

**November 2020**



## **Planning for the future - Friends of the Earth response to the White Paper**

The government recently consulted on its proposed radical reforms to the planning system. We outlined our concerns that these will diminish local accountability, erode local democracy by curtailing the right of communities to influence planning and development in their area and fail to tackle the urgent climate and ecological emergencies.

## Contents

1. [Background](#)
2. [Consultation response](#)
3. [Pillar Two: Planning for beautiful and sustainable places](#)
4. [Pillar Three – Planning for infrastructure and connected places](#)

## Introduction

Friends of the Earth is the UK's largest grassroots environmental campaigning community, with around 300 community groups across the country and devolved nations (excluding Scotland). We have long campaigned for a fair, transparent planning system that delivers sustainable development and equitable outcomes.

We welcome the opportunity to respond to this White Paper outlining the government's proposals for planning reform. These proposals would cause irrevocable damage to local democracy, deprive communities of their right to be heard, thereby eroding public trust and confidence even further in the system, and fail to acknowledge the extremely urgent need to tackle the climate and ecological crises.

Our planning system must be based on the following principles:

- It should be a system of decision-taking and plan-making that is based on ensuring sustainable outcomes enshrined within a planning framework that has the **public interest at its heart**.
- Everyone has the **right to participate in decisions** that affect their lives which means a **right to be informed** and a right to participate. These rights are enshrined in the Aarhus Convention of which the UK is a signatory. The right to be heard in person when plans are made must be maintained and extended to any policy or code which is being applied to individual planning decisions.
- Communities should have the **same appeal rights** as developers to challenge decisions which are not in the public interest on environmental grounds. This is a crucial part of environmental enforcement and will support much-needed protections for biodiversity and the natural environment.
- A civil **right to challenge** must remain and be extended from its current limited role to ensure that the system is balanced and trustworthy.
- Government must give back the powers removed from local authorities by permitted development and permission in principle so they can properly control development in their areas. All parts of the planning process from plan making to decisions on whether to approve or refuse a development proposal must be **locally democratically accountable**.
- A **legal duty to secure sustainable development** incorporating the concept of environmental limits, tackling climate change, and the health and well-being of all citizens. We need to tackle climate change in every planning decision. We must all be confident that the system is there for everyone, and not just private interests.

## Background

Friends of the Earth wishes to draw the Government's attention to the following evidence that is relevant to this consultation. We note that these planning reforms sit alongside other major planning reforms that have occurred over the last few years and resulted in extremely poor housing standards, leading to calls for a [Healthy Homes Act](#). There is no incisive reflection of the reviews of the planning system that have been conducted in recent years, from [Kate Barker's review](#) in 2004 to Oliver Letwin's review in 2019.<sup>1</sup> We further note the failure to properly address the damaging outcomes of permitted development as evidence by [research](#) and media reporting, as well as having been the subject of debate on the floor of the House and a legal challenge. There is no shortage of evidence on the [real problems facing the planning system](#).

We further suggest that evidence such as that produced by the [2070 Commission](#) should have been considered. We would add that the Committee on Climate Change is due to publish some recommendations for local government, and indeed supported Friends of the Earth's call for local authorities to have a legal duty on mitigation and adaptation to climate change.

## Consultation response

Below we set out our answers to specific consultation questions and wider proposals set out in the White Paper. We note that these are not structured in order to comment on the planning system as a whole, but rather to target responses to the Government's preferred proposals and we will therefore make additional representations where these are necessary, given the lack of detail in these proposals, or indeed, evidence supporting them.

### **Q1. What three words do you associate most with the planning system in England?**

This question is not a useful basis on which to consider reform. However, we take it that perhaps what the Government is trying to approach is the idea of concepts or principles that are generally associated with the planning system. We suggest that there are some very important concepts by which the planning system is defined:

- It is about decision making in the **public interest**
- It is about the **right to be heard** and **local democracy**
- It is about delivering **public goods**

### **Q2. Do you get involved with planning decisions in your local area?**

Friends of the Earth local and affiliated groups engage with a wide range of planning cases in their local area on a diverse range of topics. Friends of the Earth EWNl engages in specific planning cases throughout England and Wales, on occasion, for the most part working alongside or with local groups and communities on the ground. We therefore have direct and extensive experience of the existing planning system. We also run training for communities on planning, which we have now been doing for over fifteen years.

### **Q3. Our proposals will make it much easier to access plans and contribute your views to planning decisions. How would you like to find out about plans and planning proposals in the future?**

**[Social media / Online news / Newspaper / By post / Other – please specify]**

We strongly disagree with this supposition as it is unsupported by the factual basis. The Government's proposals will **not** make it easier to access plans and for people to contribute their views to planning decisions. On the contrary, the proposed changes set out in the White Paper and related consultations would make this harder.

The White Paper does not provide a single new right for community participation or a single new opportunity for democratic involvement in the plan-making process. Instead it reduces the existing rights. Digital information can potentially lead to more open process but it does nothing on its own to give communities more control over their future. For that actual legal rights are required.

Under the proposed changes, 'Protected areas', or zones, would be designated locally and nationally, (paragraph 2.8, bullet 3), and the traditional development management process would apply. Insofar as policy would need to be applied to development management decisions it would be set out nationally in a set of development management policies (paragraph 2.13), thereby reducing the scope for local planning considerations to be taken into account. Outside Protected Areas, the reforms therefore propose to omit or curtail a key stage of the planning process, namely when a planning application is submitted, subject to public consultation and decided by the local planning authority. For proposals where automatic permission or permission in principle apply, a developer would no longer be required to submit an outline planning application. Later detailed matters would be delegated to planning officers to decide (paragraph 2.39). Planning decisions as we have under our current system would simply be dispensed with (i.e. not happen). Therefore the scope for members of the public to contribute their views on planning proposals would be curtailed and/or removed.

Only 'protected areas' would appear to retain opportunities for planning decision making as we have at present. Even this does not 'make it easier' but rather because of all the associated reforms will make it all the more complex for a member of the public to understand.

English planning authorities generally provide for individuals and groups to make deputations to the planning committee where they can present their case for or against a planning proposal to the committee before the committee reaches its decision. We propose an improvement – **a right to be heard** at committee meetings for a limited period for communities objecting to proposals. These are currently in local council standing orders, but we suggest that these should be to a minimum standard across England.

At paragraph 2.48 in the White Paper there is the suggestion to change people's right to be heard in person at local plan examinations in public (EiPs). It states that planning inspectors will now have discretion over what form an objector's representations might take. Under paragraph 2.53, which is an alternative option to the proposal in paragraph 2.48, the White Paper suggests that any form of 'right to be heard' might be removed.

The right to be heard under Section 20 (6) of the 2004 Planning Act is the only clear civil right that exists in the planning process for the individual citizen. It includes the important phrase: 'Any person who makes representations seeking to change a development plan document must (if he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination.'

These changes, were they to go ahead, would take away the public's right to participate and be heard in decisions and plans and strip power from elected councillors to decide planning proposals on behalf of their community. If implemented, these changes would erode local democracy, disempower communities and risk undermining confidence in the planning system.

A wide range of methods should be used to inform the public and wider stakeholders of plans and proposals. This is necessary in order to maximise awareness of plans and proposals and enable affected parties and those who wish to submit representations and otherwise engage in the planning process. Newspaper and site notices are still key tools in the system despite the rise of online tools. We further recommend that the Government require local authorities to maintain information lists to inform any who may request such information to be notified of planning applications in their ward.

We further suggest that the Government introduce **a limited third party right of appeal** for communities based on environmental criteria. This will reinforce the general thrust of the Environment Bill and provide a much needed balance in the system in favour of the public interest.

#### **Q4. What are your top three priorities for planning in your local area?**

**[Please select only three answers:**

**Building homes for young people / building homes for the homeless / Protection of green spaces / The environment, biodiversity and action on climate change / Increasing the affordability of housing / The design of new homes and places / Supporting the high street / Supporting the local economy / More or better local infrastructure / Protection of existing heritage buildings or areas / Other – please specify]**

All the above matter, albeit there will inevitably be some variation depending on the circumstances and challenges of a site, location and community which the planning system must recognise. This question also fails to recognise that the role of the planning system is to deliver on all these matters. Our concern is that by listing a few issues in an attempt to gauge priorities fails to grasp the fundamental place making role of planning and will inadvertently deprioritise central planning considerations: one could ask the question, which of the above issues does not matter? Planning inevitably has to deal with a wide range of issues in a process that is unavoidably complex at times. An over-simplistic approach is not the basis for good outcomes or improving the system.

Notwithstanding the above comments, Friends of the Earth's priorities are:

- Environment, climate change action and biodiversity
- Public participation rights and democracy
- Homes for those most in need

Friends of the Earth believes communities have a right to participate in plans and decisions on planning proposals. The planning system is there to serve the public interest, not favour one sector, such as a landowner or developer, over another, so transparency and accountability are crucial. A local democratic framework provides for this or has the potential to do so provided the planning system allows for this.

Far greater emphasis need to be placed on funding and planning the direct delivery of genuinely affordable homes rather than the unproven assumption that 'housing affordability', ie the price of market housing, will somehow fall by increasing the supply of market housing when it is factors largely outside planning control, notably property speculation and developer build out rates, [which have a greater impact.](#)

#### **Q5. Do you agree that Local Plans should be simplified in line with our proposals?**

**No.**

Simplification is also a matter of perspective – the White Paper seems to suggest a multitude of ways to gain consent that vary from place to place, which certainly isn't 'simple' for the public to understand. To deliver new homes and other development while meeting broader objectives, such as for resilient communities, the UK net zero carbon 2050 target and its associated budgets, and protection of green space, wildlife and the natural environment, **Local Plan policies must be sufficiently detailed and tailored to local circumstances, challenges and opportunities.** With regard to the statement in the White Paper that "Local Plans should have a clear role and function, which should be, first, to identify land for development and sites that should be protected" (paragraph 2.7), local plans already do this, but with clear environmental assessment requirements attached through SEA. There is no evidence that restricting Local Plans to merely finding sites would deliver the public interest or sustainable development purpose of planning.

Under Proposal 1, land would be placed in one of three categories: zones for growth, renewal or protection. Friends of the Earth is concerned that by categorising land in this manner and conferring an 'automatic permission' (paragraph 1.16, bullet 1), 'permission in principle' or 'presumption in favour of development' within growth and renewal areas, together with simpler, shorter Local Plans, development management will be ineffective weak or absent under the proposed new system. Moreover, this approach is based on a major failure to understand that the principle and detail of the development are inextricably linked. Plans will require much more detailed site assessment processes to be robust. National datasets can speed up this process, but only detailed site investigations can ultimately reveal the suitability of a site in terms of archaeology, ecology, and flood risk, place-making, services availability, transport links and health impacts.

Only 'protected areas' will retain the current system of planning and development control, but will still be complicated by PDR changes, brownfield registers, permission in principle, and loss of local development management policy. creating a confusing and uncertain system for planning and managing development.

The proposed zoning approach is **crude, simplistic and no basis for a green and fair recovery**, for tackling climate change or creating places for people.<sup>2</sup>

Moreover, the proposed changes would require another layer of complexity to be added to the system since there is likely to be some land that warrants protection within areas classified for growth and renewal. Likewise, some land may be suitable for development within so-called "protected" areas. In reality places are much more complex and locally nuanced than this White Paper seems to suggest.

Zoning systems rely on detailed ordinances such as in the Netherlands to work effectively and are not necessarily simpler than our present system. We question whether such an approach is suitable for England. Moreover, such a system would take a long time to implement, as it calls for a completely different regulatory regime to the one we have now. Present circumstances call for greater, not less, certainty. Rather than attempt a fundamental overhaul of our planning system which risks causing major disruption for planning authorities, communities and developers alike, a better approach would be to build on and strengthen the system we have now.

Paragraph 2.10 of the White Paper refers to community-led housing developments in growth areas, however, we would wish to see the planning system facilitate community led development more widely, not just in areas envisaged for growth and not just for housing.



It is essential to continue to allow local authorities flexibility to set development management policies in their Local Plans as under the current system as they can now. They should not be restricted in this as the White Paper proposes. This flexibility should be supported by a strengthened NPPF which empowers, rather than restricts, planning authorities' and communities' ability to manage development in their area in line with local aspirations and needs and in a way which offers plan-led solutions to the climate and ecological crises.

We further support a **strengthened legislative duty** for the planning system with a **legal definition of sustainable development** to enable the planning system to deliver on the Government's priorities for biodiversity and climate change action.

With regard to the alternative options set out in paragraph 2.11 to 2.12, we do not consider automatic permission should be granted for any development unless it is of a minor nature, such as a domestic conservatory or garden shed, and certainly is an inappropriate route for substantial development.

Automatic permission will result in a loss of checks and balances which present development management arrangements provide for. In our view, substantial development is best planned by way of an allocation in the Local Plan (or neighbourhood plan) with actual schemes appraised, consulted on and decided through the planning committee process, based on information provided through the strategic environmental assessment process. The latter provides for a level of democratic oversight, public participation and scrutiny commensurate with the complexities and challenges one would commonly associate with major development. An allocation in a Local Plan gives developers some certainty while providing an element of flexibility, and the submission of a planning application ensures testing of proposals in light of the Local Plan, national policy and other material considerations, including relevant changes which have occurred since the Local Plan was adopted..

#### **Q6. Do you agree with our proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally?**

**No.**

These proposals are deeply worrying as they would take away control from local communities and the councils who serve them.

Friends of the Earth disagrees with the White Paper's proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally (Proposal 2). Local Plan policies must be sufficiently detailed and tailored to local circumstances, challenges and opportunities **to meet wider objectives, such as on climate change, nature, green space, local economy and affordable housing**. While we would strongly welcome higher minimum standards being set nationally, in regard to matters such as energy efficiency, climate change, nature and green space, it is important that planning authorities are free to set their own higher standards where they deem these necessary and justified. We believe the role of national planning policy should be to empower communities and councils, not restrict them, in setting local planning policies that are responsive to the specific needs and circumstances of their area.

Paragraph 2.15 of the consultation paper states that "We want to move to a position where all development management policies and code requirements, at national, local and neighbourhood level, are written in a machine-readable format so that wherever feasible, they can be used by digital

services to automatically screen developments and help identify where they align with policies and/or code."

We would be concerned were automated procedures to lead to schemes being approved without the scrutiny they warrant or conversely, miss opportunities for sustainable development from say a community led scheme whose proponents may be unfamiliar with the correct procedures. Automatic screening is no substitute for human judgment for many planning matters which require careful consideration and appraisal prior to a decision being reached on whether a development proposal can go ahead or not.

While there is undoubtedly scope for the planning system to make greater use of digital technologies, there is a danger that overreliance on automated processes may encourage a robotic tick-box mentality, which is the opposite to what is needed to plan well in light of our present opportunities and challenges.

Our planning system lies at the heart of local democracy. It grants local people a right to be heard and to participate in decisions on whether proposals go ahead or not and confers responsibilities on elected councillors to take decisions. The White Paper proposals for paring down the development management function, restricting the content of Local Plans, and stripping planning authorities of their ability to decide development proposals (or placing restrictions on this) outside protected areas or set development management policy, will leave local people and elected councillors with less say over what development can or cannot go ahead. Sweeping away these rights and powers is possibly the most concerning aspect of all the proposals set out in the White Paper.

**Q7(a) Do you agree with our proposals to replace existing legal and policy tests for Local Plans with a consolidated test of “sustainable development”, which would include consideration of environmental impact?**

**No.**

There is insufficient detail within the White Paper to fully answer this question. However, based on information provided, we offer the following comments.

We question whether subjecting Local Plans to a single statutory “sustainable development” test, replacing the existing tests of soundness (Proposal 3), would be sufficient. The proposal for 'a single statutory “sustainable development” test to ensure plans strike the right balance between environmental, social and economic objectives' (paragraph 2.7), appears to miss the point that **sustainable development is about integrating environmental, economic and social objectives**, not trading them off against one another. A statutory sustainable development test predicated on achieving an 'integrated' approach would be welcome. The need for a **Strategic Environmental Assessment (SEA) of plans (or similar procedure) is paramount**. SEA performs a crucial role, guiding the preparation of plans and policies and consideration of alternatives and providing evidence to inform both consultation responses and the examination process.

With regard to the suggestion that Sustainability Appraisals be replaced by a simplified process for assessing the environmental impact of plans (paragraph 2.19), it is essential that any replacement for SA fulfils the requirements of UK and international law and treaties. In our view, Local Plans and, where appropriate, Neighbourhood Plans must continue to be subject to Strategic Environmental

Assessment. We also believe that national planning policy should undergo Strategic Environmental Assessment or a similar exercise, to ensure environmental effects are appraised and alternatives considered and subject to public consultation at the national level.

With regard to the proposal to remove the Duty-to-Cooperate test, while the Duty to Cooperate hasn't been a resounding success, it nonetheless plays an important role since plans cannot be sound without addressing cross boundary strategic matters. The White Paper is elusive on this matter, simply noting that further consideration will be given to planning for cross-boundary issues (para 2.19). Until such time as a replacement for the duty is found (and in our view democratic strategic or regional planning offer the best way forward) the test should be retained.

**Q7(b) How could strategic, cross-boundary issues be best planned for in the absence of a formal Duty to Cooperate?**

Through a locally accountable, democratic, strategic planning tier. Currently this is only available in those parts of the country where an elected mayor and/or combined authority has planning powers or authorities choose to work together strategically.

**Q8 (a) Do you agree that a standard method for establishing housing requirements (that takes into account constraints) should be introduced?**

**No.**

"Proposal 4 A standard method for establishing housing requirement figures which ensures enough land is released in the areas where affordability is worst, to stop land supply being a barrier to enough homes being built" is predicated in our view on false assumptions. First, it mistakenly assumes land supply is a barrier to building enough homes. Evidence does not support this, on the contrary. As the Local Government Association points out, councils approve 9 in 10 planning applications and more than a million homes given planning permission in the last decade [have yet to be built](#). The problem lies with developers, landowners and promoters who hold these consents along with [insufficient funding and powers for councils to deliver the green, affordable homes we need](#).

Second, it assumes that by increasing supply, house prices will fall. This is unlikely as developers will want to maintain their profit margins and thereby restrict supply to maintain this; greater demand and opportunity fuel speculation which in turn leads to higher prices. The best way to tackle affordability is to plan and build more affordable homes.

Third, we assume the White Paper's reference to the standard method is in connection with that set out in MHCLG's consultation paper "Changes to the current planning system: consultation on changes to planning policy and regulations." We are concerned that the method proposed could lead to overdevelopment in some areas and neglect of others. Under the proposed formula, the geographic distribution of housing will increase pressure on places to accommodate unsustainable levels of growth<sup>3</sup> making it harder to plan and deliver development in sustainable locations served by public transport, walking and cycling, address regional imbalances, and minimise environmental impact.

Proposal 4 also states "The housing requirement would factor in land constraints and opportunities to more effectively use land", including through densification where appropriate to ensure that the land is identified in the most appropriate areas" which seem sensible. However, more detail is needed on how this would work in practice, including what counts as "the most appropriate areas" in order to form a view on whether this approach would be effective.

Planning for housing is best done locally, in light of local needs and aspirations and different places' capacity to accommodate development. Areas with the greatest affordability constraints, where house prices are most expensive compared with incomes, are not necessarily the most sustainable locations to develop, yet under the proposed approach would plan for more homes than otherwise. Conversely, places with fewer 'affordability' issues may benefit from inward investment and development but be neglected under such a method. Any meaningful assessment of need, and identification of the housing requirement, must in our view take into account local communities' and councils' own insights into their local housing needs as well as the capacity of places to sustainably accommodate new development.

The housing method must provide clarity over the type of homes required for different groups drawing on local evidence (for example on the need for affordable and accessible housing). The system must place greater onus on developers to contribute fairly towards meeting housing needs by removing current 'viability' and other loopholes.

The White Paper proposes that the housing delivery test and presumption in favour of sustainable development be retained under the new system (para 2.27). Friends of the Earth objects to the housing delivery test as this unfairly penalises local authorities who lack the power force developers to build on land that has been given planning permission. We remain concerned that the so-called presumption in favour of sustainable development operates in practice as a presumption in favour of development. In our view both these aspects of the planning system should be reformed so they work to the wider public benefit, alongside measures to tackle land-banking and a revised NPPF definition of sustainable development, or removed entirely.

**Q8.(b) Do you agree that affordability and the extent of existing urban areas are appropriate indicators of the quantity of development to be accommodated?**

**No.**

The capacity of places to accommodate sustainable development should be the primary objective and provide a broad indication of the quantity of development which should be planned for. Simply building more homes won't make them more 'affordable' as developers are highly unlikely to flood the market to a level required to make house prices fall. The constant deregulation over the last few years has resulted in no change to the amount of standard permissions, and less affordable housing due to the [viability test](#). The increase in permissions has not translated into more homes being delivered and deregulation has actually resulted in fewer affordable homes being delivered than would be the case had the homes been delivered through the conventional application process. Over a million homes remain unbuilt according to the [LGA](#).

The quantity of development planned for should be based upon an assessment of local need and places' capacity to accommodate development in a sustainable manner.

**Q9(a). Do you agree that there should be automatic permission in principle for areas for substantial development (Growth areas) with faster routes for detailed consent?**

**No.**

Friends of the Earth strongly objects to this proposal and the suggestion in paragraph 2.30 that "there will therefore be no need to submit a further planning application to test whether the site can be approved". In our view, there should be no automatic permission granted, especially not for 'substantial development'. This requires more scrutiny of proposals, not less, so an automatic permission makes no sense.

With the loss of scrutiny and democratic oversight that result from ending any requirement for a planning application, there is a high risk we will see a deterioration in the quality of schemes which get built. The development plan rightly provides a useful guide to the type of development considered acceptable and is the starting point for decisions. However, just because a scheme is in line with the development plan does not negate the need for an application, since decisions are made on material planning grounds and the development plan cannot address all relevant planning considerations or foresee changes (in evidence, circumstances, policy) in regard to actual development schemes.

For this reason, development proposals should continue to be decided by way of a planning application. The planning application process provides for public, democratic scrutiny. This is a prerequisite for robust, fair planning outcomes. Under an automatic permission in principle this stage would be omitted and therefore the procedure for approval would be less fair and potentially less rigorous.

With regard to the aspiration to achieve "faster routes for detailed consent" experience suggests any such process would still require consulting statutory consultees, assimilating policy and application information and negotiation especially for the substantial development the reforms propose for growth areas.

We would add that logistically, the various different consents proposed and permutations of these do not suggest a streamlined system, but a more complex one that we have had present.

These proposals would sweep away communities' rights to have a meaningful say on development proposals, a concern that is not allayed by the statement in the White Paper (para 2.36) "We will consider the most effective means for neighbours and other interested parties to address any issues of concern where, under this system, the principle of development has been established leaving only detailed matters to be resolved."

**It is doubtful whether a noticeably streamlined system is achievable in practice without compromising the quality of developments coming forward and the community voice in planning.**

**Q9(b). Do you agree with our proposals above for the consent arrangements for Renewal and Protected areas?**

**No.**

The planning application process provides for public, democratic scrutiny. This is a prerequisite for robust, transparent and fair planning outcomes and should be retained. For renewal areas, a presumption in favour of development would apply and therefore it is not clear that provision for the same level of public, democratic scrutiny by way of a planning application as we have now would continue. It is vital that this stage be retained and enhanced to ensure at least the level of scrutiny, democratic oversight and public participation in decisions remains as under present arrangements. Without these safeguards, procedures for approval under the reforms risk being less fair, and less rigorous. **Planning outcomes would suffer as a consequence particularly in relation to equalities issues.**

**Q9(c). Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime?**

**No.**

We see no case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime. New settlements should be seen as a last resort after all other options, such as redevelopment and urban extensions have been considered and exhausted first. The process of identifying and considering options should be led by planning authorities in the public interest.

Friends of the Earth believes planning should remain in the hands of democratically elected local authorities, to ensure fairness and transparency. The Development Consent Order process reduces the role of planning authorities to that of consultee, rather than decision maker. Rather than adopt this top-down approach a better way to plan new settlements is by way of a democratic strategic or regional planning tier and local planning authorities working together with their communities.

**Q10. Do you agree with our proposals to make decision-making faster and more certain?**

**No.**

We disagree with your proposals which we believe prioritise speed over quality and as a result could lead to poorer decisions and planning outcomes.

With regard to Proposal 6 (Decision-making should be faster and more certain, with firm deadlines, and make greater use of digital technology), while we agree there is scope for planning to make greater use of digital technology for routine elements, this does not remove the need for human oversight and scrutiny of proposals.

With regard to treating the time limits of eight or 13 weeks for determining an application from validation to decision as a firm deadline, we believe authorities do take these time limits seriously (as evidenced by the vast majority of applications being determined within the statutory timescales)<sup>4</sup>

However, there can be occasions where an extension to deadlines is necessary, such as where a planning authority requires further information from an applicant in order to assess the impact of their proposal. Removing or restricting the ability to extend determination deadlines, where justified, would result in some decisions being taken in an uninformed way.

We strongly object to the suggestion that "some types of applications should be deemed to have been granted planning permission if there has not been a timely determination." Delay is sometimes unavoidable, and not necessarily the fault of the planning authority, some developers simply submit inadequate and ill-thought through proposals. Moreover, it is unreasonable to expect communities to live with the consequences of bad development for years due to an inflexible administrative process that contains no provision for extending deadlines, where circumstances warrant this.

With regard to the suggestion for shorter and more standardised applications (para 2.39), the system must provide for sufficient information to be forthcoming to enable a robust appraisal by the planning authority of a development proposal and associated impacts. The amount of information required to assess a scheme will depend on its size, complexity and impacts, so it is important that in any move to standardise or shorten documents these are taken into account. Imposing an arbitrary word limit on planning documents assumes this will address all issues, whereas larger schemes require more detail due to their complexity and impacts therefore the volume of documentation required will be greater.

Of particular concern, is the consultation paper's suggestion that detailed planning decisions be delegated to planning officers where the principle of development has been established. While it is important that planners and other specialists advise on detailed matters, they should inform, not decide applications (other than minor non contentious ones). **Public participation and democratic scrutiny** are integral to our current system and necessary in order for decisions to be **fair, transparent and robust**. Under the proposed reforms the democratic oversight, public participation and scrutiny that occurs in relation to specific planning proposals will be lost.

With regard to the proposal for greater digitisation of the application process to make it easier for applicants, it is important that any automation of the process be restricted to routine, simple elements. Planning inevitably has to deal with complex issues and no amount of 'streamlining' can make these vanish without posing unacceptable consequences. **Computers are no substitute for human judgment**, professional or otherwise, public participation and deliberation by way of a planning committee.

There is a need for better presentation of planning documents online so that these are easily searchable and findable by professional and laypersons alike: this is an area of our present system that needs improving.

With regard to the White Paper's suggestion that planning conditions be set nationally, we do not believe a one-size fits all approach is helpful. While there is a role for national guidance on conditions, to ensure that there is integration with other environmental legislation in particular, the planning system must also provide for local authorities to set conditions tailored specifically to local circumstances.

We strongly object to the proposal that applicants will be entitled to an automatic rebate of their planning application fee if they are successful at appeal. This will deter cash-strapped local authorities from refusing to grant permission for an application they consider to be poor and consequently could allow damaging development to go ahead. Reaching a planning decision is not always black and white as it depends on the weight to be given to different factors. Such a rebate should only be required where a council's planning decision is deemed unreasonable by an Inspector on material planning grounds.

The Government must reinstate proper funding for local planning departments – a well-funded system provides a good public service and contributes to good development.

### **11. Do you agree with our proposals for accessible, web-based Local Plans?**

**No.**

Greater use of digital technologies is needed, however face to face communication, in person events and access to hard copy documentation also matter if participation is to be inclusive and reach those with limited or no access to the internet. Equalities issues of accessibility must also be considered. Further, in person events provide for a level of engagement and in-depth discussion that cannot be replicated through digital technologies. As a consequence everyone involved, both in running and taking part in these exercises, stand to be better informed about the planning issues concerned. Both types of communication are needed.

We disagree with the simplified role envisaged for Local Plans, and Neighbourhood Plans. It is important that these plans continue to set out detailed policies tailored to local circumstances and opportunities. A zoning system would actually call for more, not less, detailed local plans, in order to provide certainty and clarity to all parties and, most importantly, assurances with regard to the quality of new development to be delivered and associated impacts.

With regard to the White Paper's reference to "the more limited evidence that will be expected to support "sustainable" Local Plans", it is unclear what evidence planning authorities currently assemble to produce a sound local plan that the government considers might be dispensed with in future given the issues around the outcomes of Permitted Development where this lack of evidence for decisions is painfully apparent.

### **Q12. Do you agree with our proposals for a 30 - month statutory timescale for the production of Local Plans?**

**No.**

It is important that all areas maintain up-to-date Local Plans to guide decisions on new development. This should be achievable in a period of two and a half to three years, subject to Government **providing funding to planning departments** and the Planning Inspectorate allocating the **necessary resources to work to this swifter timescale**. Failing this, a faster timescale could only be met with a significant reduction in the quality of plans produced.

We are concerned by the proposal to remove the right to be heard in person at examinations in public, leaving this to the Inspector's discretion to decide whether this right might be fulfilled in other ways, such as by writing or a telephone conversation.

This right enables individuals to engage in person alongside other stakeholders, a process that provides for public scrutiny and testing of policies, evidence and plans. Section 20(6) of the 2004 Planning Act 'Any person who makes representations seeking to change a development plan document must (if he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination.' The deliberation and discussion that occurs at Examinations in Public helps foster consensus and understanding among diverse parties and ultimately leads to better



thought out plans and policies. Maintaining a right to be heard in person is essential if communities and the wider public are to retain a right to meaningfully participate in plan-making.

Under 'alternative options' the White Paper mentions the possibility of removing the 'right to be heard' at Examinations in Public or dispensing with examinations altogether. We could support neither of these options since these would reduce opportunities for participation and testing of plans and policies prior to adoption. On the latter, the White Paper notes that there is a risk that this option would not provide sufficient scrutiny around whether plans meet the necessary legal and policy tests. We agree, particularly on matters such as climate change and equalities where legal duties exist.

**Q13 (a) Do you agree that Neighbourhood Plans should be retained in the reformed planning system?**

**Yes.**

Neighbourhood Plans have a role to play in setting local policies tailored to the needs of their neighbourhood and where communities choose to do so, allocating sites for development and specific uses. Neighbourhood Plans can foster community ownership of and engagement with planning, but need to be publicly funded.

The role of Neighbourhood Plans should continue as now or be enhanced, not restricted in scope in the manner the reforms propose.

**Q13 (b) How can the neighbourhood planning process be developed to meet our objectives, such as in the use of digital tools and reflecting community preferences about design?**

By empowering communities to draw up Neighbourhood Plan policies that require development to be zero carbon, nature friendly and address the need for affordable housing, workspaces, community facilities and other land use requirements including community led schemes. The design preferences of the community should be reflected in the Neighbourhood Plan where communities would like this, but broader planning considerations should continue to be integral to the Neighbourhood Plan process rather than omitted or constrained along the lines the White Paper proposes.

**Q14. Do you agree there should be a stronger emphasis on the build out of developments? And if so, what further measures would you support?**

**Yes.**

We agree there should be a stronger emphasis on the build out of development. Providing for a greater variety of building types and developers as the consultation paper proposes (Proposal 10) may help, however other measures are needed too. Measures are needed to address excessive landbanking, which require developers to implement the planning permissions they have already and where necessary achieve a faster build out of developments. This must be done in a way that ensures timely provision of the necessary infrastructure and services necessary to support the development. We suggest the Government should consider a **Land Value Tax**. We further suggest that funding for planning departments with regard to enforcement of conditions and to check the quality of build will markedly increase public trust in the system and create a level playing field for

developers.

## **Pillar Two: Planning for beautiful and sustainable places**

### **Q15. What do you think about new development that has happened recently in your area?**

#### **Other: Unsustainable**

Very little new development is truly sustainable, as in zero carbon, nature friendly with sufficient affordable homes and workspaces that are accessible to all, incorporate green space, adapted to climate change impacts and are well served by public transport, e-transport, walking and cycling. New housing developments are often delivered on the outskirts of towns/cities, served by private cars, with limited provision of new green space, integration with public rights of way, cycle paths and so forth, and have not properly addressed climate change adaptation. Research commissioned by the Royal Town Planning Institute found that less than <sup>5</sup> half of new housing built between 2012 and 2017 was within 2 km of a railway station. This must change if we are serious about tackling the climate and ecological emergency and working towards a green, fair recovery.

### **Q16. Sustainability is at the heart of our proposals. What is your priority for sustainability in your area?**

#### **Less reliance on cars/More green/open spaces/Energy efficiency of new buildings/More trees/Other: all**

All these things matter. If we are to develop in a sustainable way, it makes no sense to exclude any one of them. In order for sustainability to be at the heart of your proposals, reforms should give far greater weight to meeting carbon reduction targets and objectives for nature and wellbeing as well as equalities. The planning system would benefit from better alignment with the Climate Change Act 2008, for example, by extending the duty which currently applies to development plans to decisions (section 70 of TCPA 1990). The duty for planning to contribute to sustainable development should have a legal definition on the face of the legislation. Consideration should be given to identifying how we might plan better for and with nature, rather than against it. Lastly, for planning to provide the basis for resilient, sustainable, and socially just communities, local people must be in the driving seat of [plans and decisions](#).

### **Q17. Do you agree with our proposals for improving the production and use of design guides and codes?**

#### **No.**

Greater use of design guides and codes could potentially play a helpful role, depending on what these contain, how locally responsive they are and the extent to which development follows the guidelines set out. Such guides and codes should have sustainable design, energy efficiency and sustainable transport embedded within them, including maximum parking standards, cycle storage, charging points, and so forth.

With regard to new homes being 'zero carbon ready', by 2025 with the ability to become fully zero carbon homes over time as the electricity grid decarbonises (Proposal 18), we remind the Government that we were meant to have all new homes zero carbon in 2016. That is four years ago,

so anything that puts it off beyond 2021 is simply incommensurate with the UK's own political standing on climate change and the commitments of the Act. We should have new net zero homes introduced as soon as possible, and a retrofit programme that aims to have the built environment retrofitted to net zero by 2030, and the transport system electrified (e-bikes/e-trams/e-buses/e-trains/e-car sharing pools).

Codes may have some potential to help secure better designed development than the current poor quality, but need to be seen within the broader context of planning impacts and wider objectives such as the climate and ecological crises and need for a fair, green recovery. For example, allowing major new housing development on greenfield sites on the edge of out towns and cities makes a transition to more sustainable transport modes harder to achieve; as reliance on the private car is embedded as a necessity from the outset. This in turn leads to houses with no front gardens but parking spaces, leaving little or no room for trees, nature or greenery. This may also have impacts on public health and wellbeing.

**Q18. Do you agree that we should establish a new body to support design coding and building better places, and that each authority should have a chief officer for design and place-making?**

**No.**

This is essentially a centralisation of power creating a new design body. Design bodies such as the Green building council already exist and more could be made of them. Design and place-making are fundamental to good planning outcomes, but planning is broader than these. It would be helpful for all local authorities to have a chief planning officer, given the crucial role of planning in responding to present day challenges (whether of an environmental, economic or social nature) and managing development and use of land in the public interest. A design and place-making officer to improve quality of build would be additional capacity but should not be at the expense of the core planning function. Greater emphasis needs to be placed on planning for zero carbon, resilient development and ensuring we have a planning system enabled and resourced at a local level to deliver these.

**Q19. Do you agree with our proposal to consider how design might be given greater emphasis in the strategic objectives for Homes England?**

**Yes.**

Measures to require the highest design quality and environmental standards in Homes England's activities and programmes of work would be welcome. They are well behind on what should have been delivered.

**Q20. Do you agree with our proposals for implementing a fast-track for beauty?**

**No.**

While good design matters, many factors determine whether a development is sustainable in terms of impact on the environment and host community. The look of a development is not the same as the quality of a development. A fast track process would not be subject to the level of scrutiny required to fully assess the impacts of a proposal. Therefore we cannot support such an approach.

We are concerned by the suggestion that popular and replicable designs might be pre-approved in areas of renewal through permitted development. Permitted development by-passes our plan-led system, and raises numerous issues around extremely poor outcomes, which are well documented.

It is unclear how a "pattern book" approach would foster innovation when the reverse also holds true, since to innovate often calls for a bespoke approach and unique solution specific to a site and local context. Places must retain their identity so that communities also retain their sense of identity. Having a small group of people decide on beauty for the millions of inhabitants in England is rather authoritarian.

Nor is a 'beautiful' development necessarily a sustainable one. Sustainability should be a minimum requisite (to include zero-carbon, nature friendly), along with compliance with Local Plan policies, for any 'fast track' process, ideally community led or with community consensus.

## **Pillar Three – Planning for infrastructure and connected places**

**Q21. When new development happens in your area, what is your priority for what comes with it?**

**More affordable housing / More or better infrastructure (such as transport, schools, health) / Design of new buildings / More shops and/or employment space / Green space / Don't know / Other: All**

All these things matter and should be taken into account in plans and proposals: they should not be seen as an either/or.

We need more affordable homes, better access to green space, and protection and enhancement of existing green space, sustainable infrastructure with priority given to making provision for walking, cycling and public transport, local shops and employment space as well as space for leisure, recreation, nature and community uses.

New development should be well designed as a matter of course, achieving high standards of energy and water efficiency, zero-carbon, with good access to nearby green space and local facilities.

**Q22. (a) Should the Government replace the Community Infrastructure Levy and Section 106 planning obligations with a new consolidated Infrastructure Levy, which is charged as a fixed proportion of development value above a set threshold?**

**No.**

We are concerned that the abolition of S106 agreements will lead to a reduction in the amount of affordable housing developers provide. [Shelter estimates that nearly 60% of new social housing is delivered through S106](#) and it is not clear that the new Levy will provide an adequate alternative. Add to this the expected reduction in affordable housing provision resulting from exempting small and medium size developments from contributions, securing affordable housing under the new system looks set to become harder than it is at present.

**Q22. (b) Should the Infrastructure Levy rates be set nationally at a single rate, set nationally at an area-specific rate, or set locally?**

This requires a proper review in its own right. A national levy needs to draw on the lessons of past attempts to capture a fair share of development values and to provide clarity on precisely how the overall yield of values would be increased.

**Q22. (c) Should the Infrastructure Levy aim to capture the same amount of value overall, or more value, to support greater investment in infrastructure, affordable housing and local communities?**

**More value.**

The overall aim should be to secure a greater proportion of the uplift in land value in order to support greater investment in sustainable infrastructure, affordable housing and local communities.

**Q22. (d) Should we allow local authorities to borrow against the Infrastructure Levy, to support infrastructure delivery in their area?**

Local authorities should be able to borrow to invest, but again this requires a whole discussion in its own right.

**Q23. Do you agree that the scope of the reformed Infrastructure Levy should capture changes of use through permitted development rights?**

**Yes.**

It is seriously damaging to local communities that development delivered as a result of exercising permitted development rights is able to sidestep local policy requirements, development impacts and community needs for private gain.

Evidence from academics, sector representatives and Government commissioned research highlights the poor planning outcomes of homes delivered through Permitted Development Rights.

Shortcomings include poor design; failing to meet basic space standards; poor residential amenity; lack of affordable housing contributions; impact on business; and lack of infrastructure.

Reforming the Infrastructure Levy to capture changes of use through permitted development rights is essential. However, the best way to ensure the level of scrutiny required to address these unacceptable impacts on our environment, health and wellbeing is to require a planning application and scrap Permitted Development Rights other than for very minor development.

**Q24. (a) Do you agree that we should aim to secure at least the same amount of affordable housing under the Infrastructure Levy, and as much on-site affordable provision, as at present?**

**Yes.**

We need to plan for the delivery of more affordable homes than we do at present. This requires developers to provide more by way of planning obligations and higher levels of direct public investment.

Loopholes whereby developers are able to avoid providing affordable housing or reduce the amount they provide on spurious grounds of 'viability' or as a result of exercising permitted development rights must be closed.

Provision of affordable housing should be made a mandatory requirement that developers and landowners factor in from the outset when devising schemes and remain committed to on delivery.

The government should look at increasing overall affordable housing requirements through planning obligations. Therefore it makes no sense to exempt small and medium size housebuilders from developer contributions, as government proposes ('Changes to the Current Planning System' MHCLG consultation).

**Q24. (b) Should affordable housing be secured as in-kind payment towards the Infrastructure Levy, or as a 'right to purchase' at discounted rates for local authorities?**

**No.**

Affordable housing should be provided on site, with the aim of delivering mixed tenure communities where possible.

**Q26. Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?**

**Yes.**

We are concerned that these reforms, were they to go ahead, would disproportionately affect vulnerable groups. This would be the result of a planning system that is poorly designed to cater for their needs, which restricts councils in setting local policy and where a key stage of the planning process, whereby communities and councils have their say whether development proposal can go ahead and if so, in what form, is to be omitted.

It is disappointing that the government has not undertaken its own impact assessment to understand the potential impacts of these proposals and published it alongside these proposals.



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## Notes

- 1.** O Letwin: Independent Review of Build Out. Final Report. Cm 9720. Letwin Review Report. Oct. 2018. <https://www.gov.uk/government/publications/independent-review-of-build-out-final-report> – while the Letwin Review is referenced once, the analysis and recommendations of the Review are not considered in the White Paper
- 2.** Academics from the Bartlett School of Planning, UCL, describe the proposals as "without the sophistication of more developed zoning systems" such as in Victoria (Australia), noting that "an as-of-right planning system based around just three zones seems highly reductive and unable to tackle the complexities of planning for real places." <https://www.ucl.ac.uk/bartlett/planning/news/2020/oct/bartlett-school-planning-academics-respond-governments-white-paper-consultation>
- 3.** Lichfields' analysis How many homes? The new Standard Method shows the geographic distribution of housing under the new method). This in our view would present not only insurmountable challenges for the environment and host communities, it may be undeliverable.
- 4.** In the year ending 2019/20 planning authorities determined 88% of major applications and 85% of minor applications within determination timescales and approved 88% of applications (figures exclude county matter applications). Source: Planning live tables, Table P120 <https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>
- 5.** The study mapped and analysed the location of permissions for over 220,000 new homes in 12 fast-growing city-regions between 2012 and 2017, including Cambridge, Brighton, Leeds and Newcastle. Settlement patterns, urban form & sustainability, RTPi, 2018. <https://www.rtpi.org.uk/media/1836/settlementpatternsurbanformsustainability2018.pdf>