

ICE response to the Housing, Communities and Local Government Committee inquiry: the planning system

About ICE

Established in 1818 and with over 95,000 members worldwide, the Institution of Civil Engineers exists to deliver insights on infrastructure for societal benefit, using the professional engineering knowledge of our global membership.

ICE's 2019 State of the Nation report made a number of recommendations on the interventions required for better integrating the planning and delivery of housing and infrastructure.¹ Our response to this inquiry draws on this report's findings and sets out further detail in the context of the government's proposals in *Planning for the Future*.

Executive summary

The responses and recommendations set out within this submission are targeted at improving the planning and delivery of economic infrastructure to enable and support housing. There is much scope within the current system to consider infrastructure more strategically instead of seeing it as something that runs as a consequence of development.

This submission focuses specifically on question 1 of the Committee's inquiry and makes the following key points:

- The proposals in *Planning for the Future* recognise a number of challenges within the current planning system and suggest bold action to address them. However, some deficiencies remain and must be focused on as this work is taken forward.
- While not in any way ruled out, strategic planning across local authority boundaries seems to have a less, rather than more, significant role via the proposals in the White Paper. The proposed removal of the Duty to Cooperate without a replacement is particularly concerning. We believe that strategic infrastructure planning must be more prominent through the application of integrated regional infrastructure strategies that include housing, and have read across with MHCLG's work on devolution.
- The proposed new Infrastructure Levy places an undue financial burden on local authorities while itself not appearing to be suitable for use on major infrastructure projects due to a limited ability to forward fund mitigations. While the current levy regime can undoubtedly be improved, and a focus on land value capture is to be welcomed, replacing section 106 and the Community Infrastructure Levy entirely with it is not appropriate, particularly for major infrastructure projects.
- We welcome government's openness to explore the use of Development Consent Orders (page 34 of *Planning for the Future*) to deliver large-scale new settlements. The DCO process almost certainly offers an effective potential delivery mechanism, but it would need to be integrated more effectively with wider spatial planning if it is

¹ ICE (2019) [State of the Nation 2019: Connecting Infrastructure with Housing](#)

to offer a robust approach. At the same time, empowering and effectively resourcing Local Planning Authorities to participate fully and effectively through the pre-application, examination, and post-consent stages can further enhance and reinforce the certainty that the DCO process provides.

1. Is the current planning system working as it should do? What changes might need to be made? Are the Government's proposals the right approach?

A more strategic approach to infrastructure planning

Strategic infrastructure such as transport and utilities is planned primarily at a national level. There is potential to create far better alignment between budgets, funding streams, the analysis of available data and local needs to avoid poorly planned housing developments with inadequate infrastructure provision. By creating integrated regional housing and infrastructure strategies that are based on evidence, have cross-authority agreement and go beyond individual political cycles, infrastructure for housing could be planned in a far more strategic way than at present.

It is important to state there are no legal obstacles to housing and infrastructure being delivered in a better and more integrated way than at present. However, too often there are no shared objectives between the public and private sector, and between different public sector bodies, to deliver housing and infrastructure in a coordinated way.

It is not enough just to consider the number of new homes and where they are located when it comes to infrastructure requirements.² There are crucial economic, social and environmental challenges, including water provision (most acutely in the south of England); ensuring housing and infrastructure is delivered in a way that meets the net-zero emissions target and preserves and protects natural habitats; the decarbonisation of transport and heat; flood resilience; and creating communities where people want to live, work and relax.

Integrated and strategic housing and infrastructure planning and delivery can therefore act as the solution to some of the core challenges the UK faces.

Regional infrastructure strategies

Devolution in England has focused on city-regions and on the conceptualisation of new economic geographies such as the Northern Powerhouse and Midlands Engine. As the programme of devolution progresses it is critical that the different levels of decision-making and service delivery are effectively joined-up, both with one another and with strategic developments at the national level.

There are inextricable links between housing, energy and water supply, waste services and the provision of transport. Within this, many different public and private sector organisations are responsible for infrastructure delivery. A strategic approach to their delivery can foster a better understanding of overall system need. Setting in place a framework to inform where ultimate decision-making over the implementation and delivery of a given area of infrastructure policy should be located is imperative. It is as important to establish a system of identifying infrastructure need at multiple political and economic levels, while allowing for effective community engagement.

² ICE (2019) [State of the Nation 2019: Connecting Infrastructure with Housing](#)

Lessons need to be learned from previous and current deficiencies in the system, while building on the success seen recently in combined authorities and subnational transport bodies (STBs) that have brought together multiple stakeholders in developing a coherent vision with continuous engagement.

In 2016, ICE argued for the creation of cross-sectoral regional infrastructure forums, bringing together government, regulators, businesses and stakeholder representatives to develop regional infrastructure strategies.³ ICE's 2019 State of the Nation report on infrastructure and housing showed that support for those forums is still high, and that housing must also be central to this, ensuring any planned infrastructure supports new housebuilding.⁴

We believe that forums for developing regional infrastructure strategies should be convened and managed by subnational infrastructure bodies – these bodies would be created by extending the current remit of STBs such as England's Economic Heartland, Transport for the North and Midlands Connect to include other economic infrastructure sectors, as well as housing.

Many existing STBs have a wide evidence base built up on future requirements for transport, energy, digital infrastructure and more. Investment has already been made in developing this evidence base, which can act as a platform for local authorities to further build on in order to determine their own infrastructure requirements.

It is important to emphasise that adequate infrastructure for housing is not simply a matter of transport connections. It is well known that transport infrastructure acts to support economic expansion and provision of new housing, and hence targeted investment to increase capacity should remain a priority.⁵ But with a net-zero carbon emissions target in place and a need to mitigate against potential impacts from climate change, other infrastructure – such as heat and power networks, digital communications, electric vehicle charging and flood resilience – need to be considered, as well as a focus on sustainable travel options. Strategies at a regional level must consider all this in their development, focusing on how infrastructure and housing can be catalysts for reducing environmental impacts, utilising innovation and new technology to its greatest effect.

Greater alignment of budgets, funding streams and programmes for transport infrastructure, housing, health, education and other local infrastructure, particularly at local authority, combined authority and county levels, would contribute to greater productivity and more efficient use of resources. We recognise that each regional infrastructure strategy will be different and, depending on geography, have a multitude of stakeholders to engage. This would include, but not be limited to, local authorities, combined authorities, regulators, local businesses, Local Enterprise Partnerships, community groups, national and local delivery bodies and central government departments. These strategies must go beyond individual political cycles, both at a national and local level. Appropriate governance mechanisms must be created around them, allowing flexibility for principles and needs to evolve over time and in line with policy developments.

The regional infrastructure strategy approach also means infrastructure providers can manoeuvre away from a system where they build or upgrade assets for where growth is going to happen, to one where they can come together with a multitude of stakeholders to influence the location of growth ahead of Local Plan stage.

A critical aspect of a higher level plan is to ensure it sets the vision for the region to which each functional area can respond without outlining painstaking levels of detail. Local Authorities can then use the high-level vision to prepare corresponding and aligned Local Plans reflecting the context of each council area. This approach also avoids replicating that taken under the former Regional Development Agencies, where plan-making was a lengthy and often contentious process. It is also important that any future regional infrastructure strategies are compatible with one another across service-level boundaries such as energy or water networks.

³ ICE (2016) [State of the Nation 2016: Devolution](#)

⁴ ICE (2019) [State of the Nation 2019: Connecting infrastructure with housing](#)

⁵ IPA (2016) [National Infrastructure Delivery Plan 2016–21](#)



There should also be much-needed alignment between the outcome of the White Paper and the devolution work that is progressing within MHCLG.

Collaboration across boundaries

The White Paper proposes the abolition of the Duty to Cooperate, but is silent on a replacement that would enable effective strategic planning mechanisms for infrastructure, homes, flood risk etc.

While we recognise concerns from local authorities that the Duty to Cooperate can sometimes lead to unfair distribution of housing requirements, its proposed removal is a symptom of a lack of collaboration, rather than a solution to it. There must still be a requirement for cross-authority collaboration in order to ensure that strategic 'larger than local' and cross-boundary growth projects proceed.

ICE has also heard from infrastructure client bodies who are concerned that the removal of the Duty to Cooperate may inhibit their ability to deliver on their own infrastructure plans. Firstly, as they believe the current system works well in terms of ensuring local authorities effectively collaborate with them to plan and deliver vital infrastructure, and secondly as its removal could lead to inconsistencies if it is not replaced with a similar obligation.

ICE's preference would be for the Duty to Cooperate to remain, or to be replaced with a similar fundamental and legal requirement to collaborate, notably for cross-authority infrastructure projects. However, if it is to be removed, consideration should be given to the regional infrastructure strategy approach outlined earlier in our response, and how this could allow for formal collaboration on strategic cross-boundary issues.

Infrastructure Levy

There is no doubt that there is merit in a nationally established levy for infrastructure, which could reduce the well documented transaction costs of section 106 agreements while more accurately capturing land value.

However, the proposed Infrastructure Levy has a number of shortfalls. Notably, it does not appear appropriate for use on major infrastructure projects. The Infrastructure Levy will capture the increased value of the development, but not necessarily the cost of a major infrastructure project that the uplift does not pay for in full or which the local planning authority (LPA) does not commit to provide. The legal test to grant planning permission at present essentially boils down to 'do the benefits outweigh the adverse impacts?'

If there is not the upfront payment available to mitigate those impacts, the Infrastructure Levy will not work for nationally significant infrastructure projects because contributions have to link to offsetting adverse impacts of a project for them to count. Paying into an amorphous fund will not do this.

On more complex developments, including those delivered through Development Consent Orders (DCOs), section 106 is the only tried and tested way in which appropriate mechanisms can be arrived at to make sure that, for instance, necessary infrastructure comes forward at the right time and by way of a sensible process, bespoke to the circumstances of the development, agreed between the parties. There is no proposal in the paper that the role of planning conditions could be expanded instead.

Therefore, either some form of section 106 will have to remain for larger projects delivered via DCOs, or exceptions to the proposed Infrastructure Levy would have to apply to those projects in order to mitigate development impacts on local communities.

Funding outside of a levy system

Mechanisms such as developer contributions have a significant role to play in infrastructure delivery, but careful thought needs to be given to alternative ways in which funding for infrastructure can be raised, given the possible limitations of existing mechanisms such as planning obligations. Locally derived mechanisms such as strategic tariffs, used in Milton Keynes, might be one way forward. It is clear that developer contributions alone do not have the capacity to provide the necessary funding and investment to deliver all planned infrastructure requirements in a region, only those necessary to enable their development.

ICE has previously recommended that UK financial institution is created to replace access to the European Investment Bank (EIB), with a sustainability mandate to invest in net-zero-aligned infrastructure and crowd-in private finance.⁶ The EIB is one of the few large-scale organisations which prioritises investment for social and regional infrastructure.⁷

Strategic infrastructure tariff

The existing Strategic Infrastructure Tariff (SIT) that allows combined authorities to pool resources to fund specific strategic infrastructure must be made better use of. This will allow groups of charging authorities to use existing powers more effectively and support the delivery of strategic infrastructure, often cross-boundary, through the pooling of their local CIL receipts that can capture uplifts in land value.

We would be keen to see more promotion of SIT from the government and how it could apply, particularly for 'larger than local' projects and whether it could have application outside of combined authorities alone.

Development Consent Orders

There are some important disconnects between infrastructure delivery and housing delivery. At a very large scale in England and Wales, the Development Consent Order (DCO) process for infrastructure can deliver only 500 homes maximum as part of any Nationally Significant Infrastructure Projects (NSIP) application, which itself is dependent on functional need and geographic proximity. Often, the homes delivered as part of the current NSIP regime include housing for key employees working on large-scale infrastructure schemes, such as at Hinkley Point C. This means the system is not used to deliver large-scale coordinated infrastructure and housing projects or facilitate strategic mixed-use schemes with business or commercial projects.

The success of the DCO process in delivering integrated consents for infrastructure projects of national importance suggests that there is no proper planning reason why it cannot be extended to deliver large-scale coordinated housing developments. A major benefit of the DCO process is that all powers required to deliver a project are wrapped into a single consent, such as environmental permits, highways orders and compulsory acquisition of land. Research has also shown the DCO process delivers high levels of certainty and transparency, helped in part by well-understood processes, a defined timescale and an extensive consultation period, providing confidence to all parties engaged in the process.⁸

If it is to apply to large scale new settlements, the process must have a strong balance between detail and flexibility in the preparation of DCO applications. There is little dispute that a degree of flexibility can be beneficial all round, but the extent of flexibility will be scheme and context dependent.

One of the main weaknesses of the DCO process in regard to housing is that it lacks a spatial element and does not suitably integrate with spatial planning processes.⁹ This must be central to the scope to use the DCO process more widely

⁶ ICE (2020) [State of the Nation 2020: Infrastructure and the 2050 Net-Zero Target](#)

⁷ ICE (2019) [ICE response to HM Treasury and the Infrastructure and Projects Authority consultation: Infrastructure Finance Review](#)

⁸ UCL (2016) [Infrastructure Delivery: The DCO Process in Context](#)

⁹ Barton Wilmore (2020) [National Infrastructure and Development Planning Review](#)

for housing, particularly as new settlements on this scale often have a staggered development process over a long time period. The process therefore requires flexibility in delivery and the right mechanisms in place for adaptive governance. This is where the role of development corporations, particularly locally led ones that include local authority partnerships, is vital.

The role of regional infrastructure strategies in effectively identifying this spatial approach is important, as they can recognise the broad parts of the country suitable for new settlements/large scale developments that can be developed under DCO engagement principles with input from Local Authorities and, in some cases, devolved administrations.

The views of consultees and other stakeholders are often underpinned by a perception that the DCO process is complex and opaque.¹⁰ Locally-led project promoters who are willing to take local views into account can ensure early engagement with the process and lead to ongoing collaboration to address this particular issue. At the same time, empowering and effectively resourcing LPAs to participate fully and effectively through the pre-application, examination, and post-consent stages can further reinforce the certainty that the DCO process provides.

While a fixed threshold of the number of homes required to be able to apply for a DCO might not be suitable, it does provide an incentive and target for those involved in projects to submit an application and not feel like they are wasting their time and resources in submitting one.

If it is to be voluntary to use the regime, and if such projects are not to suffer the fate of the DCO for 'business and commercial' projects where no applications have been made since the regime began in December 2013, there must be capacity-building in the housing sector and collaboration between the infrastructure and housing sectors so that consultants and advisers are less apprehensive of using it. It is worth considering that the infrastructure sector had not used anything similar to the DCO process before it was introduced in the Planning Act 2008, while it is now a well-understood process that has been broadly welcomed.¹¹

¹⁰ NIPA (2019) [NIPA Insights II: Towards a Flexibility Toolkit](#)

¹¹ UCL (2016) [Infrastructure Delivery: The DCO Process in Context](#)

