

# Planning for Future Generations



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# 1. Executive Summary

Local policies significantly impact the long-term wellbeing of communities and the environment. Local Planning Authorities are increasingly called upon to deal with concerning issues such as rising sea levels, increased floods, disappearing biodiversity and siting of renewable energy installations. All these require Local Planning Authorities to consider not only the here and now, but also those who will come after us – the future generations.

This study asks: to what extent do local authorities in England consider the interests of future generations in their local plans and decision-making?

This study was conducted as part of the British Academy Policy Insight Case Study scheme. The scheme facilitates policy-focused research projects. By diving into case studies, it enables us to draw significant policy insights. This project contributes to the wider Where We Live Next policy programme. Studying local planning laws in this way brings together the three dimensions which are the focus of the Policy Insight programme: Place, Scale and Time. First, Planning law is a clear example of place-sensitive policy making. As a response to their varied locales and environments, Local Authorities vary in their preferences and their decisions. Second, planning policy also corresponds with the idea of scale, and especially the scale of governance (individual, local, national, international), and the interconnections across scales (individual decision making with local authority; local policymaking with national policy). Lastly, the temporal dimension is a key feature of the study, with its focus on extending the temporal horizons of planning and policymaking to better account for the long-term interest of future generations.

While existing literature explores the role planning law plays in wind energy siting more specifically, and in public participation, the consideration of future generations within planning law remains understudied and under-theorised. This project aims to fill this gap and examine the question of Where We Live Next, through the lens of local planning laws and their temporal horizons.

Our analysis examined a sample of planning documents to uncover local authorities' commitments to the interests of future generations. We analysed 41 main planning documents from 9 major urban areas across England, spanning from 2011 to 2023. Our analysis covered Bath, Birmingham, the districts of Bournemouth, Christchurch and Poole<sup>1</sup>, Brighton, Bristol, Liverpool, The City of London and the 32 boroughs of London, Newcastle upon Tyne, and Southampton. We also assessed the planning documents related to the proposed coal mine in Cumbria County, UK.<sup>2</sup>

To deepen our existing understanding of the subject, we also employed a mixed research

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- 1 Bournemouth, Christchurch and Poole Council is a unitary local authority for the district of Bournemouth, Christchurch and Poole in England that came into being on 1 April 2019.
  - 2 Not a local authority. Known as the "Cumbria Coal Mine" or the "West Cumbria Mining Project", this project was proposed by West Cumbria Mining Ltd and intended to extract metallurgical coal for use in steel production. The mine was planned to be located near the town of Whitehaven in Cumbria. N.B.: From 1 April 2023 local government in Cumbria went through structural changes, and the past six district councils and Cumbria County Council were replaced by two new unitary authorities: Cumberland Council and Westmorland and Furness Council.

methodology to survey a wide selection of planning documents (104 documents in total), including local plans, core strategies, development management policies, waste and minerals plans, flood risk management strategies, neighbourhood plans and planning decisions.

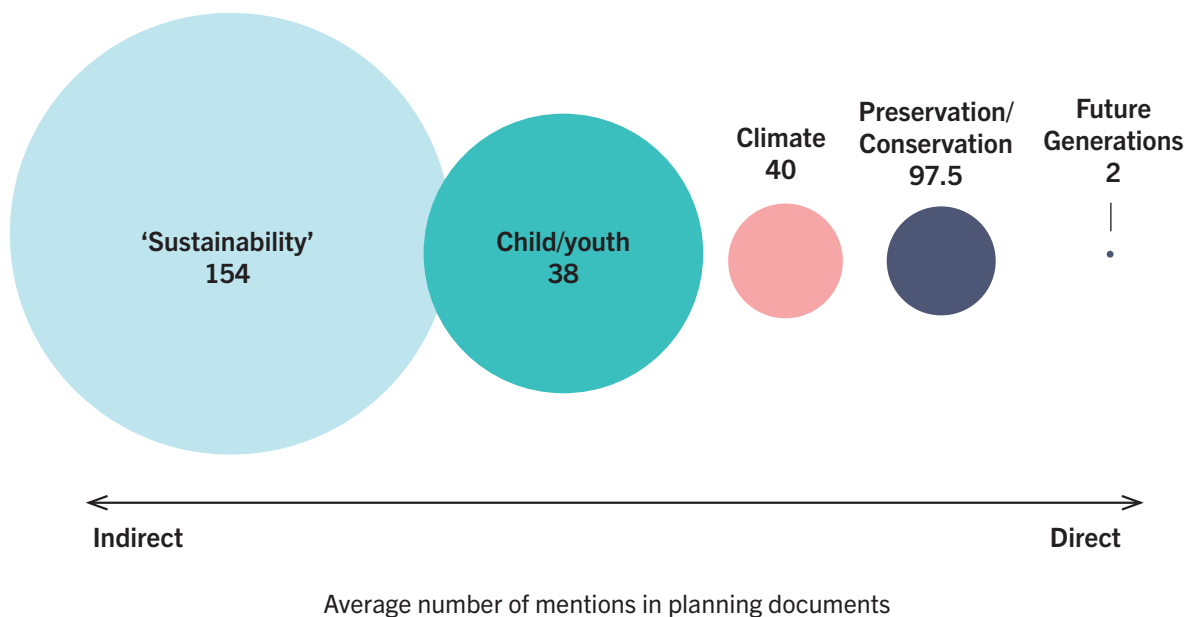
We have found that, overall:

- › Only 3% of the core planning documents analysed directly reference future generations. Moreover, despite introductory mentions, their interests are rarely mentioned in the policy text.
- › 70% of the local development plans acknowledge the climate crisis in general terms, though it is unclear to what extent this includes concern for future generations more specifically.
- › All of the planning documents use the term “sustainability” multiple times, but it is unclear to what extent this includes climate or future generations.
- › The average time horizon adopted by the core planning documents is 15 years.

Our focused analysis of Greater London (and each one of its 32 boroughs) revealed:

- › Only 2% of the planning documents mention future generations, without explicit integration in policy texts.
- › 72% of the local development plans demonstrate a strong commitment to fighting the climate crisis, though the extent to which this encompasses a concern for future generations is unclear.

#### FREQUENCY OF LINGUISTIC TERMS USED



Overall, there is a substantial lack of integration of future generations' wellbeing, interest and needs within the local plans we examined. This is apparent in the linguistic terms used: as mentioned only 3% of the planning documents directly mentioned future generations (for this purpose, direct terminology includes words or phrases explicitly mentioning future generations' interests, future, and wellbeing). There is also very little integration of these interests into adequate policies, despite some introductory references to future generations in the documents, such as in the forewords or prefaces of the planning documents.

We did notice that non-direct terms were used in the planning documents more frequently than the direct terms. The term 'sustainability', for instance, was mentioned in all the documents, multiple times. In theory, the term could encompass the interest of future generations. Yet it is unclear to what extent the term is currently used in this way.

Similarly, the term 'climate', was used by the majority of local authorities in their planning documents. Many of the local authorities surveyed do have climate-related language in their planning documents or have made other climate-related statements. For instance, 85% of London's boroughs have declared a climate emergency in their development plans. Addressing the climate crisis (or failing to do so) will be hugely consequential for future generations. Yet in the planning documents, it is unclear whether the term 'climate' is used in a way that encompasses the interest of future generations. The link between the climate crisis and future generations is not clearly drawn, and our analysis suggest that despite climate-related language in the planning documents there is almost complete disregard for future generations' interests.

The lack of substantial integration of future generation's interests into planning is also apparent in the limited time horizon adopted. Our research shows that local authorities adopt a limited time horizon in their planning documents – only 15 years on average. This time horizon is shorter than one generation (for the purpose of this study we assume one generation is 25 years). The planning documents thus not only neglect the interests of future generations but also barely account for the interests of one generation ahead. This risks inadvertently prioritising short-term goals above the needs of generations to come.

Based on these findings, we make three key policy recommendations:

First, we recommend that the time horizon of development plans be extended, to include at least one generation ahead. The need for periodic review, we suggest, should not prevent the development plans from adopting a longer-term outlook to begin with.

Second, and relatedly, we suggest that both national and local policymakers adopt a more ambitious policy framework regarding the interest of future generations. National policy, for instance, could mandate a minimum timeframe of 25 or 30 years for planning documents. Local policymakers, in turn, can go beyond the national minimum, and encompass an even longer timeframe in their plans, where possible.

Third, we recommend that planning documents adopt clear and coherent terminology with regards to future generations.

## 2. Legal Framework

### 2.1 Assessing the Temporal Challenge of Planning Law

Managing our resources, through property law and planning law, plays a crucial role in governing the complexities of ownership, tenancy, and the resolution of disputes related to both real and personal property. This report shows, however, that current policies included in local authority planning primarily prioritise the claims and demands of present generations, crucially overlooking the rights and interests of future generations.

This lack of attention creates a problem: property rights in the form of freehold ownership can be permanent. However, the fact that freehold ownership is theoretically permanent does not automatically lead to the freeholder having an interest in using property in a sustainable manner, in a way that accounts for rights and interests of future generations. This argument extends with even more force to leasehold ownership as a form of property right. Consequently, property law does not encourage or ensure, in its current state, that interests and rights of future generations are taken into account in the management of land resources. It follows from all of this, as shown elsewhere, that property law and planning law inadequately address the temporal element of property rights.<sup>3</sup> Recognising this oversight, the purpose of this report is to advocate for a balanced and forward-thinking approach to law and policies, ensuring that the needs and concerns of both current and future generations are considered and safeguarded.

In the context of this study, rather than viewing future generations as non-existent or inanimate entities, we regard them as prospective citizens, taxpayers, and contributors to the nation's growth – future rights holders who deserve protection under our laws. Emphasising their status as future stakeholders underscores the significance of incorporating their interests and wellbeing into the development of new policies. This way, the law can better safeguard the rights of those who will come after us.

Overall, the collected data suggest a lack of attention to the needs of future generations. As discussed below, among the analysed planning documents, only a mere 3% explicitly acknowledge future generations. The objective of this report is to provide a deeper insight into the current phenomenon while also offering preliminary guidance on the best next steps to address the shortcomings of existing local planning policies. Ultimately, the report aims to assist decision-makers in this domain.

Alongside this report, our team has conducted a comprehensive review of the legal and academic literature shaping the development and practices of planning laws in England. The aim of this review is to provide the reader with an understanding of the legal context informing this research, while also highlighting important inconsistencies, areas of ambiguity, and literature gaps that hinder progress from today's development planning policies. This review will also shed light on some of the contradictions and fragmented themes amid the objectives and priorities found in the development proposals and core strategies analysed in this study.

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3 Lifshitz, Y.R., Gilboa, M., and Kaplan, Y., "The Future of Property" (2023) 44 *Cardozo Law Review* 1443-1492.

## 2.2 Legal Background

For the purpose of clearly understanding the findings of this report, this section provides an overview of the planning framework in the United Kingdom.

The starting point for an understanding of planning law is the generalisation introduced by the Town and Country Planning Act (TCPA) 1990, of the requirement to obtain planning permission from the relevant local authority for a “development” as defined in S 55 (1) TCPA 1990.

This establishes local planning authorities (LPAs) as one of the main players in planning decision-making. LPAs are defined as public authorities “whose duty it is to carry out specific planning functions for a particular area. All references to local planning authority include the district council, London borough council, county council, Broads Authority, National Park Authority, the Mayor of London and a development corporation, to the extent appropriate to their responsibilities”.<sup>4</sup> Importantly, the allocation of decision-making authority within each area can vary significantly, whether through the merger with other local authorities to form combined authorities or delegation of plan- and decision-making powers to different tiers of local government. Further, different planning functions can be distributed between different authorities for a given area. This inconsistency is mostly due to the institutional changes undergone by local government over the last half-century resulting from varying political influences, but also to the lack of attention given to this topic<sup>5</sup>.

Despite the varied nature of the institutions in play, the defining structural feature of the planning system is, at least theoretically, localised decision-making. In fact, it flows from S. 70 of the TCPA 1990, that local planning authorities have “discretion” to grant or refuse planning permission – the English planning system is discretion based. Courts deciding on planning law cases via judicial and statutory review, only assess the (procedural) lawfulness of decision-making<sup>6</sup>, but do not intervene on the merits. However, local authorities operate within the constraints of local, regional and, especially, central government policies (mainly the National Planning Policy Framework (NPPF)<sup>7</sup>) as well as national legislation, which are “material considerations”<sup>8</sup>. In fact, while it is up to local authorities to decide how much weight should be given to any material consideration (planning judgement) subject to Wednesbury reasonableness<sup>9</sup>, they must take into account every consideration that is material regarding a given planning application (which is a matter of law).<sup>10</sup> The specific appeal structure to a planning decision issued by an LPA which has the Planning Inspectorate (PINS) acting on behalf of the Secretary of State as the appeal body, means that central policy guidance, mainly the NPPF, has *de facto* considerable weight attributed to it in planning decision making.

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4 NPPF, Annex 2 Glossary.

5 Lee M, ‘English planning law: an outline’ in Maria Lee and Carolyn Abbot (eds), *Taking English Planning Law Scholarship Seriously* (UCL Press 2022), 10-32, p. 14.

6 E.g. a decision that has been made *ultra vires*.

7 NPPF, para 2: “The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions.”

8 *Stringer v Minister of Housing and Local Government* [1970] 1 WLR 1281; R (on the application of Wright) v *Resilient Energy Severndale Ltd and Forest of Dean District Council* [2019] UKSC 53.

9 *Associated Provincial Picture Houses v. Wednesbury Corporation* [1947] EWCA Civ 1.

10 S. 70 (2) TCPA 1990; *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 (HL).



This can be understood as a reflection of what has been termed, albeit in a different context, “centrally directed localism”.<sup>11</sup>

Within this framework, local authorities are responsible for drafting and respecting a local development plan in line with an adopted and approved development scheme. A local development plan consists of legal documents that outline policies and guidelines for land use and development within a specific geographic area. It serves as an important point of reference for directing future strategic investments and actions for the benefit of the communities and the environment. It should be noted that the expression “development plan” includes different types of development documents, such as core and supplementary planning documents, area specific documents, waste and mineral plans as well as neighbourhood development plans. As a result, the present research has not only considered the core strategy development plan in its narrow sense, but rather a broader range of documents within the planning ecosystem.

Local development plans have a wide-reaching scope as they guide decisions related to land use, development, and sustainability within a specific area. They outline policies for various aspects, including housing, infrastructure, environment, and community development. While local plans are not legally binding documents, they are material considerations, serving as a framework for local planning authorities to make consistent and coherent judgments.

This is where considerations on the wellbeing of future generations introduce a new layer of complexity to the already intricate system of planning law. The important point here is that future generations’ interests are not explicitly mandated by statute, but nor are they prohibited. Decision-makers therefore have discretionary authority to consider them, particularly in cases with long-term impacts. Despite being of relevance to “the use and development of land”<sup>12</sup>, what will likely influence the weight given to future generations in planning policies is the circumstances in which the interests of future generations will be regarded as material.<sup>13</sup>

## 2.3 The Legal Scope of Considering Future Generations

As mentioned, the starting point for this study is the tragedy of the commons resulting from the temporal mismatch of property law.<sup>14</sup> This can sometimes translate into an unawareness, inability or unwillingness to see it as a tool to shape a consciously chosen future by specific legal frameworks and structures,<sup>15</sup> to protect and preserve the rights of future generations. In fact, as a global matter, this issue often appears to be ignored or insufficiently taken account of in local planning and decision-making.<sup>16</sup>

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11 Ferm J, Raco M, , ‘Viability Planning, Value Capture and the Geographies of Market-Led Planning Reform in England’ (2020) 21 (2) *Planning Theory & Practice*, 218-235, p.221.

12 *Stringer v Minister of Housing and Local Government* [1971] 1 All Er 65

13 Ibid 1294-1295.

14 Lifshitz, Y.R., Gilboa, M., and Kaplan, Y., “The Future of Property” (2023) 44 *Cardozo Law Review* 1443-1492.

15 Elen Stokes, ‘Futurescapes of planning law: Some preliminary thoughts on a timely encounter’ in Maria Lee and Carolyn Abbott (eds), *Taking English Planning Law Scholarship Seriously* (UCLPress, 2022), pp 157-179

16 Chris Hilson ‘Framing fracking: which frames are heard in English planning and environmental policy and practice?’, *Journal of Environmental Law*, 27 (2) (2015). pp. 177-202



With that in mind, we can turn to the current legal framework to determine the scope of considering and protecting rights and interests of future generations in planning and decision-making. Importantly, for our purposes, the law does not mandate the explicit consideration of future generations in local planning. However, it does not prohibit it either. Local authorities therefore have the scope to take the interests of future generations seriously if they so choose.

As a matter of legal doctrine, the question can be reframed as asking whether future generations' interests is a "material" consideration within section 70(2)(c) of the Town and Country Planning Act 1990. The categorisation of considerations as material or immaterial is one of the areas in which planning is highly particularised.<sup>17</sup> In *Stringer v Minister of Housing*,<sup>18</sup> it was held that, while considerations must be "of a planning nature", that can include "any consideration which relates to the use and development of land", whether related to public or private interests, with the materiality of any given consideration depending on the circumstances.<sup>19</sup> As we see it, the interests of future generations, as discussed in this project, do relate to the use and development of land and may be of a mixed private and public nature. The key question then becomes: in what circumstances will the interests of future generations be regarded as material?

Before proceeding with that inquiry, stepping back from the statute, it is helpful to consider the application of the taxonomy set out in the *Heathrow* case<sup>20</sup> which now provides the leading dicta on relevant and irrelevant considerations for the purposes of judicial review. Regarding s.70(2)(c), the interests of future generations as a specific consideration are neither mandated nor prohibited by the statute, expressly or impliedly. Nor, despite the importance of averting a temporal tragedy of the commons, the consideration is "so obviously material" (or immaterial) that decision-makers must (or must not) have regard to it. Indeed, for reasons discussed elsewhere,<sup>21</sup> the impact on future generations is not immediately obvious, given the large durations of time and cognitive obstacles involved. By process of elimination, then, future generations' interests must be a consideration of the non-mandatory variety: a factor to which planning decision-makers may have regard if they think it right to do so.

Returning now to the Town and Country Planning Act 1990, it is at least conceivable that in some circumstances the interests of future generations would be sufficiently relevant to qualify as a "material consideration" within section 70(2)(c) and therefore a factor the consideration of which is made mandatory by the Act. Indeed, in many cases the impact on future generations may be regarded as so remote or uncertain that the court would regard it as being of minor importance in relation to the particular decision (and therefore not "material").<sup>22</sup> But in the case of developments with obvious long-term impacts and legacy issues – paradigm examples might include projects relating to long-term waste management, mining legacy, or developments with a major environmental impact – then the interests of future generations may become so fundamental to the decision that section 70(2)(c) requires their consideration.

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17 Bell (supra) 233.

18 [1970] 1 WLR 1281.

19 *ibid* 1294-1295.

20 *R (Friends of the Earth) v Heathrow Airport Ltd* [2020] UKSC 52; [2021] 2 All ER 967.

21 Lifshitz, Gilboa and Kaplan, 'The Future of Property' (2022).

22 On the treatment of matters of small importance, see *Bolton Metropolitan Borough Council v SSE* (1990) 61 P & CR 343, 352 (per Glidewell LJ).

A further point might be made about the significance of the development plan in effectuating a system wherein planning decisions take account. As has been discussed above, the most significant effect of the development plan is that it is prima facie a mandatory consideration in every case; that is the effect of section 38(6) of the Planning and Compulsory Purchase Act 2004. The aim of creating a planning culture wherein the interests of future generations were a major point of consideration in a wide range of cases would therefore be advanced significantly by the inclusion of the promotion of such interests in the development plan as a policy of the local planning authority. While the decision-making process is always multifactorial and it would be for the decision-makers to decide the priority to be given to each factor within the development plan, express inclusion of such considerations in the development plan would both expand and solidify the application of a future interests factor in planning decisions.

Finally, drawing together these strands of thought, the significance of the attitude of the decision-makers – be they local planning authorities or the Secretary of State – cannot be overstated. Whether at the stage of formulating the NPPF or the development plan, the taking of a planning decision, or the defence of that decision in subsequent proceedings for judicial review, the judgment of the decision-maker is paramount.

### 2.3.1 Elements Related to Local Planning

The NPPF provides that “[p]lans and decisions should apply a presumption in favour of sustainable development”<sup>23</sup> requiring local planning authorities to account for sustainable development in their development plans.<sup>24</sup> Para 7 of the NPPF defines sustainable development as “meeting the needs of the present without compromising the ability of future generations to meet their own needs.”

Strategic priorities must be determined and designed within the plan-making process and shape the resulting policies resulting therefrom. They are defined as “[p]olicies and site allocations which address strategic priorities in line with the requirements of Section 19 (1B-E) of the Planning and Compulsory Purchase Act 2004.”<sup>25</sup> Indeed, S 19 (1B-E) of the PCPA 2004 poses a statutory obligation upon planning authorities to include such strategic policies in their development plans. Para 22 of the NPPF provides further guidance on the substance of strategic policies. Pursuant to this para, “[s]trategic policies should look ahead over a minimum 15-year period from adoption, to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure. Where larger scale developments such as new settlements or significant extensions to existing villages and towns form part of the strategy for the area, policies should be set within a vision that looks further ahead (at least 30 years), to take into account the likely timescale for delivery.”

Regarding flood-risk assessment, the NPPF states at paras 152-173 that plan-making and

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23 NPPF, para 11.

24 NPPF para 11, p 6. The value added by this presumption has been questioned; in particular, the broad notion of ‘sustainability’ adopted by the NPPF does not mirror the layperson’s notion of ecological sustainability: Upton, ‘What is the Purpose of Planning Policy? Reflections of the Revised National Planning Policy Framework 2018’ (2019) 31 JEL 135.

25 NPPF, Annex 2 Glossary, p. 73.

decision-making should be carried out in such a way to make developments “safe for their lifetime” in relation to flood risks, so that developments are “sustainable in the long-term.” Further, the Planning Practice Guidance – Flood Risk and Coastal Change, at para 6, “assumes” the lifetime of a development when assessing and applying policies on flood risk and coastal change, to be of at least 100 years, unless there is specific justification for considering a different period. Major infrastructure projects or developments that entail significant land-use change are considered to have, in principle, an “anticipated lifetime significantly beyond 100 years”.<sup>26</sup>

Looking at paras 72 and 73 of the same document relating to coastal change management areas, the same 100-year time horizon can be found. Moreover, in such areas, the policy defines 20 years as a short-term risk period, 20 to 50 years as a medium-risk period and up to 100 years as a long-term risk period.

Pursuant to para 34 of the NPPF and para 1 of the Planning Practice Guidance on Viability, local planning authorities are required to issue development plans that are informed by viability assessments so that developments made in accordance with the adopted local plan are viable, especially with regard to developer contributions. If policies are up to date, the development plan and planning applications made in accordance with it are presumed to be viable. It is then for the applicant (eg, the developer) to show that particular circumstances justify that a new viability assessment should be carried out at the decision-making stage.<sup>27</sup>

It follows from the above that such an assessment can be required to be carried out at the decision-making stage by the applicant if policies are not up to date, since the presumption of viability of the development plan does not stand anymore. Para 62 of the Planning Practice Guidance on Plan Making<sup>28</sup> hints at a general need for review or check for the need of a review of local plans, including their viability assessments, roughly every 5 years to remain up to date<sup>29</sup>. Further, different reports on the national level, in the context of developer contributions, show that there is a need for LPAs to agree on up-to-date local plans to avoid renegotiation via viability assessments at the decision-making stage or a later stage<sup>30</sup>, and minimise the risk of appeal.<sup>31</sup>

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26 All characters in bold have been thus formatted by the authors and are not found as such in the original policy documents.

27 Planning Practice Guidance - Viability, para 7.

28 “To be effective plans need to be kept up-to-date. The National Planning Policy Framework states policies in local plans and spatial development strategies, should be reviewed to assess whether they need updating at least once every 5 years, and should then be updated as necessary.”

29 See also: The Country Side Charity, ‘What’s the plan? An analysis of local plan coverage across England’ (2020)

30 Housing, Communities and Local Government Committee, Land Value Capture, Tenth Report of Session 2017-19 (HC 2019, 766), paras 25, 111.

31 Ministry of Housing, Communities and Local Government, The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2016-2017 (2018), paras 6.1, 6.2, 6.17.

### 2.3.2 The Challenge of Defining Sustainability

The regard for future generations could, in theory, be carved out from the existing concept of sustainability. However, local authorities are under no strong legal obligation to include references to sustainability in their planning strategies<sup>32</sup>. Furthermore, there isn't even a clear or consistent definition for the concept of "sustainable development", facilitating an ambiguous use of the language in planning documents. In the context of sustainable development, the NPPF used to adopt the definition proposed by the Brundtland report, which articulates that a development plan can be regarded as sustainable insofar as it meets the needs of the present without compromising the ability of future generations to meet their own needs.<sup>33</sup> The NPPF has, however, shifted away from the definition above to adopt the notion of "presumption" in favour of sustainable development. What this means is that the NPPF assumes the compliance of local authorities with the general guidance of including a plan for sustainable development in their policies. This presumption involves a set of conditions acting as guiding principles for both planning and decision-taking processes.<sup>34</sup> These conditions require local authorities to actively look for ways to meet the development needs of their area while being flexible enough to adapt to rapid changes. However, there are exceptions.

If the adverse impact of a development plan significantly outweighs its benefits or if the development plan contradicts specific policies in the NPPF, then local authorities are reasonably expected to stop the plan. To reiterate, the negative impacts must be significantly and clearly greater than the benefits in order for a development plan to not be deemed sustainable.<sup>35</sup> This allows for instances where, despite certain negative implications arising from an implemented development plan, the plan may not be considered unsustainable insofar as the adverse impact it produces is not significantly higher than its benefits.<sup>36</sup> Richard Humphreys points out how over time, even if each development plan has only slightly negative effects, they could add up to become significant, and thus resulting in objectively unstable policies.<sup>37</sup>

Insofar as the concept of sustainable development remains unclear and subject of a flexible cost-benefit analysis at the discretion of each local authority, the current planning system is not in a position to protect future generations' interests. We suggest that adopting a clear and more ambitious definition, as discussed in the Policy Recommendations section, would ultimately create more accountability on behalf of local planning authorities.

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32 Lee & Shepherd, 2015, p.4: "Tensions over the desired degree of local autonomy, over local participation, and the processes by which that is achieved, may pointedly manifest themselves once the policy which attempts to work around these problems becomes law."

33 'Our Common Future', also known as the Brundtland report from the World Commission on Environment and Development (1987) para. 27

34 Humphrey, R., 'Sustainable development: does the NPPF paragraph 14 ensure that future generations can meet their own needs?', (2016), p. 1

35 Ibid. p. 2

36 Ibid. p.5

37 Ibid.

## 2.4 The Gap in Existing Literature

Some of the existing literature exploring the intersection between law and future generations has progressed so far as attributing to law an important role of anticipation and future-making.<sup>38</sup> In law, the concept of anticipation involves the diverse ways in which individuals, organisations, and societies engage with the future, extending beyond mere prediction and encompassing the ways in which law actively shapes and directs the future. On this note, Elen Stokes' framework introduces three critical dimensions: legal form, legal horizon, and legal effect. Legal form refers to the structures, provisions, and mechanisms within law that shape future outcomes. Legal horizon pertains to the temporal aspects of law and how it delineates timeframes, continuity, and progress. Of particular significance to our study, and lacking, is the third dimension: effect.

This dimension explores law's capacity to translate potential future scenarios into tangible present-day impacts. This report is particularly interested in this third dimension of effect and examines how planning law currently strategies and operates under the conditions of uncertainty brought by the future. Stokes' work advocates for the development of "sensory" legal methods that better capture law's futurity and emphasises the need to make the future and its complexities a central analytical focus in legal research. As previously discussed, building upon similar scholarship, this report strives to take a step forward by providing empirical evidence and a more concrete idea of the extent of the progress still needed in this domain.

There has indeed been a recent upsurge of litigation, whether it is young generations seeking to make their voices heard in court<sup>39</sup> or the principle of "intergenerational equity gaining traction" in climate litigation cases.<sup>40</sup> But the issue of planning law and the interests of future generations in this regard remains, so far, unchallenged. Importantly for our purposes, the current suits are typically aimed more broadly at the Country's overall carbon or climate-related policy. And there is hardly any discussion of how the consideration of future generations can be integrated into the legislation and rulemaking itself, let alone planning law more specifically.

Conversely, the Court of Appeal case *Finch v Surrey*<sup>41</sup> addresses the need (or lack of) for taking into account downstream emissions when deciding on a planning application for an oil drilling development. Future generations are not mentioned even though they were mentioned multiple times in third-party submissions to the planning application opposing the development. At the time of writing this report, it still remains to be seen whether this avenue is used to introduce aspects of intergenerational equity or rights of future generations into planning judicial review cases.

Courts in other countries have included considerations relating to future generations in decisions on downstream emissions in planning decision-making.<sup>42</sup> In any case the recent

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38 Elen Stokes, "Beyond evidence: Anticipatory regimes in law", Cardiff Law School (2020)

39 *Held v Montana*, 307 F. Supp. 405 (D. M. 2023); *Juliana v United States*, 543 F. Supp. 1 (D. O. 2015); *Children have a right to sue their countries over climate change, a U.N. panel determined.*; <https://www.theguardian.com/environment/2023/sep/14/young-people-to-take-32-european-countries-to-court-over-climate-policies>;

40 Bertram D, ' 'For You Will (Still) Be Here Tomorrow': The Many Lives of Intergenerational Equity' (2022) *Transnational Environmental Law*, 12:1, 121, 149.

41 *Finch v Surrey* [2022] EWCA Civ 187.

42 *Gloucester Resources Ltd v Minister for Planning* (2019) 234 LGERA 257, [490], [2019] NSWLEC 7; *Greenpeace v Norway v Ministry of Petroleum and Energy* (Borgarting Court of Appeal, No 18-060499ASD-BORG/03, 23 January 2020) 21.

upsurge in litigation does show that there is, or that there should be, increasing interest in advancing the interests of future generations, which makes this study all the more relevant, and its findings all the more significant. The recent past bears witness to the emergence of various efforts, some more successful than others, to protect the rights and interests of future generations, such as the Future Generations Commissioner in Wales, The Ombudsman for Future Generations in Hungary, the Parliamentary Commissioner for the Environment in New Zealand and the Commissioner of Future Generations in Israel, to name just a few<sup>43</sup>. The recent adoption of the Maastricht Principles on The Human Rights of Future Generations and the existence of a Wellbeing of Future Generations Bill in the UK<sup>44</sup>, shows that there exists at least some consensus regarding our obligations to future generations as well as the existence of rights proper to them. The literature pertaining to these developments mainly deals with representation of and agency on behalf of future generations. What is examined are new institutional models to represent future generations and how they can last<sup>45</sup>, and analysis of existing models and their comparison regarding their respective effectiveness<sup>46</sup>, with a rare focus on the UK more generally<sup>47</sup>, and more often on the Welsh case<sup>48</sup>.

The existing literature thus focuses on the prolongation of institutions that, as a separate body in the landscape of constitutional institutions, protect and represent the interests of future generations. One of the limitations of these studies is that they ‘deal’ only with ‘macro’ mechanisms; [they] do not consider more specific legislative proposals in detail’.<sup>49</sup> Further, many of them mention, in view of achieving some sort of longevity and resilience to political mood swings of these representatives of future generations, the need for a constitutional entrenchment of some sort of these institutions, which presupposes in principle cross-party support for this issue. With regards to planning law, it may be worth exploring the avenue of making existing institutions such as LPAs, local councillors, and planners the guardians of future generations by inducing this role via central government policy (NPPF, NPPG). Such an approach may be pragmatic with view to its implementation because the change would be more

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43 Knebel, 'Cross-country comparative analysis and case study of institutions for future generations' (2023) *Futures* 151

44 <https://bills.parliament.uk/bills/2869>, accessed on 23/09/2023.

45 Radavoi, Rayman-Bacchus, 'The need for durable institutions for future generations: Mobilising the citizenry' (2021) *Futures* 132, p. 1.; Tonn, 'Philosophical, institutional, and decision making frameworks for meeting obligations to future generations' (2018) *Futures* 95, p. 44.; Fribieger, Byskov and Keith Hyams, 'Who Should Represent Future Generations in Climate Planning?', *Ethics & International Affairs*, 36, no. 2 (2022), pp. 199-214; Byskov, Hyams, 'Who should represent future generations in climate planning?' (2022) *Ethics & International Affairs*, 36, no. 2, pp. 199-214.

46 Knebel, 'Cross-country comparative analysis and case study of institutions for future generations' (2023) *Futures* 151, p. 1.

47 Jones, O'Brien, Ryan, 'Representation of future generations in United Kingdom policy-making' (2018) *Futures* 102, p. 1.

48 Nesom, MacKillop, 'What matters in the implementation of sustainable development policies? Findings from the Well-Being of Future Generations (Wales) Act, 2015' (2021) *Journal of Environmental Policy & Planning*, 23:4, pp. 432-445.; Davies H, 'The Well-being of Future Generations (Wales) Act 2015—A Step Change in the Legal Protection of the Interests of Future Generations?', *Journal of Environmental Law*, Volume 29, Issue 1, March 2017, pp 165–175 <<https://doi.org/10.1093/jel/eqx003>>; Davies H, 'The Well-being of Future Generations (Wales) Act 2015: Duties or aspirations?' (2016) *Environmental Law Review*, 18(1), p. 41-56.

49 N Jones, M O'Brien, T Ryan, 'Representation of future generations in UK policy-making' (2018), 102 *Futures* p. 162.

subtle and less prone to raise a lot of distrust as was the case for some Institutions of Future Generations.

However, present research does not engage sufficiently with enabling existing authorities in the institutional landscape to take on the role as guardians of future generations. This is the research gap this project intends to fill by inviting policymakers at every level to consciously account for future generations in their policy- and decision-making and offering options and means to do so – something which is called for by existing literature itself.<sup>50</sup>

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50 Elen Stokes, 'Futurescapes of planning law: Some preliminary thoughts on a timely encounter' in Maria Lee and Carolyn Abbott (eds), *Taking English Planning Law Scholarship Seriously* (UCLPress, 2022), pp 157-179.



### 3. Methodology

We analysed 41 core development plans from 9 major urban areas across the England: Bath, Birmingham, The districts of Bournemouth, Christchurch and Poole<sup>51</sup>, Brighton, Bristol, Liverpool, The City of London, and the 32 boroughs of London, Newcastle upon Tyne, and Southampton, and Cumbria County, UK.<sup>52</sup> In addition to the core planning documents, we also surveyed a range of supplemental planning documents (104 documents in total), including local plans, core strategies, development management policies, waste and minerals plans, flood risk management strategies, neighbourhood plans and planning decisions.

- › The selection of these cities, representing some of the largest urban areas for demographic numbers in England, was based on the following considerations:
- › These areas represent large and diverse geographical regions. They govern large swaths of the population.
- › They either have Green Belt<sup>53</sup> areas or have a water interface (either sea or river).

For the purpose of this research, selecting Green Belt areas is crucial as they embody the challenges of balancing preservation, development, and long-term sustainability goals in our rapidly changing world. As such, analysing the local management of Green Belts areas can inform us on how local authorities grapple with the complexities of sustainable development and whether such considerations effectively translate into the formulation of policies that safeguard the environment and the wellbeing of future generations.

This research employed both quantitative and qualitative methodologies, involving the gathering of a substantial number of relevant planning documents and subsequent qualitative study of these documents. The selected sample was designed to create a robust and accurate collection of pertinent planning documents for future research, thereby enhancing the forward-looking aspects of planning decisions and the decision-making process.

More specifically, the social research methods adopted by this research include:

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- 51 Bournemouth, Christchurch and Poole Council is a unitary local authority for the district of Bournemouth, Christchurch and Poole in England that came into being on 1 April 2019.
  - 52 Not a local authority. Known as the “Cumbria Coal Mine” or the “West Cumbria Mining Project”, this project was proposed by West Cumbria Mining Ltd and intended to extract metallurgical coal for use in steel production. The mine was planned to be located near the town of Whitehaven in Cumbria. N.B.: From 1 April 2023 local government in Cumbria went through structural changes, and the past six district councils and Cumbria County Council were replaced by two new unitary authorities: Cumberland Council and Westmorland and Furness Council.
  - 53 The green belt designation is a planning tool and the aim of green belt policy is to prevent urban sprawl by keeping land permanently open; however, there is not necessarily a right of access there. There are 14 green belts in England and 1 in Wales. This is an important factor helping us establish the level of commitment to sustainable development demonstrated by each local planning authority as the NPPF prescribes the protection of Green Belt.

## Document Analysis

We closely examined any nuanced language and discourse patterns stemming from a scale of selected terminology which reveal both a direct and indirect reference towards future generations' interests.

Indirect terminology refers to words and phrases that may not explicitly mention future generations but are associated with concepts that have implications for their interests. Direct terminology includes words or phrases explicitly mentioning future generations' interests, future, and wellbeing.

Importantly, this research extends beyond a simple counting of direct and indirect mentions of future generations and investigates the extent to which the wellbeing, interests and needs of future generations are integrated into the policy texts, recommendations, and deliberative processes of the assessed development plans. This aspect stands as a pivotal dimension of our study, as our findings indicate that the direct references to future generations identified in the reviewed documents are primarily confined to the foreword, introductory sections, or simply align with the standard definition for sustainable development outlined in the National Planning Policy Framework.

Indirect terminology	Direct terminology
Sustainability (per NPPF) Preservation Stewardship Climate/ renewables Children or Youth	Future Generations

## Thematic Analysis

This method involved identifying and analysing themes or patterns within the textual data found in the development plans. Researchers categorised language into different themes, including “climate change”, “sustainability”, “stewardship”, and “future generations”, which can provide insights into the priorities, values, and goals of each individual local authority's planning documents.

## Case Studies

In-depth exploration of single case studies to identify any relevant phenomenon or caveat affecting our conclusions and findings.

Due to the complex administrative structure of London, the research assessed the development plans of the 32 local authority districts that together with the City of London make up the administrative area of the Greater London Authority. Separately, we analysed the London Plan which acts as a regional plan on top of the local ones.

### CASE STUDY REVIEW AREAS



# 4. Main Findings

## 4.1 Comparative Analysis

### 4.1.1 Time Horizon: Comparative Analysis

The data reveals an average time horizon of 15 years across the planning documents reviewed. This risks limiting the ability of local authorities to respond to long-term or unforeseen challenges that future generations encounter, especially in areas where sustainable development or environmental considerations are at play. Local plans with shorter time horizons may fail to address the full extent of environmental challenges that future generations will face.

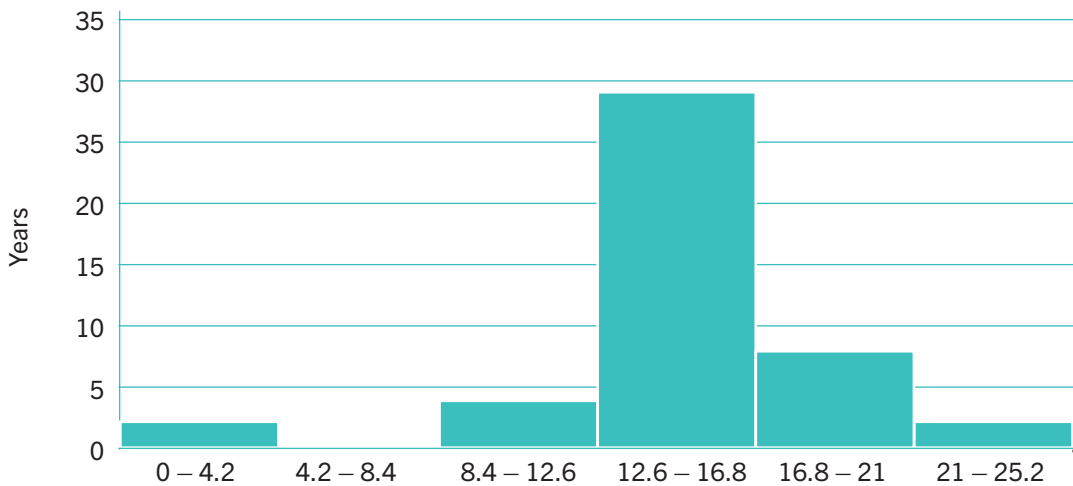
Waste management plans, which are crucial for resource conservation and sustainability, are also presented with relatively short time horizons. This might lead to insufficient long-term strategies for managing waste and resources efficiently, impacting future generations' access to essential resources and liveable spaces.

Finally, urban development can also be severely affected by shorter time horizons in development plans. Urban sprawl, congestion, and inadequate infrastructure can affect the quality of life for future residents.

The 15-year timeframe seems to conflict with the National Planning Policy Framework's (NPPF) definition of sustainable development which must enable future generations to meet their needs<sup>54</sup>. This implies an extended time horizon to account for at least more than one

54 UN General Assembly, Resolution 42/187, 2023, [<http://www.un.org/documents/ga/res/42/ares42-187.htm>].

DISTRIBUTION OF TIME HORIZON



generation ahead, considering that a generation is “the average period, generally considered to be about 20-30 years, during which children are born and grow up, become adults, and begin to have children.”<sup>55</sup>

### ***Southampton and Poole Case Study***

Amongst the cities reviewed, Southampton stands out for its unique flood risk management strategies and is a clear outlier in time horizon. In 2012, the council adopted a 100-year Flood Risk Management Strategy showing its long-term outlook. This development strategy emphasises proactive measures to safeguard the city’s coastal frontage and mitigate flood risk well into the future.

The planning strategy splits recommended actions into three main phases. It has measures to extend to 2110 and provides a forward-looking perspective, acknowledging the enduring impacts of climate change on future generations. The strategy’s risk-based approach prioritises action in areas vulnerable to flooding, reflecting a conscious effort to secure Southampton’s future.

Southampton’s City Centre Action Plan, complementing the city’s Core Strategy, encompasses more than just one area of concern. Southampton’s strategy speaks of providing and protecting open spaces, enhancing public transport, and managing flood risk. Another exceptional case that surpasses the average of 15 years typically associated with planning policies, can be found in Poole’s Flood Risk Management Strategy. Poole’s strategy remarkably applies a time horizon of 116 years (until 2126).

Although the extended time horizon could show intent to safeguard the livelihoods of future generations, neither of these case studies explicitly mentions future generations in their planning documents. This is further evidence that many local authorities may not fully grasp the temporal aspect of property law and the profound responsibility for shaping a better future.

### ***Analysis of Applicable Legal Framework***

Three elements explain existing time horizons and provide examples of how to change these moving forward.

First, strategic priorities translated into strategic policies, which have to be included in local development plans (PCPA 2004), “should” in principle have a “long-term” time horizon of 15 years.<sup>56</sup> This fits with the average 15-year time horizon within our samples. The language of the NPPF however is permissive (rather than prescriptive) so LPAs are free to deviate from this average point.

The outlying Southampton and Poole case studies can be explained by the NPPF and national planning practice guidance. It recommends that flood risk and management policies for coastal areas should have a “long-term” time horizon of 100 years. This is “assumed” to be the lifetime of developments, “unless there is specific justification for considering a different period.”

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55 Oxford Advanced Learners’ Dictionary, s.v. “Generation”

56 NPPF, para 22.

This also fits nicely with the theory of focal points. In brief,<sup>57</sup> LPAs face a coordination problem when setting time horizons for their local development plans and policies. There are multiple solutions that could be chosen but none of these choices impose themselves. Eventually, however, they must choose one time horizon. Focal points help make this choice. Central government policy can be seen as a focal point around which local planning authorities gravitate when deciding on a time horizon for their local planning documents.

Sticking to a focal point may not always lead to the best or most efficient outcomes. The 15-year time horizon works for some planning areas such as housing and employment but the generalisation of the 15-year time horizon as a focal point may be insufficient for other purposes.

In addition to the focal point, it is possible that LPAs are deterred by the requirement set by central government policy for up-to-date local plans, informed by up-to-date viability assessments. If a local plan is not up to date, it can't be presumed that it contains policies for viable developments. The local planning authority, in principle, has to grant planning permission.<sup>58</sup> Plans need to be rewritten or updated roughly every 5 years to be up to date. This may explain why local plans don't include time horizons that take into account future generations. However, we stress that the need to review a plan every 5 years does not impede the design of policies with longer-term time horizons. Despite the flaws, this example shows how a local plan with a longer time horizon could adapt in certain areas.

Either way, while these points explain different time horizons of local development plans, they also show the effects of policy language and the steering potential of central government policy – as well as the freedom of local planning authorities to account for the rights and interests of future generations.

#### **4.1.2 Textual Analysis of Plans**

##### ***References to Sustainability and Climate***

On average, the term “sustainability” appears 154 times across the analysed documents. Although the word “sustainability” often lacks clear context and purpose, and the extent to which it includes future generations is unclear. The term “climate” is mentioned 40 times. Approximately 70% of the documents acknowledge or address climate change challenges explicitly.

For example, in Birmingham's planning documents, sustainability appears to be a prominent theme, with 1080 references in the city's Revised Sustainability Appraisal Report of 2015. However, the document still submits to the shortsighted planning vision of a time horizon of 20 years for reaching effective development impacts.

Relative to other London boroughs, Croydon's local plan significantly emphasises the term “sustainable”. But it's frequently employed without substantive explanation. References to drainage systems, infrastructure investment, and materials advocate for sustainability without

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57 For more on Focal Point and their role in solving coordination problems, see eg: Thomas C Schelling, *The Strategy of Conflict* 98 (1960); Richard H McAdams, *A Focal Point Theory of Expressive Law*, 86 Va. L. Rev. 1649, 1652 (2000); Richard H McAdams, *Beyond the Prisoner's Dilemma: Coordination, Game Theory and the Law*, 82 S. Cal. L. Rev. 209, 225-236 (2009); Shitong Qiao, *Small Property, Big Market: A Focal Point Explanation*, 63 Am. J. Comp. L. 197 (2015); Ulmann-Margalit, *supra* note 18, at 74-133 (1977).

58 NPPF, para 11 (d).

providing a clear definition of this intended objective. Without such clarity, it is hard to take informed actions that would positively influence the experiences of future generations.

### References to Future Generations

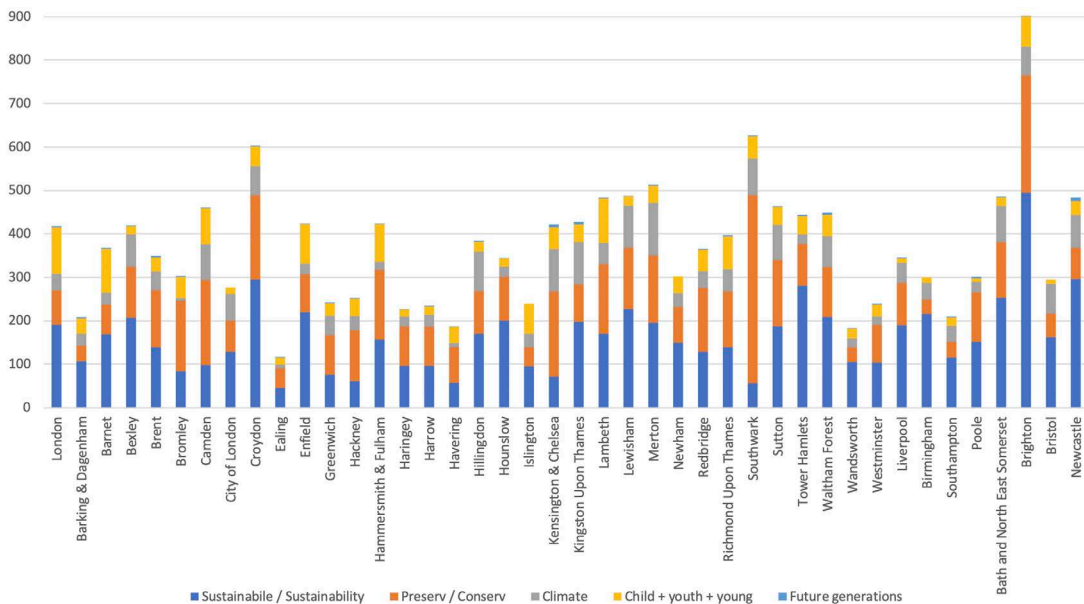
As mentioned in the executive summary of this report, this study reveals that only 3% of the reviewed documents directly reference future generations, with an even lower subset substantially integrating their interests into policy.

For instance, although our research recognised Bristol’s strong commitment to address immediate environmental challenges, this dedication does not extend to the safeguarding of future generations’ welfare. In fact, the notion of “future generations” is scarcely mentioned in the city’s planning documents, merely referenced in the context of playgrounds for children.

In Liverpool, the only document directly addressing the interests of future generations is the City Region Growth Strategy. In this document, phrases like “our children’s children” and “generations to come” are used in the foreword, but only in relation to historic buildings preservation.

In Cumbria County Council’s Waste and Minerals Plan, references to future generations only appear in the foreword and within the glossary definition of “sustainability”. Similarly, in all the inspector’s reports of 2022, reference to future generations only appears in the concluding statements and not in the more technical sections of the documents displaying policy strategies. One of the documents contains a submission made by a 9-year-old child. The submission insists on taking the issue of tomorrow’s generations seriously and shows that today’s children can have a voice in planning processes. But it’s not clear what weight this consideration had within the plan, and whether such additions are part of a larger commitment to safeguard the interests

### FREQUENCY OF LINGUISTIC TERMS USED IN REPORTS BY LONDON COUNCILS





of future generations or if they merely introduce a vague moral appeal without yielding any actual decision-making.

A similar case can be found in Bournemouth, Christchurch, and Poole Council's planning strategies. Reviewing the councils' core strategy, we collected 122 references to sustainability but only 2 to future generations within the same document. Just like in the case of Cumbria County Council, the mention of future generations is only in the foreword, not in the actual policy or as part of decision-making considerations.

Even more striking is the parallel between Cumbria County Council's and Bournemouth, Dorset and Poole's waste plans. Both only reference future generations within a common definition of sustainable development. Should we assume that every reference to sustainability is a conscious account of future generations' needs?

These considerations come with the caveat of Bournemouth, Dorset and Poole Minerals Strategy's direct mention of the need to preserve present goods for future generations. However, this document only accounts for a shortsighted time horizon of 15 years, in common with the rest of the documents analysed.

In Brighton, the document that most explicitly mentions future generations is a general policy guide for various aspects of Brighton life. It has a relatively short time horizon of only 3 years.

In Birmingham's planning documents, direct consideration of the interests of future generations do not seem to play a significant role, with only one reference, almost as an afterthought in the appendix.

The Royal Borough of Kensington and Chelsea stands out as the sole London borough with more than five mentions of the term "future generations" within their local plan. They're aware of the time frame issues inherent in local plan development, even considering the interests of generations yet to be born. They also approach the issue of climate change with a perspective that prioritises safeguarding the wellbeing of future generations. However, this recognition does not necessarily translate into policies. Instead, these acknowledgments represent the extent of their commitment and there are no discernible variations in policymaking in Chelsea compared to other London Boroughs with fewer references to future generations.

## 4.2. Case Studies: A Closer Examination of Select Cases

### London

London provides a useful case study to consider. It's the largest urban area in the United Kingdom and home to more than 15% of England's population. The Greater London Authority Act 1999 mandates the Mayor of London to publish a spatial development strategy, the London Plan, dealing with objects of strategic importance to Greater London.<sup>59</sup> This plan is legally part of each of the boroughs' development plan and must be taken into account when planning decisions are taken, unless there are sound planning reasons which indicate otherwise. All development plans and neighbourhood plans must be "in general conformity" with the London Plan.

The latest London Plan does not replace the previous two iterations. The first was introduced

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<sup>59</sup> Greater London Authority Act 1999, s 334(5).

## LONDON BOROUGHS



by Ken Livingstone in 2004 and lasted 7 years. It was replaced under Boris Johnson's premiership in 2011. The first two London Plans only lasted 8 years each, both being changed when political control shifted. This undermines the idea that the London Plan can truly be long term, given the precedent of abandoning and remaking plans upon the election of a new mayor.

The Plan is further limited by the significant discretionary powers of the Secretary of State to dictate its nature. For instance, they retain reserve powers to require review of the Plan, as well as to direct alterations to be made.<sup>60</sup> They may also make regulations with respect to its form and content.<sup>61</sup>

The London Plan is merely the context that is framing more locally made plans. The actual local plans reveal more about the realities of plan-making in London. Our findings underline different boroughs' priorities and approaches in addressing the issue of climate change, as well as their different levels of commitment towards the wellbeing of their future communities.

We reviewed the core strategies and associated planning documents of the 32 boroughs of London and the City of London's and found that:

There is a relatively short time horizon within London's planning documents – an average of 15 years' time commitment for issues that would need at least half a century of implementation of strategic plans.

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60 Ibid, s 337(6)

61 Ibid, s 343

Croydon stands out for its notable emphasis on sustainability (295 references), while Ealing ranks as the borough with least direct references to this subject (45).

Lambeth stands out for its focus on policies benefiting children's interests (103 references) indicating indirect attention to the needs of future generations and a strong dedication to improving the wellbeing of younger generations.

Although Kensington & Chelsea scored the highest for references to future generations, the borough has also the lowest time horizon for development planning – only 9 years.

Although it is not one of the 32 boroughs of London, we also analysed the development plan of the City of London from 2015 to 2026 and beyond. Given the role of the City as the primary central business district of London and one of the leading financial centres of the world, it is disappointing that the local plan of the City of London does not contain any direct mention to future generations.

### ***Newcastle upon Tyne***

The foreword of Newcastle's documents prominently emphasise consideration for future generations, explicitly stating that their needs have been taken into account. This is a departure from most of the other development plans that merely reference future generations. However, we found no direct mention of future generations within the actual policy texts of the documents, including the council's Core Strategy, Urban Core Plan, Development Allocation Plan, and Waste Strategy.

### ***Cumbria County***

The debate surrounding the proposed coal mine in Cumbria reveals contrasting viewpoints on its impact. Some parties argue that the mine, touted as the first net-zero coal mine, would boost local and national economies and create employment opportunities. Others, including Friends of the Earth and the Secretary of State, have raised concerns about its environmental consequences.

In Cumbria County Council's documents related to the coal mine project, around 20% of the references show limited direct engagement with future generations. However, direct references to future generations are more prominent in submissions opposing the project (around 50%), while supporting documents have fewer direct references (around 10%). However, these references are often found in concluding statements and not within the main technical arguments, potentially diminishing their influence in the decision-making process.

## **4.2.1. Themes**

### **CLIMATE**

#### ***Poole and Bath – a Comparison of Two Different Approaches Towards Climate Policies***

In Poole's Local Plan, climate change is treated as a secondary topic. It appears as a constraint upon local development needs, and an afterthought in the large scope of the development plan.

By contrast, in the Bath Local Plan, the chapter on climate change occupies 32 pages at the beginning of the document and comprises 12 policies. Several Bath planning documents were drafted with the specific purpose of tackling climate change, for example the Transport and Development SPD or the Renewable Energy in the Green Belt SPD.

This comparison shows two different approaches to the climate crisis. One involves referring

to the climate act as a secondary restraint upon local development needs such as housing, economic development, and mining. The second, and recommended, approach treats climate as the primary subject of private law informing local planning policy on the best way to pursue sustainable development in transportation, urban planning, and reduced energy production. Other development needs are a secondary consideration which may act as a constraint on what can be done for climate change.

### ***Brighton and Bristol***

Brighton's planning documents show a consistent focus on sustainability and climate change over the average timeframe of 15 years. The planning strategy aims for carbon neutrality by 2030 and carbon-free status by 2050. The city's Biosphere Management Strategy emphasises environmental stewardship, children, and young people as voices for the next generation. However, explicit references to future generations are rare in the city's planning policies and strategies.

Bristol's planning documents consistently address climate change and sustainability through a range of policies. Sustainability, conservation, and climate topics are frequent, with an emphasis on green infrastructure, sustainable energy, and mitigation measures like energy-efficient building design. The city's policies aim to protect and enhance the natural environment while reducing carbon emissions and promoting sustainable development.

### ***London***

At the heart of the London Plan lies the concept of Good Growth, which weaves together affordability, social inclusivity, sustainability, and community engagement. Within this framework, goals include achieving carbon neutrality, enhancing air quality, and maximising energy efficiency, all vital components in the fight against climate change. The plan also considers the urban heat island effect, taking into account the potential for excessive heat in urban areas and proposing strategies to mitigate the risks of overheating.

## **FLOOD PLANNING**

### ***Southampton***

The South Hampshire Strategic Flood Risk Assessment explicitly sets out the risks associated with increased flooding over time. Notably, while the Southampton Core Strategy only has an 11 year timeframe (2015 – 2026), the Strategic Flood Risk Assessment highlights risks faced by the city in nearly a century (up until 2115). The Strategic Flood Risk Assessment, along with the Local Flood Risk Management Strategy; the North Solent Shoreline Management Plan; the River Itchen to Hamble Coastal Study; and the Southampton Coastal Management Strategy, show a range of measures to combat increasing flood risk, such as mitigation measures (building sea walls and raising land in affected areas) and development-related measures (e.g. not allowing development in high-risk zones unless developers include a flood management plan in their application for planning permission). These plans show an acknowledgment of the long-term risks posed by climate change and the need for foresight in planning appropriate mitigation measures, including in timeframes that encompass future generations.

### ***Bristol***

Bristol acknowledges the increased flood risk associated with climate change. The city addresses this challenge through its flood planning policies, aiming to protect against fluvial and tidal flooding, particularly in the city centre. Policies emphasise the importance of low-risk development areas and green infrastructure in mitigating flood risk. Bristol City Council's Local Flood Risk Management Strategy acknowledges the escalating threat of flooding due to climate change but doesn't directly address future generations' interests within its policies. Although the strategy outlines actions for sustainable development and flood risk reduction, it lacks direct language that expressly considers the needs and wellbeing of future generations.

## **ENERGY AND MINING PROJECTS**

### ***Brighton v Birmingham***

Both Brighton and Birmingham's planning documents reveal limited references to energy and mining projects. While sustainability is an alleged core focus, specific energy and mining projects are not extensively covered. This reflects a lack of detailed planning for energy sources and resource management, which could impact future generations' interests.

### ***Bath***

There are limited references to energy and mining projects in Bath's planning documents. While there is an extensive focus on sustainability in the city's Core Strategy (229 references), it falls short in addressing specific energy and mining initiatives. This gap in coverage reveals a deficiency in strategic planning and allocation for energy resources and resource management. This could show that there is insufficient consideration of the interests and needs of future generations in these critical areas.

# 5. Moving Forward: Policy Recommendations

We recommend a more informed decision-making process that takes future generations' wellbeing and needs into account in policy planning. Overall, there's a clear need to prioritise their interests more prominently in the development of planning policies. A balanced and forward-thinking approach will ensure that the needs and concerns of both current and future generations are equally considered and safeguarded. As we will show, this approach can fit into the existing planning law framework.

There are the main three takeaways for policymakers reading this report:

## 1. Time Horizon

**The time horizons in local plans must account for at least one or more generations into the future.**

- › This will address future generations' interests in local development plans and decision-making. The current average time horizon of just 15 years in the reviewed local plans doesn't capture the long-term implications of development strategies.
- › We also acknowledge the importance of periodic reviews to respond and adapt to rapid change. These can work in tandem with longer time horizons to ensure sensible and effective planning.

## 2. National Guidelines

**We need a more ambitious policy framework encompassing both national and local decision-making.**

- › This will enable local authorities to give due consideration to the interests of future generations in their plans.
- › As explained, central government policy can suggest various time horizons; this then translates into local development plans. To extend the time-horizon - so as to better account for the rights and interests of future generations<sup>62</sup> - central government can steer local

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62 Bell J, 'Embracing the unwanted guest at the judicial review party: Why administrative law scholars should take planning law seriously' in Maria Lee and Carolyn Abbot (eds), *Taking English Planning Law Scholarship Seriously* (UCL Press 2022), 229-248, p. 238.

planning authorities by either mandating and longer time horizon, or including an ‘anchor’ time-frame, of minimum 25 years.

- › At the same time, local planning authorities could take the permission given to them to adopt a longer time-horizon (beyond the national ‘anchor’); and to say more about the protection of rights and interests of future generations.

### 3. Language

**Local planning documents must develop clear and consistent terminology around future generations.**

- › The term ‘sustainability’ is frequently mentioned in development plans but often lacks a workable definition that clearly stipulates its scope and remit. Likewise with the term ‘climate’, while it has long-term implications, it is currently unclear to what extent local authorities using the term intend to consider these longer-term implications and the interest of those yet to come. There is also no clear understanding of what period ‘long-term’ refers to.
- › Clear terminology will lead to better implementation of future generations’ interests in local plans. We suggest moving beyond mere introductory forewords towards consciously designed, clearly defined policies that prioritise the well-being of both current and future generations.
- › A good example of language use comes from the local plan of the Royal Borough of Kensington and Chelsea. It included a glossary explaining all the relevant terms including carbon neutrality, conservation, energy efficiency, green corridors, sustainable development, drainage systems and residential quality. Clear definitions also reduce judicial uncertainty and improve citizen engagement.



## 6. About the Authors

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