November 2020

Friends of the Earth's response to changes in the current planning system

The government is proposing changes to the current planning system. Our response outlines our concerns that these will make it harder for local authorities to take account of sustainable development and climate change in planning decisions, remove local democratic oversight and reduce fairness and transparency.

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Introduction

Friends of the Earth welcomes the opportunity to respond to this Ministry of Housing, Communities and Local Government (MHCLG) consultation. As the UK's largest grassroots environmental campaigning community, with groups and affiliated groups in more than 150 neighbourhoods, we believe an effective planning system that works for the environment and serves, rather than by-passes, local communities is crucial.

Friends of the Earth has long campaigned for a fair, transparent planning system that delivers sustainable development and equitable outcomes.

We have several concerns about these changes, notably that these proposals:

- fail to contribute to legal duties on sustainable development and climate change in the planning system and will make it harder for planning authorities to discharge their duties in this regard;
- generally remove power and control from local democratic representatives and communities and hand it to private sector interests, thus reducing fairness and transparency in the system;
- are out of kilter with UK commitments to adhere to Aarhus Convention principles with regard to public participation in environmental decision making;
- will lead to a loss of affordable housing that would otherwise be provided;
- are based on the unfounded assumption that deregulation will provide better outcomes when measures which empower local government to initiate large scale social and affordable housing schemes offer a far better way of meeting society's needs.

Below we set out our response to selected consultation questions.

Standard Method of assessing local housing need

Q1: Do you agree that planning practice guidance should be amended to specify that the appropriate baseline for the standard method is *whichever is the higher of* the level of 0.5% of housing stock in each local authority area OR the latest household projections averaged over a 10-year period?

Response: We believe the proposed approach set out in the consultation paper to assessing local housing needs to be fundamentally flawed. Any meaningful assessment of need in our view must take into account local communities' and councils' own insights into their local housing needs as well as the capacity of the environment, local and wider area to sustainably accommodate new development. Reliance on a single method as proposed is not a basis for sound planning outcomes. On the contrary, we fear the proposed formula will place yet further pressure on places to accommodate unsustainable levels of development and growth making it even harder than it is at present to plan and deliver development in sustainable locations served by public transport, walking and cycling; rebalance economies (geographically); and minimise environmental impact.

The very large increase in housebuilding that would result from applying the method in practice (Lichfields' analysis How many homes? The new Standard Method shows the geographic distribution of housing under the new method), would present not only insurmountable challenges for the environment and host communities, it may be undeliverable. It also risks exacerbating regional imbalances. Chris Young QC notes that the while proposed method increases the collective national number of new homes built by 27% (up by 72,000 from 265,000 to 337,000), this compares with a 13% increase in the North (Explained: Planning White Paper & Current Changes), September 2020). This is not a sensible approach.

Q2: In the stock element of the baseline, do you agree that 0.5% of existing stock for the standard method is appropriate? If not, please explain why.

See our answer to question 1.

Q3: Do you agree that using the workplace-based median house price to median earnings ratio from the most recent year for which data is available to adjust the standard method's baseline is appropriate? If not, please explain why.

Response: We are concerned that in assessing housing needs the needs of the most vulnerable groups, including those on lowest incomes should be taken into account. We are not convinced that this would happen with the proposed approach.

Q5. Do you agree that affordability is given an appropriate weighting within the standard method? If not, please explain why.

Response: see our answers to questions 1 and 3

Do you agree that authorities should be planning having regard to their revised standard method need figure, from the publication date of the revised guidance, with the exception of:

Q6: Authorities which are already at the second stage of the strategic plan consultation process (Regulation 19), which should be given 6 months to submit their plan to the Planning Inspectorate for examination?

Response: No.

Q7: Authorities close to publishing their second stage consultation (Regulation 19), which should be given 3 months from the publication date of the revised guidance to publish their Regulation 19 plan, and a further 6 months to submit their plan to the Planning Inspectorate?

Response: No

If not, please explain why. Are there particular circumstances which need to be catered for?

Response: In our view the proposed standard method is not a robust basis on which to plan. Therefore we disagree that authorities should plan at all using a revised figure derived from the proposed new standard method. We explain our reasons more fully in answer to questions 1 and 3.

First Homes

Q8: The Government is proposing policy compliant planning applications will deliver a minimum of 25% of onsite affordable housing as First Homes, and a minimum of 25% of offsite contributions towards First Homes where appropriate.

Which do you think is the most appropriate option for the remaining 75% of affordable housing secured through developer contributions? Please provide reasons and / or evidence for your views (if possible):

1. **Prioritising the replacement of affordable home ownership tenures, and delivering rental tenures in the ratio set out in the local plan policy.**
2. **Negotiation between a local authority and developer.**
3. **Other (please specify)**

Response: 3. Other. In our view priority for housing provision should go to meeting the needs of groups who are unable to access housing on the open market, whether for rent or purchase, with particular emphasis on delivering affordable homes to those in greatest need. While there will likely be some geographic variability, and affordable ownership tenures have a role to play, we do not consider discounted market housing should take priority over or be considered an adequate substitute for affordable rental tenures. The split between affordable tenures should be based on local evidence with requirements and the broad approach set out in the Local Plan. Being plan-led and based on evidence is crucial, as different areas face different affordability challenges and planning considerations.

With regards to current exemptions from delivery of affordable home ownership products:

Q9: Should the existing exemptions from the requirement for affordable home ownership products (e.g. for build to rent) also apply to this First Homes requirement?

Response: Only social rent homes should be exempt from S106 and CIL obligations in our view, on the principle of focusing support where it is most needed. That said, as with market housing, it is important that new housing is supported by the necessary infrastructure, including local greenspace and infrastructure prioritising walking and cycling, so there will need to be arrangements to ensure these are provided where needed alongside new housing regardless of tenure.

Q10: Are any existing exemptions not required? If not, please set out which exemptions and why.

See answer to Q9.

Q14: Do you agree with the approach of allowing a small proportion of market housing on First Homes exception sites, in order to ensure site viability?

Response: No. The purpose of exception sites policy is to provide affordable rural housing in the areas with greatest identified need. Allowing a small proportion of market housing is akin to providing a backdoor means for housebuilders outside of the plan led system, especially as exception sites are not identified in plans.

Q15: Do you agree with the removal of the site size threshold set out in the National Planning Policy Framework?

Response: No. This would further undermine the plan-led system, making it harder for communities to plan and manage development in a sustainable way.

Small sites planning policy

Q17: Do you agree with the proposed approach to raise the small sites threshold for a time-limited period?

Response: No. We are very concerned that raising the small sites threshold will result in fewer affordable homes being delivered. As the government's own consultation paper acknowledges raising the threshold to 50 homes could lead to a reduction of between 10 and 20% in the number of affordable homes provided. This is no way to address our housing crisis, at a time when we need to be building significantly more affordable homes, not less. As other respondents, notably Just Space, have pointed out, this will be a windfall profit for developers at the expense of those in housing need.

Q18: What is the appropriate level of small sites threshold?

1. **Up to 40 homes**
2. **Up to 50 homes**
3. **Other (please specify)**

Response: We consider that local planning authorities should be able to set their own threshold drawing on local evidence, or remove the threshold altogether where local evidence justifies this. The suggested thresholds are far too high and will lead to a substantial cumulative loss of affordable housing provision across England, which is simply unacceptable.

Q19: Do you agree with the proposed approach to the site size threshold?

Response: No. See our answers to questions 17 and 18

Q20: Do you agree with linking the time-limited period to economic recovery and raising the threshold for an initial period of 18 months?

Response: No. See our answers to questions 17 and 18

Q21: Do you agree with the proposed approach to minimising threshold effects?

Response: while we disagree with raising the threshold for contributing affordable housing for reasons given above, it is nonetheless essential that planning guidance makes clear how local planning authorities can secure contributions for affordable housing where it is apparent that a site above the threshold is being brought forward in phases in an attempt to avoid contributions.

Supporting SMEs

Q23: Are there any other ways in which the Government can support SME builders to deliver new homes during the economic recovery period?

Response: Yes. Government should explore other ways to support SME builders. This should include for example, providing further support, funding and encouragement towards building community-led housing schemes.

Permission in Principle

Q24: Do you agree that the new Permission in Principle should remove the restriction on major development?

Response: No. We believe that major development warrants thorough scrutiny through consideration of a planning application. The application process provides for a level of public engagement, democratic oversight, transparency and scrutiny of development schemes that is not possible with permission in principle. Crucially, it allows for a development's impacts and implications to be understood, discussed and appraised before any decision is reached. This is especially important with major development.

Consideration of major development sites should be through the plan-led process. This entails a Strategic Environmental Assessment (SEA) of proposed sites to be allocated in the plan and consideration of alternatives. Permission in principle circumvents this process as it enables some sites to be granted PiP that have not undergone SEA and potentially may not be in line with the development plan and therefore environmental impacts may not be fully considered. This undermines the plan-led system and is not an appropriate route.

Q25: Should the new Permission in Principle for major development set any limit on the amount of commercial development (providing housing still occupies the majority of the floorspace of the overall scheme)?

Response: See our answer to question 24.

Q26: Do you agree with our proposal that information requirements for Permission in Principle by application for major development should broadly remain unchanged? If you disagree, what changes would you suggest and why?

Response: We disagree. Major development should proceed via the normal planning application process for the reasons we give in our answer to question 24. Moreover, it is vital that major developments are evidenced with adequate ecological and environmental information. Up to date, robust environmental assessments must be presented before an informed decision can be made and to enable authorities to comply with their duties under section 40 of the Natural Environment and Rural Communities Act 2006.

Q27: Should there be an additional height parameter for Permission in Principle? Please provide comments in support of your views.

Response: We strongly object to the concept of permission in principle. However, were the government to pursue this approach, we would support a height parameter in addition to density (floorspace) statements. Taller buildings can have higher energy consumption and CO2 emissions and can cause overshadowing of public and private space as well as other unforeseen impacts. In order to deliver sustainable, liveable environments sensitivity to a development’s height is therefore important.

Q28: Do you agree that publicity arrangements for Permission in Principle by application should be extended for large developments?

If so, should local planning authorities be:
i) required to publish a notice in a local newspaper?
ii) subject to a general requirement to publicise the application or iii) both?
iv) disagree

Response: Both should apply. It is essential that the public is kept well informed in a timely, accessible manner of development proposals.

In our view the publicity arrangements would be insufficient to support effective consultation. A five-week determination period and a 14-day consultation falls considerably short of the amount of time needed for thorough scrutiny and public engagement. The Aarhus Convention, to which the UK is signatory, states that "public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making (article 6(3)).

It is vital that regulations ensure that major developments are subject to proper stakeholder and community engagement, especially with local communities, including consultation periods of a sufficient duration to enable all affected parties to familiarise themselves with and respond in an informed way to proposals.

Q31: Do you agree that any brownfield site that is granted Permission in Principle through the application process should be included in Part 2 of the Brownfield Land Register?

If you disagree, please state why.

Response: No. Initial consideration of sites is best undertaken through the plan-led process, which includes a strategic environmental assessment of proposed sites to be allocated in the plan together with alternatives. Permission in principle circumvents this process as it enables some sites to be granted PiP that have not undergone SEA and potentially may not be in line with the development plan. This undermines the plan-led system. If sites are to be given PiP or included in the Brownfield Register they should be considered as part of Local Plan preparation (or where applicable, neighbourhood plan) and subject to strategic environmental assessment along with other sites.

Q32: What guidance would help support applicants and local planning authorities to make decisions about Permission in Principle?

Where possible, please set out any areas of guidance you consider are currently lacking and would assist stakeholders.

Response: As we make clear above, Friends of the Earth does not support the concept of Permission in Principle. This approach is totally ill-suited to larger scale development as this results in development proposals by-passing the necessary scrutiny that they would otherwise receive through an outline planning application. This is an important stage in the planning process which enables impacts, insofar as they are known, to be fully and properly appraised, considered and consulted on before decisions are taken on whether a scheme should be allowed to proceed.

Q33: What costs and benefits do you envisage the proposed [PiP] scheme would cause? Where you have identified drawbacks, how might these be overcome?

Response: the main drawback of the proposed approach is that by omitting any requirement for an outline planning application, the democratic oversight and public scrutiny that are integral to the determination of a development proposal would be lost. Scrutiny and oversight are especially important where major development is concerned since impacts tend to be significant and wide ranging. The planning application process subjects development proposals to a level of rigour, scrutiny and public participation which do not apply to schemes which proceed under PiP. These drawbacks in our view overwhelmingly outweigh the benefits. Taken together with changes set out in the Planning White Paper, notably the delegation of detailed matters to officers to decide and loss of scrutiny, public participation and democratic oversight of proposals, extending PiP to major development would result in an overall a significant deterioration of the planning process.

Public Sector Equality Duty

Q35: In light of the proposals set out in this consultation, are there any direct or indirect impacts in terms of eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations on people who share characteristics protected under the Public Sector Equality Duty?

If so, please specify the proposal and explain the impact. If there is an impact – are there any actions which the department could take to mitigate that impact?

Response: As the consultation paper states, the Equality Act 2010 requires public authorities to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. We note with concern the lack of evidence presented in the consultation paper on the expected impacts of the proposals on the Public Sector Equality Duty and protected groups.

In our view, the proposed changes will impact disproportionately on vulnerable groups. This includes those in greatest housing need as well as those forced to live with the consequences of development whose impacts have failed to be considered due to the absence of a rigorous planning application process.

The proposal to raise the threshold for affordable housing contributions will lead to fewer affordable homes being built, making it harder for those in greatest need to access housing. Protected groups are disproportionately represented among those on low incomes, who are least able to access housing, including people from ethnic backgrounds and those with disabilities. Our housing stock caters especially poorly for the latter group with the vast majority of properties not even visitable by disabled people.

Given the demonstrably harmful effect these proposals would have on groups protected under the Public Sector Equality Duty they should not be taken forward.

1 October 2020