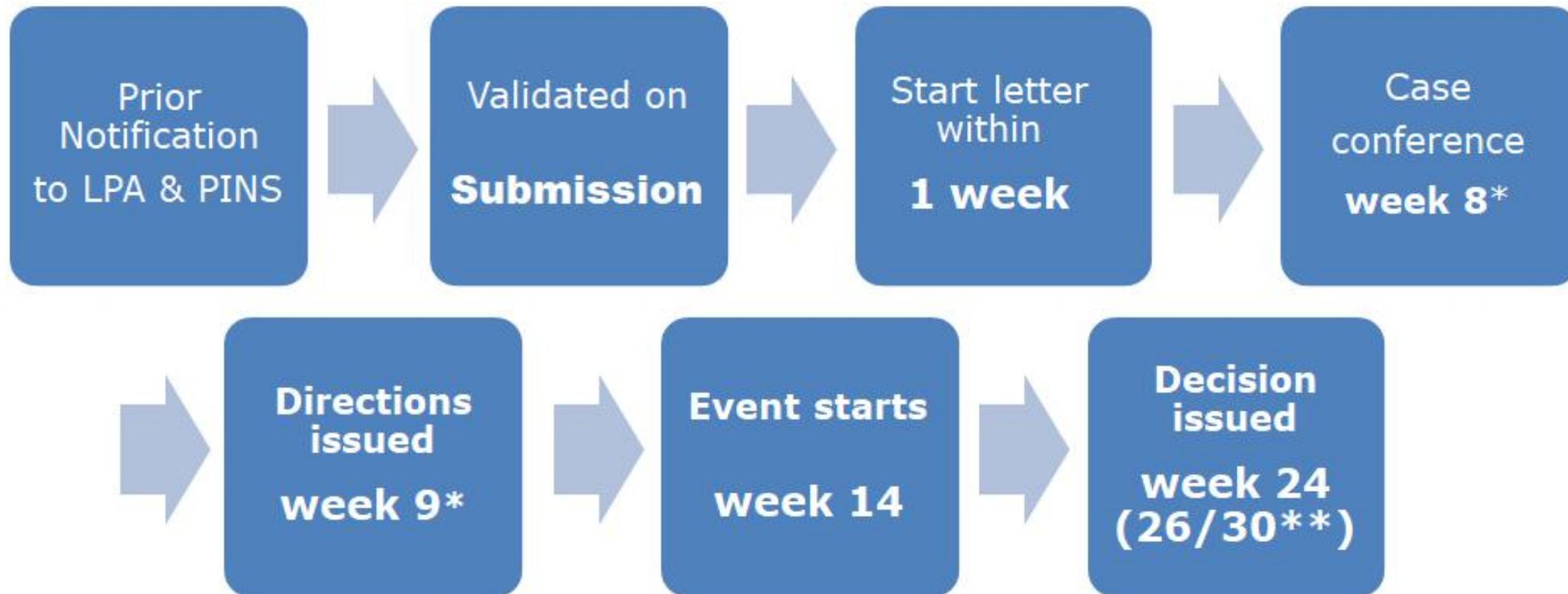
## **3 Time targets for the Inspectorate:**

- Submit action plan by April 19;
- Achieve timeliness: good progress by 09/19; complete 06/20
- Portal for all inquiries by end of 2019



# Rosewell Review

## Overview of 'new' process



\* Or earlier

\*\* 30 for SoS cases



# What does this mean for you?

- LPA's procedure advice required a day after receipt of inquiry appeal
- Early venue identification needed (likely MHCLG venue consultation)
- Start letter issued within 1 week of receipt
- Default inquiry event start date 14 weeks after receipt (max. flex of 2 weeks later)
- Participation in case conference by telephone required on every inquiry case
- Easier, faster and more transparent information exchange via portal
- Inspector directing timely, concise & succinct information exchanges
- Substantial reduction in time from receipt to decision

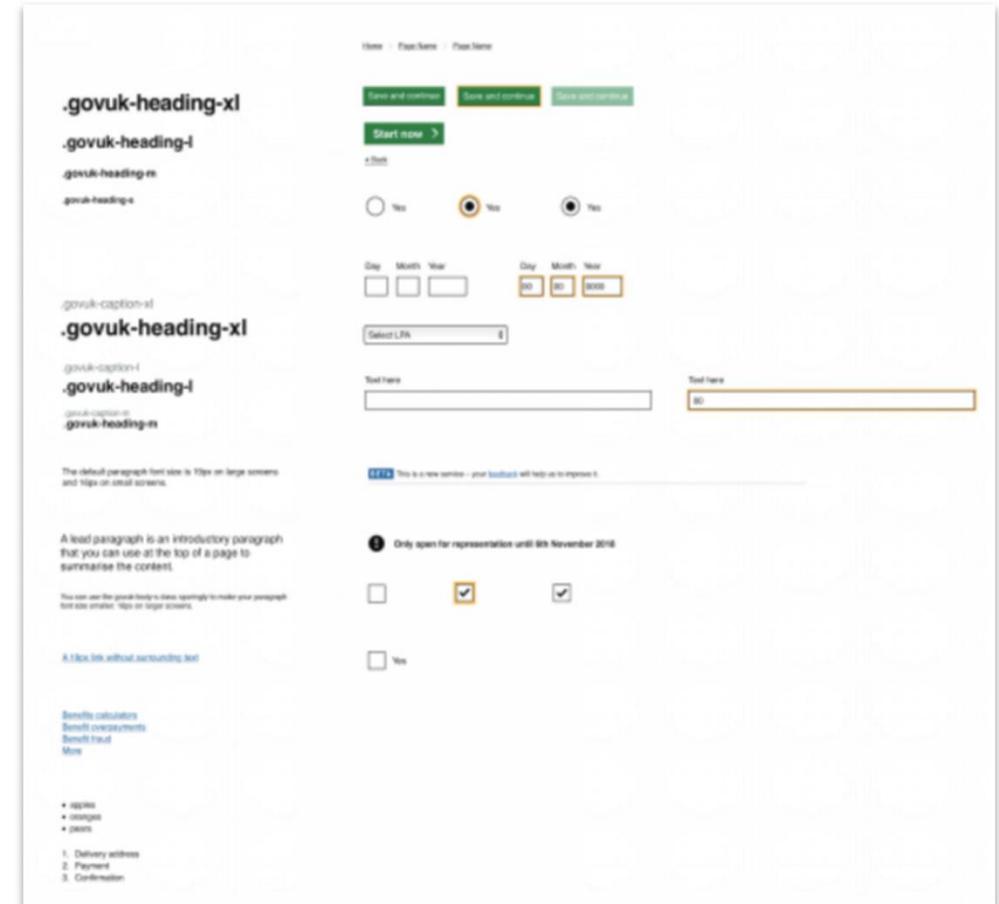


The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

# Changing the Appeal Casework Portal

# HOW WE BUILT THE PROTOTYPE

- Based on **user research** and feedback to ensure we address needs
- Using **GDS Design System** components, as well as learning from other Government services (such as 'Apply for a passport', 'File your tax return online' etc.)
- Brought in an **Interaction Designer** to iterate prototype quickly and to best meet user needs
- We have dedicated Government-experienced **Content Writers** working with the Interaction Designer to improve content and guidance
- Content will guide users through the system to enable them to **get it right first time**
- Will be accompanied by revised **guidance**



*We have built a component sheet from the GDS prototype kit elements to ensure our clickable prototypes are Design System compliant*

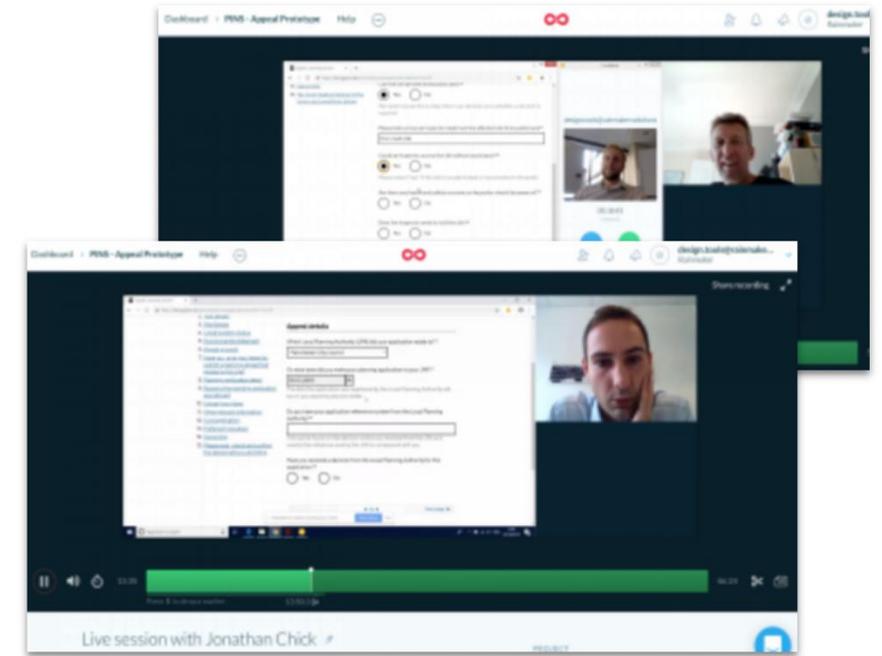


The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

# USER TESTING

## TESTING OUR PROTOTYPE

We've completed four rounds of testing to ensure confidence our prototypes meet user needs and that we can move into a beta phase with a clear direction.



18

Agents

12

Unrepresented  
Appellants

31

Local Planning  
Authorities

10

Interested  
Parties

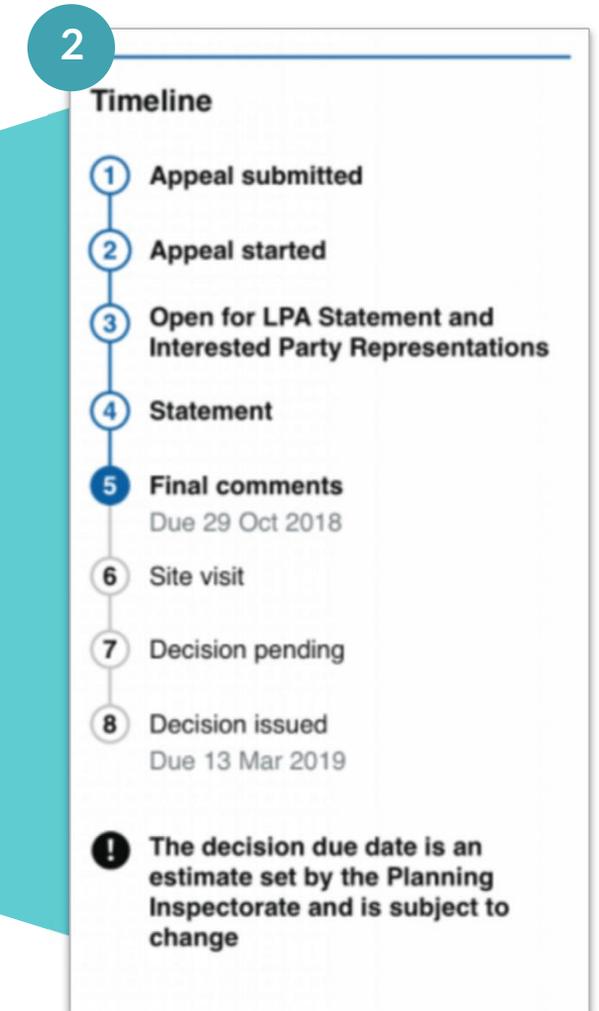
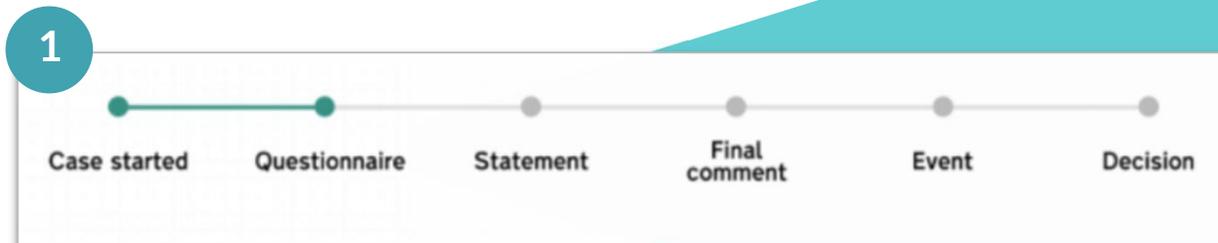


# TRACKING PROGRESS

## HELPING USERS TO UNDERSTAND APPEAL TIMELINES

As the appeals process is both lengthy and complex, users felt a timeline showcasing the progress of their appeal would benefit them. This applied to both one-time users (unrepresented appellants) to help them navigate the process, as well as Local Planning Authorities who are likely to be managing multiple appeals at once.

The eventual design of the timeline was inspired by the design patterns used in the HMRC Self Assessment Tax Return service

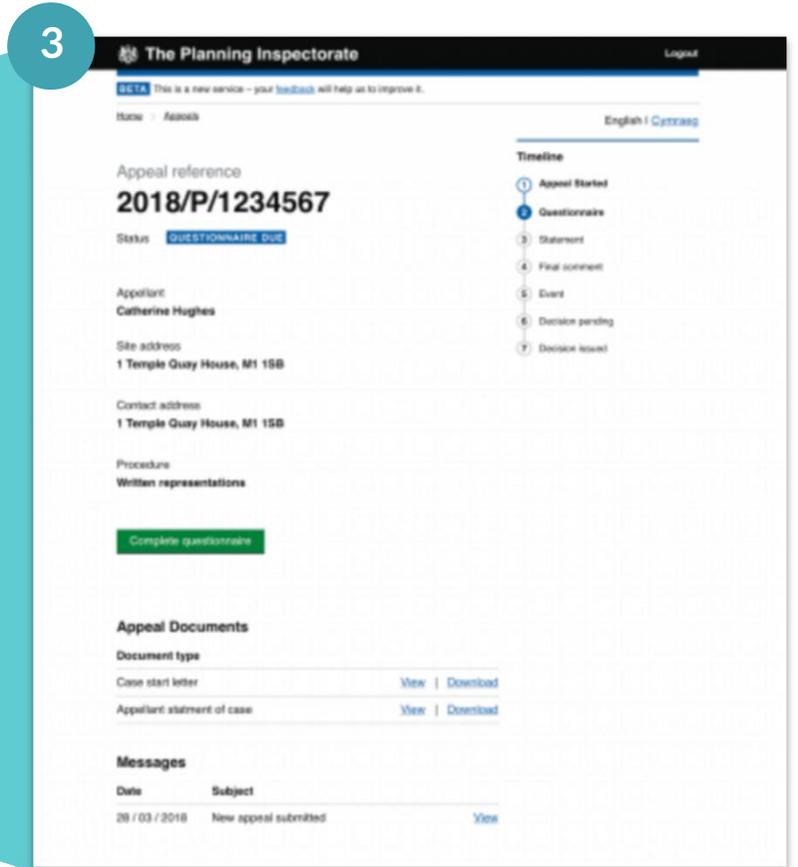
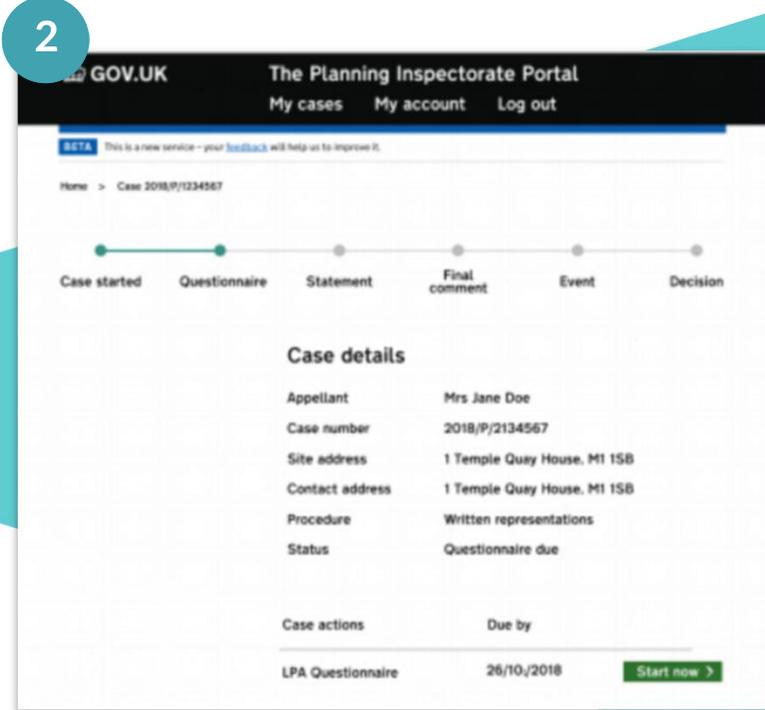




# LOCAL PLANNING AUTHORITIES

## UNDERSTANDING MY APPEALS

As we engaged with Local Planning Authorities, who handle multiple appeals at any one time, we understood their need to be able to quickly understand the progress of appeals. Introducing the timeline to the LPA 'case view', as well as clearly laying out key appeal information, enables LPAs to quickly see their available actions relating to this appeal. We have also made sure that the information displayed on screen is the information requested by LPAs during the testing.



# LOCAL PLANNING AUTHORITIES

## ARE WE ASKING THE RIGHT QUESTIONS?

The questionnaire is one of the most important evidence collecting devices the Inspectorate uses and as such it's vital it is easy to complete for LPAs. By ensuring that evidence is clearly requested only when needed, as well as simplifying the language used, we can ensure the process is not overly complex for Local Planning Authorities.

1

Do you agree with the appellant preferred procedure?

Yes  
 No

If you do not agree please indicate your reasons here

\_\_\_\_\_

Please provide the relevant extracts of Development plan referred to in the Decision Notice

\_\_\_\_\_ [Change](#) [Remove](#)

In respect of the Development plan please provide the relevant supporting text, incl written justification and policy map when relevant.

\_\_\_\_\_ [Change](#) [Remove](#)

Please provide the relevant Policy on which your decision was made, stage, extent of objections, anticipated adoption, evidence of 5yH (if applicable) and inspectors reports. Sign post to NPPF

\_\_\_\_\_ [Change](#) [Remove](#)

Please provide details of any emerging plans

\_\_\_\_\_

Please status the stage of the Plan

Please select

Please provide the extent of the objections to the plan

\_\_\_\_\_

2

### Local Planning Authority Questionnaire

Page 2 of 9

✓ 1. [Appeal information](#)

2. [Appeal procedure](#)

3. Local policy

4. Five year housing land supply

5. Your evidence

6. Conditions

7. Conservation areas

8. Monuments and listed buildings

9. The planning application

## Appeal procedure

! The appellant's preferred procedure is written representations

**We have started this case using a written representations procedure. Do you agree with our choice of procedure?**

Yes  
 No

**State your reasons**

\_\_\_\_\_

[Save and Continue](#)  
[Save and Quit](#)



# What this means? How can you help?

- Greater emphasis on parties to 'get it right' first time
- Reducing questionnaire length and changing focus to checking appellant's info
- Meet deadlines and flag any issues immediately
- Feedback on new service
- Let us know if you want to help us test in the future:

[OperationalDeliveryTransformation@planninginspectorate.gov.uk](mailto:OperationalDeliveryTransformation@planninginspectorate.gov.uk)



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

# Questions?

# Session 4

**Simon Ricketts, Town Legal LLP**

---

# Once In A Lifetime: The NPPF and the courts

by Simon Ricketts, partner, Town Legal LLP

# And you may ask yourself

1. How did I get here?
2. What is its legal basis;
3. How does the government avoid SEA requirements?
4. The importance of proper consultation
5. Making policy by written ministerial statement (and what is the status of planning practice guidance?)
6. Objective interpretation vs excessive legalism??
7. What does the future hold?

# How did I get here?

- NPPF 1: 27 March 2012
- NPPF 2: 24 July 2018 (with NPPF 1 still relevant for plans submitted for examination before 24 January 2019)
- NPPF 3: 19 February 2019
  - Definition of “deliverable”
  - Use of new standard method for assessing local housing need for development management purposes when plan more than 5 years old
  - Tilted balance even where appropriate assessment under the Conservation of Habitats Regulations
- Supplemented by:
  - Written Ministerial Statements
  - Planning Practice Guidance since 2014, regularly amended eg February 2019 confirmation that 2014-based populations should again be used to assess local housing need (formula to be reviewed in 18 months)

# How do I work this?

What is the legal basis of the NPPF?

*Suffolk Coastal District Council v Hopkins Homes and  
Richborough Estates v Cheshire East Borough Council*  
(Supreme Court, 10 May 2017)

# Same as it ever was.

How does the government avoid SEA requirements?

*BARD Campaign v Secretary of State* (Walker J, 25 February 2009)

*R (HS2 Action Alliance & others) v Secretary of State*  
(Supreme Court, 22 January 2014)

*Friends of the Earth v Secretary of State* (Dove J, 6 March 2019)

# Am I right? Am I wrong?

The importance of proper consultation

“Sedley” principles:

1. Consultation must take place when proposals are still at a formative stage
2. The consultation body must set out sufficient reasons for the proposals to permit ‘intelligent consideration’
3. Adequate time must be given for consideration and response
4. The results of consultation must be conscientiously taken into account

*Stephenson v Secretary of State* (Dove J, 6 March 2019)

# Under the rocks and stones

Making policy by written ministerial statement (and what is the status of planning practice guidance?)

*Richborough Estates Limited (and 24 other co-claimants) v Secretary of State*  
(Dove J, 12 January 2018)

*West Berkshire Council v Secretary of State* (Court of Appeal, 11 May 2016)

*Solo Retail Limited v Torrington District Council* (Lieven J, 4 March 2019)

cf the pitfalls of supplementary planning guidance

# **This is not my beautiful house!**

Objective interpretation vs excessive legalism??

*Tesco Stores Limited v Dundee City Council*  
(Supreme Court, 21 March 2012)

Cases since on issues of issues of interpretation.

*Barwood Strategic Land II LLP v East Staffordshire Borough Council*  
(Court of Appeal, 30 June 2017)

*Mansell v Tonbridge and Malling Borough Council*  
(Court of Appeal, 8 September 2017)

# Where does that highway go to?

What does the future hold?

- Will we see a more spatial and less ad hoc approach - or more of the same?
- Draft Environment (Principles and Governance) Bill
- Government's response due on Letwin report
- Likely continuing controversial issues for the courts

# My God! What have I done?

[Simon.ricketts@townlegal.com](mailto:Simon.ricketts@townlegal.com)

[Simonicity.com](http://Simonicity.com)

Any questions?

**tn.**