LANDMARK CHAMBERS

Using policy effectively

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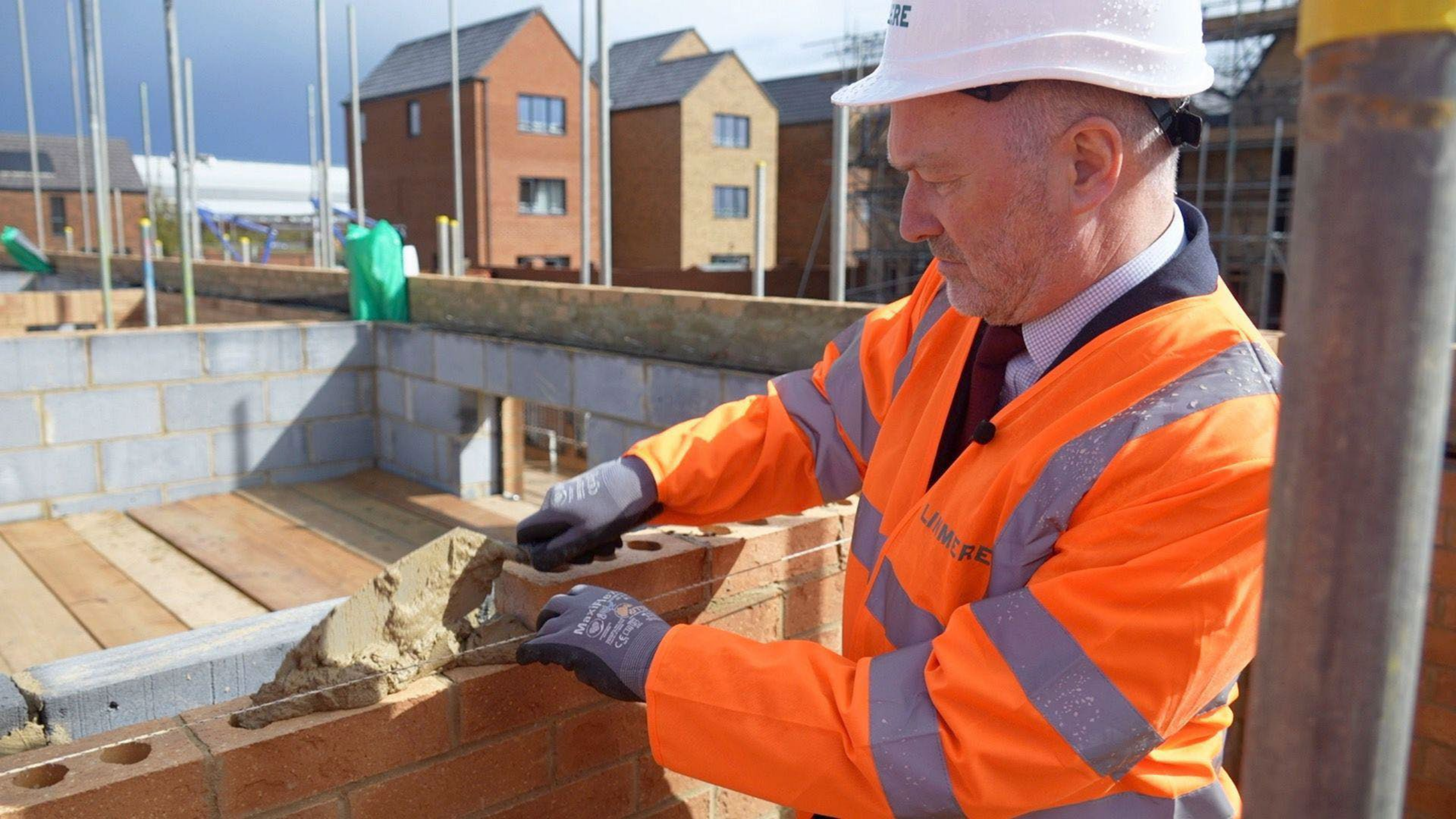

What part can planning policy play in the “acceleration package”?

- The NPPF is heading for another revision
- It aims to support the new plans system and to simplify/streamline DM policy
- But how best to use planning policy effectively?
- 3 planning policy pointers from 2025 so far: where; when; and how to develop

Where (i): the grey belt

- The radical change to GB policy is now clear: see eg *Mole Valley v SSHCLG* [2025] EWHC 2127 and NPPF footnote 55: where “not inappropriate”, there can be no harm to the GB of any kind (including to purpose (c))
- NPPF definition – not performing “strongly” against purposes (a) (b) or (d) and no knockout fn 7 issue (eg flooding, SSSI)
- PPG guidance: (a) not incongruously affecting large built up area; (b) not taking up a large part spatially/perceptually of a gap between towns (not villages)
- DL 22-23 of the *Woodlands Park* decision 9 July 2025 (3347753): disagreeing with the Inspector’s judgement based on existing development, landscaping and the M25
- The radical aspect is that greybelt can be next to or distant from the built up edge, subject to sustainability

Where (ii): PDL

In urban areas: NPPF 125(c) says “give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused…”

Has played a part in major decisions see JLP West Ealing (27 May 2025, 3347877)

Care needs to be taken over “suitable”: the Northfleet Harbourside decision in due course will deal with this – does it mean “suitable for what’s proposed”, or “suitable having regard to eg policy protections/planning balances”

PDL is an effective way to the grey belt or to ‘not inappropriateness’ too, see the Hook Estate DL, (25 March 2025, 3354772) – rural PDL site found to engage para 154(g) of the NPPF

When (i): even if the emerging plan is coming soon

The guidance on ‘Prematurity’ (paras 50-51) is still important – large scale scheme/affecting local plan outcomes/plan at an ‘advanced stage’ (post submission) is the danger area – and there is the rash of ‘transitional’ plans going through now

But – if the scheme is needed and there are factors which mean that the emerging local plan (even as submitted) is not likely to prevail on the relevant point – then there may be no problem

- The JLP West Ealing is a good example: plan submitted November 24 allocating the site but with much lower maximum heights specified
- Inspector found that the issue of appropriate density/height on the site was much better analysed at a s.78 than an EiP, and that changes on the ground meant that the submission plan was unlikely to survive the EiP

When (ii): where 11(d)(ii) applies in adopted plan cases

The presumption is engaged if the most important policies are out of date: in residential cases that can be if there is no 5 year HLS or the HDT has been failed

But *Peel Investments v SSHCLG* [2020] EWCA Civ 1175 makes it clear that plans or policies can be out of date also (a) because of conflict with the NPPF and (b) because of "changes on the ground".

Grey belt is obviously a case where the plan is unlikely to conform with NPPF 2024

But so are cases where the settlement hierarchy, or mix policies are out of date.

In these cases the plan-led system point is often deployed (ie – 'yes, it's out of date, but this is just planning by appeal/application, etc etc')

Always remember: the PCPA 2004 s.38(6) does not tell the decision maker how much weight to give to the plan or any other material consideration

How: need and delivery

Need is still the biggest and best weapon in the current policy arsenal: it is part of the Golden Rules; it opens up the tilted balance; it is a matter to which substantial weight is often given in the planning balance – even when harm is also caused

The *Save Wimbledon Park* case in the High Court ([2025] EWHC 1856) underlines that the basic position is that need can justify a scheme and that issues with the timing of delivery may – but does not need to be – taken into account

Cases where there may need to be CPO, for instance: one should not normally weigh against the benefits of meeting an identified need the fact that delivery is subject to another, later, process, the outcome of which is uncertain.

How (ii): s.73 and viability reviews

2025 has been the year when it is settled that one should not include prospective (highly uncertain) growth (ie in GDV) in the initial FVA of a scheme: see *Stag Brewery* (2 May 2025, 3329860) at DL 169-170 and *Cuba Street* (29 May 2025, 3356375).

Reviews are therefore more difficult to avoid in multi-stage or phased schemes. However, s.73 applications can be used if the scheme either stalls or cannot be implemented because of declining viability: see *Cuba Street* as an appeal example; the law underpinning it is set out in *Test Valley BC v Fiske* [2024] EWCA Civ 1541.

Looking ahead

Potential (likely/certain) national policy change in the next six months – will the policy tests (especially viability guidance/policy) recognize the need to deal with the pile-up of costs affecting delivery?

How will infrastructure problems be dealt with – eg Anglian Water in Cambridge currently imposing a (yet further) effective embargo?

Further clarification/application of grey belt tests in appeals/cases

Notable decisions on housing in rural areas (eg *Sittingbourne*) and urban areas (eg *Northfleet Harbourside*)

Thanks for listening

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