



Department for  
Communities and  
Local Government

# Technical consultation on implementation of planning changes



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## Scope of the consultation

Topic of this consultation:	<p>This consultation seeks views on the proposed approach to implementing the planning provisions in the Housing and Planning Bill, and some other planning measures. It covers the following areas:</p> <ul style="list-style-type: none"><li>• Changes to planning application fees</li><li>• Permission in principle</li><li>• Brownfield register</li><li>• Small sites register</li><li>• Neighbourhood planning</li><li>• Local plans</li><li>• Expanding the planning performance regime</li><li>• Testing competition in the processing of planning applications</li><li>• Information about financial benefits</li><li>• Section 106 dispute resolution</li><li>• Permitted development rights for state-funded schools</li><li>• Changes to statutory consultation on planning applications</li></ul>
Scope of this consultation:	<p>We are seeking views of all parties with an interest in the proposals, so that relevant views and evidence can be taken into account in deciding the way forward.</p>
Geographical scope:	<p>These proposals relate to England only.</p>
Impact assessment:	<p>We have included a summary of the Equality Statements prepared to support these policies. We are keen to receive feedback on the evidence in this document, and to receive any other relevant evidence that should be considered.</p>

## Basic Information

To: This is a public consultation and anyone with an interest in the proposals may respond.

Responsibility: This consultation is being run by the Planning Consultation Team in the Department for Communities and Local Government.

Duration: This consultation will run from Thursday 18 February and will conclude on Friday 15 April 2016.

After the consultation: A summary of responses to each of the consultations contained within this document will be published on the Department's website within three months of the closing date.

## How to respond to this consultation

To respond to this consultation use the following link:

<https://www.surveymonkey.co.uk/r/HZHX8H9>

# Introduction

The purpose of planning is to help achieve sustainable development. It is important that the planning system supports delivery of the high quality new homes and supporting infrastructure that the country needs.

This consultation is seeking views on the proposed approach to implementation of measures in the Housing and Planning Bill, and some other planning measures. Responses to the consultation will inform the detail of the secondary legislation which will be prepared once the Bill gains Royal Assent. We are setting out proposals in the following areas:

Chapter 1: Changes to planning application fees;

Chapter 2: Enabling planning bodies to grant permission in principle for housing development on sites allocated in plans or identified on brownfield registers, and allowing small builders to apply directly for permission in principle for minor development;

Chapter 3: Introducing a statutory register of brownfield land suitable for housing development;

Chapter 4: Creating a small sites register to support custom build homes;

Chapter 5: Speeding up and simplifying neighbourhood planning and giving more powers to neighbourhood forums;

Chapter 6: Introducing criteria to inform decisions on intervention to deliver our commitment to get local plans in place;

Chapter 7: Extending the existing designation approach to include applications for non-major development;

Chapter 8: Testing competition in the processing of planning applications;

Chapter 9: Information about financial benefits;

Chapter 10: Introducing a Section 106 dispute resolution service;

Chapter 11: Facilitating delivery of new state-funded school places, including free schools, through expanded permitted development rights; and,

Chapter 12: Improving the performance of all statutory consultees.

Chapters 1-12 are structured to allow respondents to comment on consultation proposals which are most relevant to them. We are also seeking views on whether proposals impact on protected groups as described in chapter 13, to ensure that we take into account all relevant evidence in our consideration.

# Chapter 1: Changes to planning application fees

- 1.1. Fees for making planning applications are set nationally at present<sup>1</sup>, and make an important contribution to meeting the costs of development management services. They were last revised, in line with inflation, in 2012. This consultation sets out proposals for amending fees to reflect changes since 2012, but in ways which link more effectively to the service which is provided.
- 1.2. We are particularly keen to encourage innovation and improvement in the way that planning services operate, for the benefit of both applicants and authorities. For example, some councils have successfully entered into partnerships with commercial providers that have enabled savings to be made while allowing the service to draw on a wider pool of staff. Opportunities exist to go much further, and the proposals in this consultation are designed to enable radical reform where authorities identify the scope for significant improvements.

## What are we proposing?

### National fees

- 1.3. We are proposing that national fees are increased by a proportionate amount, in a way which is linked to both inflation and performance. The national fee schedule would be revised in line with the rate of inflation since the last adjustment in 2012, with the exact level of increase reflecting when the change comes into effect<sup>2</sup>. We also propose to make future adjustments on an annual basis, if required, to maintain fee levels relative to inflation.
- 1.4. We are clear that any changes in fees should go hand-in-hand with the provision of an effective service. Consequently, we are proposing that any increase in national fees would apply only to those authorities that are performing well. One approach would be to not apply an increase where an authority is designated as under-performing in its handling of applications for major development (or, in future, applications for non-major development)<sup>3</sup>. However we are interested in views on other approaches that could be employed, such as limiting increases to those authorities that are in the top 75% of performance for both the speed and quality of

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<sup>1</sup> By regulations made under section 303 of the Town and Country Planning Act 1990; see the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 S.I. 2012/2920, as amended.

<sup>2</sup> This will need to follow the passage of the Housing and Planning Bill and revised fees regulations, so will not be before Autumn 2016. An amendment to the Bill will, once enacted, make it easier for different fee scales to be applied in different areas.

<sup>3</sup> Designations made or revoked in accordance with section 62B of the Town and Country Planning Act 1990, and the published criteria for designation and de-designation (for current version see <http://tinyurl.com/nj7sn67>). The Housing and Planning Bill proposes to extend this approach to the handling of applications for non-major development.

their decisions<sup>4</sup>. Whatever approach is taken, we also wish to consider whether this change should be implemented as quickly as possible – so that under-performing authorities do not receive the next available increase – or whether authorities should be given a period of grace before the policy applies, so that there is further time to improve before any fee increases are withheld.

- 1.5. Where an authority is not eligible for a particular national increase, the pre-existing fee would continue to apply until the authority's performance improves to the point at which it becomes eligible for increases again, and the fees regulations are next revised (we expect that this would be on an annual basis, to implement any inflation-related adjustments in national fees). At that time the most recently-revised national fee would apply in that area.

Question 1.1: Do you agree with our proposal to adjust planning fees in line with inflation, but only in areas where the local planning authority is performing well? If not what alternative would you suggest?

Question 1.2: Do you agree that national fee changes should not apply where a local planning authority is designated as under-performing, or would you propose an alternative means of linking fees to performance? And should there be a delay before any change of this type is applied?

- 1.6. As an alternative to future increases in national fees linked to performance, we have considered whether fees should be set locally in all areas. However, as planning authorities are, at present, solely responsible for the planning service in their area, this approach risks unintended consequences: increases in fees might not be linked sufficiently to improved performance, and in some cases could even rise to a level that dissuades applications from coming forward. Nevertheless we believe that opportunities do exist for more locally-led approaches where there is a clear link to improvement.

## Local flexibility and performance

- 1.7. We have embarked on a radical programme to decentralise power from Whitehall: using deals to give every part of the country the opportunity to innovate, improve services and show how funding can go further. Through this process we are keen to see proposals for ambitious reforms in the way that planning services are delivered, and which can enable greater flexibility in the way that fees are set.
- 1.8. Proposals need to be locally-led, and we wish to encourage a wide range of measures that can streamline the process for applicants and accelerate decisions. However, we are particularly interested in ideas that would:

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<sup>4</sup> This could, for example, be assessed annually against data that the Department would publish on performance over the most recent two-year period, across all application types.



a) provide applicants with the choice of a fast-track service (or services) in return for a proportionate fee. Such proposals would need to maintain the minimum standards for notification and representations set out in legislation<sup>5</sup>, while offering decisions in less time than the current statutory periods<sup>6</sup>. We are interested in your views on whether any fast track standards should be set out in regulations (and applied in specific areas that pursue this approach), or whether local performance agreements could be used to provide sufficient assurance of the enhanced service to be offered.

b) test the potential for, and benefits of, competition in application processing. Clauses in the Housing and Planning Bill will, if enacted, allow competition to be trialled in specific areas, with applicants having the choice of applying to the local planning authority or one of a range of approved providers (which could be other planning authorities). The final sign-off for decisions would remain with the local planning authority. A competitive market for processing applications would require the ability for providers – including the local planning authority – to set their own fees and service standards. Chapter 8 sets out our proposals for how competition could work.

1.9. Given the potential impacts of any changes in fees, service standards and suppliers of planning services, we would expect the local business community to be involved in formulating any proposals of this type, with the Local Enterprise Partnerships having an important role in this engagement.

Question 1.3: Do you agree that additional flexibility over planning application fees should be allowed through deals, in return for higher standards of service or radical proposals for reform?

Question 1.4: Do you have a view on how any fast-track services could best operate, or on other options for radical service improvement?

1.10. We consider these proposals will benefit users in a number of ways: by encouraging radical improvements in development management processes, improving choice in the services on offer and linking any changes in fees to performance. However we are interested in your views on the potential impacts of the changes.

Question 1.5: Do you have any other comments on these proposals, including the impact on business and other users of the system?

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<sup>5</sup> See articles 14–16 (publicity), 18–21 (consultation) and 24–26 (representations and notifications) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 S.I. 2015/595 (the “DMPO”).

<sup>6</sup> See article 34 of the Development Management Procedure Order.

# Chapter 2: Permission in principle

- 2.1 The Housing and Planning Bill, currently being considered by Parliament, introduces a new 'permission in principle' route for obtaining planning permission. This is designed to separate decision making on 'in principle' issues (such as land use, location and amount of development) from matters of technical detail (such as what the buildings will look like). The Bill provides for permission in principle to be granted on sites in plans and registers, and for minor sites on application to the local planning authority.
- 2.2 By improving how matters of basic principle are dealt with in the planning system, we can help make the process more effective and support the delivery of new homes. The current system can often require too much information to be produced upfront before there is reliable certainty that a development can go ahead in principle. Greater certainty about whether land is suitable for development can bring benefits for all, especially when it is given early in the process.

## Background

- 2.3 Two key issues with the present system are:
- It allows in principle decisions to be revisited at multiple points in the process. Local planning authorities, parishes and designated neighbourhood planning forums frequently identify land and assess its suitability for development when they propose the allocation of sites in plans. Even where land is allocated in a local plan, decision makers will reassess the basic principles of site suitability when a planning application is submitted.
  - It requires applicants to invest heavily in the finer detail of a scheme without sufficient certainty that a site is suitable in principle. Alongside uncertainty of outcome, the system requires applicants to invest upfront in producing information related to a wide variety of detailed technical matters, such as detailed design. The cost of producing this information can be considerable and the time spent considering it can be significant for local authorities and others, including consultees and communities, who are asked to comment on proposals. Even where only outline planning permission is sought with all matters reserved, an applicant often needs to invest heavily in illustrative detail (e.g. showing detailed layouts and other design features).
- 2.4 Our proposals aim to give greater certainty and predictability within the planning system by ensuring that the principle of development only needs to be established once. More certainty should be available earlier in the process, before heavy investment is made in costly technical details. At the same time we need to ensure an appropriate assessment of the development proposed against local and national policy, and the opportunity for involvement of communities and other interested parties.
- 2.5 We consider that permission in principle will have a number of benefits: it will increase the likelihood of suitable sites being developed; it will also improve the efficiency of the planning system by reducing the number of detailed applications that are unsuitable in

principle; and it will limit the amount of time spent reappraising the principle of development at different points in the process.

- 2.6 The Bill sets the overarching framework for permission in principle to be granted in two ways:
- on allocation in a locally supported qualifying document that identifies sites as having permission in principle; and,
  - on application to the local planning authority.
- 2.7 The primary decisions about when to grant permission in principle will be locally driven, taking account of national and local policy. Permission in principle must be followed by an application for technical details consent to agree the details of the scheme before the applicant obtains full planning permission and can start work on site.

### Permission in principle on allocation in a locally supported qualifying document

- 2.8 The three key requirements that need to be met in order for permission in principle to be granted by this route are:
- a) the site must be allocated in locally produced and supported documents that have followed an effective process of preparation, public engagement, and have regard to local and national policy;
  - b) the document must indicate that a particular site is allocated with permission in principle. The choice about which sites to grant permission in principle in a qualifying document will be a local one, but our expectation is that it will be used in most cases. Allocations in existing plans cannot grant permission in principle i.e. it will not apply retrospectively;
  - c) the site allocation must contain 'prescribed particulars'. These are the core 'in principle' matters that will form the basis of the permission in principle.
- 2.9 The result of a grant of permission in principle is that the acceptability of the 'prescribed particulars' cannot be re-opened when an application for technical details consent is considered by the local planning authority. Local planning authorities will not have the opportunity to impose any conditions when they grant permission in principle. It will therefore be important for the development granted in principle to be described in sufficient detail, to ensure that the parameters within which subsequent application for technical details consent must come forward is absolutely clear.

### Permission in principle on application for small sites

- 2.10 The Bill also makes provision for permission in principle to be granted following an application made to the local planning authority. An application can be used to establish the acceptability of the 'core in principle' matters for a particular site and a grant of permission in principle will have the same effect as described above. Applications for permission in principle will require less information upfront than an outline application, as the consent authorising the development (i.e. the planning permission subject to any conditions) is not secured until technical details consent is obtained.

- 2.11 Applications for permission in principle must be determined having regard to the development plan and any other material considerations, in the same way an application for planning permission is considered. Where it is justified a local planning authority can refuse permission in principle and in those circumstances the applicants will have a right to appeal.

## Technical details consent

- 2.12 Whether permission in principle is granted on allocation or application, full planning permission will only be secured once technical details consent has been obtained by applying to the local planning authority. We expect that the parameters of the technical details that need to be agreed will have been described at the permission in principle stage. An application for technical details consent must:
- a) relate to a site where permission in principle is in place;
  - b) propose development in accordance with the permission in principle; and
  - c) be contained in a single application (i.e. not broken down into a series of applications).
- 2.13 An application for technical details consent for a site must be determined in accordance with the permission in principle in force at the time. This means that the question of whether the 'in principle matters' are acceptable cannot be re-opened. It does not prevent consideration of the technical details of the scheme against local and national policy and other relevant material considerations. A refusal of technical details consent can be appealed. Any conditions needed can be imposed when technical details consent is obtained. Technical details consent will also be the stage at which planning obligations will be negotiated and the Community Infrastructure Levy will apply.
- 2.14 The process for applying for technical details consent will draw on some of the key elements of information submission and consideration, engagement and decision making used for applications for outline planning permission, with some variation to avoid unnecessary requirements or duplication at the permission in principle and technical details consent stages. These elements of the process are considered further below. We expect that decisions on applications for technical details consent will be made efficiently as they will focus on whether the detail is acceptable, rather than re-appraising the principle of the development.

## What are we proposing?

- 2.15 The Housing and Planning Bill sets the overarching framework for permission in principle. The detailed operation of it will be set out in a Development Order<sup>7</sup>. We are keen to hear views about our detailed proposals for how permission in principle will

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<sup>7</sup> A development order is made way of secondary legislation used to implement powers given in primary legislation – for example, the Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out the procedure connected with planning applications.

operate to help shape the secondary legislation. The areas for consultation can be broken down into eight areas:

- a) the qualifying documents that can grant permission in principle on allocation
- b) permission in principle on application
- c) the 'in principle matters'
- d) sensitive areas
- e) involvement of the community and others
- f) information requirements
- g) durations of permission in principle and technical details consent
- h) maximum determination periods

The locally supported qualifying documents that can grant permission in principle on allocation

2.16 Permission in principle can only be granted on allocation where it is identified in a qualifying document. The choice about whether to grant permission in principle should be locally driven and reinforces our commitment to a plan-led system. We therefore propose that qualifying documents should be:

- a) future local plans;
- b) future neighbourhood plans;
- c) brownfield registers<sup>8</sup>.

2.17 We think that using these as qualifying documents to grant permission in principle will allow local planning authorities, parishes, and designated neighbourhood groups<sup>9</sup> to propose sites to be granted permission in principle as part of an effective process for identifying and assessing sites that are suitable for development. Central to this will be the consideration of in principle matters against local and national planning policy. Appropriate community engagement and involvement of other relevant consultees is also ensured.

2.18 Using plans and registers to grant permission in principle will make better use of the detailed work that already goes into making a plan. It will reinforce the allocation of sites in plans by ensuring that they send the strongest possible signal about which land is suitable locally for development.

Question 2.1: Do you agree that the following should be qualifying documents capable of granting permission in principle?

- a) future local plans;

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<sup>8</sup> See Chapter 3 of this consultation on brownfield – brownfield registers are being introduced by clause 137 of the Housing and Planning Bill 2015.

<sup>9</sup> Parishes and designated neighbourhood groups for the purpose of neighbourhood plans only.

- b) future neighbourhood plans;
- c) brownfield registers.

## Permission in principle on application

- 2.19 We recognise that developers of smaller sites can face particular challenges with the planning system due to lack of certainty. This is because the sites they want to develop often do not have the benefit of a plan allocation and developers of small sites can struggle to get access to timely pre-application advice. To help address these concerns, we propose that applicants for minor development<sup>10</sup> should be able to apply directly to the local planning authority for permission in principle, submitting a minimum amount of information.
- 2.20 Permission in principle applications could also be of benefit to applicants for major development. As major development can involve greater information requirements, before making this route available we want to ensure that it would provide a sufficiently distinct option from existing outline planning permission. We therefore propose to consider the case for this following a closer examination of the operation of outline permission.

Question 2.2: Do you agree that permission in principle on application should be available to minor development?

The ‘in principle matters’ that should be covered in a grant of permission in principle

- 2.21 We want to make an appropriate distinction between decision making on ‘in principle matters’ and technical detail. The former will consist of the ‘prescribed particulars’ which must be included in a permission in principle, while the latter will focus on matters of technical detail to be agreed as part of a subsequent application for technical details consent.
- 2.22 The ‘in principle matters’ are the core elements underpinning the basic suitability of a site for development. We want to ensure that these core elements are established by a grant of permission in principle. We recognise that there is a careful balance to be struck between delivering the greater certainty that is needed and avoiding overloading a permission in principle with too many matters of detail that may undermine its fundamental purpose.
- 2.23 We propose that the only ‘in principle matters’ that should be determined as part of a permission in principle should be the location, the uses and the amount of development. These are described further below:

Location	We propose that this would be a red line plan drawn to a scale that clearly identifies the location
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<sup>10</sup> Development that is not major development or a householder application as defined in Article 2 Town and Country Planning (Development Management Procedure) (England) Order 2015.

	and parameters of the site.
Uses	We propose that permission in principle should be given for proposals that are housing led. Retail, community, and commercial uses that are compatible with a residential use can also be granted permission in principle where they form part of a housing led development.
Amount of residential development	To achieve a good balance between ensuring upfront certainty and flexibility, it is proposed that permission in principle will specify a minimum and maximum level of residential development that is acceptable. This range will be indicated either by the number of units or by the dwellings per hectare. Using a range will allow some flexibility to address issues emerging at the technical details consent stage. The amount of non-residential development will not have to be specified.

2.24 We propose that anything other than location, use, and amount of development are not included in the permission in principle and will be regarded as technical details. These matters will need later agreement through an application for technical details consent. We expect that the parameters of the technical details that need to be agreed, such as essential infrastructure provision, will have been described at the permission in principle stage and will vary from site to site.

2.25 Examples of technical details include the provision of infrastructure, fuller details of open space, affordable housing, alongside matters of design, access, layout and landscaping. If the technical details are not acceptable for justifiable reasons, the local planning authority could justify a refusal at the technical details stage, and the applicant would have the right of appeal. The local planning authority may not use the technical details consent process to reopen the 'in principle' issues that have been approved in the permission in principle.

Question 2.3: Do you agree that location, uses and amount of residential development should constitute 'in principle matters' that must be included in a permission in principle? Do you think any other matter should be included?

Question 2.4: Do you have views on how best to ensure that the parameters of the technical details that need to be agreed are described at the permission in principle stage?

### The approach to sensitive sites

2.26 Permission in principle will help bring forward suitable sites for development more quickly, while reducing the amount of time that the planning system spends considering the detail of development that is unsuitable in principle. We recognise that sites can have particular constraints and sensitivities - such as

proximity to heritage assets, contamination, and flood risk.

- 2.27 Permission in principle will not remove the need to assess the impact of development properly before full planning permission is granted. We are clear that the assessment of all sites against local and national planning policy is at the heart of both the decision to grant permission in principle and the subsequent agreement of technical details.
- 2.28 We expect that in most cases it should be possible to decide whether or not to grant permission in principle. In a small number of cases, the site might be suitable, but the extent or nature of development is highly constrained due to the sensitivity of the site or its surroundings. Where allocation is being considered in these circumstances, a decision may be taken to allocate a site, but not grant permission in principle. If it is an application, the local planning authority may decide that it cannot grant permission in principle given the sensitivity of the site.
- 2.29 When considering an application for technical details consent, the local planning authority will be able to consider the detailed proposals for how the development will be delivered on the site, having regard to local and national policy. In line with other permissions, it will be possible to impose conditions or seek planning obligations to mitigate impacts of the development, and where it is justified refuse planning permission.
- 2.30 Permission in principle will also not remove obligations in relation to European Directives. We would welcome views on options for addressing the requirements of the Environmental Impact Assessment Directive<sup>11</sup> including how this could be done alongside requirements such as Strategic Environment Assessment undertaken as part of plan production. We propose that where development on a site falls within Schedule 2 of the 2011 Regulations<sup>12</sup>, it may only be granted permission in principle on allocation or application where:
- the local planning authority has sufficient information about the proposed development on that site to be able to screen it and as a result of screening the project, the authority determines that an environmental impact assessment is not required; or
  - as a result of screening, the authority decides that the development would be EIA development, that it carries out an Environmental Impact Assessment, including consultation, of all its significant effects, and ensures that permission in principle is only granted if any measures needed to address the significant effects of the proposal are in place.
- 2.31 The requirements of the Habitats Directive<sup>13</sup> will also need to be met where they apply. The Habitats Directive provides protection for Special Areas of Conservation and Special Protection Areas. Plans or projects which are likely to have a significant effect on either of these areas, but are not directly connected with or necessary to the management of that area, must be subject to an

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<sup>11</sup> EIA directive 85/337/EEC, as amended and consolidated.

<sup>12</sup> <http://www.legislation.gov.uk/ukxi/2011/1824/contents/made> as amended by [http://www.legislation.gov.uk/ukxi/2015/660/pdfs/ukxi\\_20150660\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/660/pdfs/ukxi_20150660_en.pdf).

<sup>13</sup> Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.



appropriate assessment of its implications for the site. A plan or project may only proceed if it will not adversely affect the integrity of the site concerned.

Question 2.5: Do you have views on our suggested approach to a) Environmental Impact Assessment, b) Habitats Directive or c) other sensitive sites?

## Involvement of the community and others

- 2.32 We want to ensure that, whether permission in principle is granted on allocation or application, communities and other interested parties have the opportunity to comment on the principle of whether a site should be developed for housing and the appropriate scale of development on the site. We also want to ensure that an appropriate opportunity for further engagement is available when the technical details are considered, while minimising any unnecessary duplication.
- 2.33 Where permission in principle is proposed on allocation in local and neighbourhood plans, the government considers that existing consultation arrangements provide an appropriate framework for involving communities and appropriate specialist bodies such as the Environment Agency and Natural England. We are seeking views on proposals relating to the brownfield register in Chapter 2.
- 2.34 For permission in principle applications, it is proposed to set consultation arrangements for involvement of communities and statutory consultees that are in line with requirements for planning applications<sup>14</sup>.
- 2.35 Before an application for technical details consent is determined, we do not propose to require by secondary legislation that local planning authorities consult with the community and others before making a decision. We would welcome views about giving local planning authorities the option to carry out further consultation with such interested persons as they consider appropriate. This would be based on their judgement and would be informed by the engagement that took place when permission in principle was granted. While we think that it is important for appropriate further engagement to take place at the technical details consent stage, we consider that centrally mandating what should be done risks unnecessarily repeating engagement and takes away an important local flexibility. We do propose that it should be mandatory for applicants to notify landowners and agricultural tenants of the application (as is currently the case with a planning application).

Question 2.6: Do you agree with our proposals for community and other involvement?

## Information requirements

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<sup>14</sup> As set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

- 2.36 We want to ensure that local planning authorities have the information needed to determine an application for permission in principle or technical details consent. We also recognise that it is extremely important to ensure information requirements are proportionate and justified.
- 2.37 Local planning authorities, parishes and designated neighbourhood planning groups already produce information as part of plan production. We think that this will provide a sound basis from which to make decisions about the ‘in principle matters’ on allocation and whether permission in principle can be granted to a site, subject to further information being produced to agree the technical details later.
- 2.38 Where an applicant submits an application for permission in principle to the local planning authority for minor development, we think that a decision about whether the development is acceptable in principle should be possible with minimal information. It is proposed that that applications will include:
- a nationally prescribed application form;
  - a plan which identifies the land to which the application relates (drawn to an identified scale and showing the direction of north); and
  - a fee which we would expect to be set at a level that is consistent with similar types of applications in the planning system.
- 2.39 For applications for technical details consent, it is proposed that an application will include:
- a nationally prescribed application form (including an ownership certificate<sup>15</sup>);
  - plans and drawings necessary to describe the technical details of the development;
  - a fee which we would expect to be set at a level that is consistent with similar types of applications in the planning system.
- 2.40 The technical details to be agreed will vary from site to site depending on the parameters set by the permission in principle. We believe that most details can be broadly categorised as relating to either the design of the development or its impact. Accordingly, it is proposed that applications for technical details consent should be limited to only require two further sets of information:
- a design statement, which should contain information relating to design matters including layout, access and architectural detail; and
  - an impact statement, which should include:
    - i. required further assessments e.g. contamination study and flood risk assessment
    - ii. mitigation e.g. remediation and drainage schemes.

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<sup>15</sup> A certificate which applicants must complete that confirms that notice of an application for planning permission has been served on any landowners etc. See article 14 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Question 2.7: Do you agree with our proposals for information requirements?

Question 2.8: Do you have any views about the fee that should be set for a) a permission in principle application and b) a technical details consent application?

The respective duration of permission in principle and technical details consent

2.41 The duration of permission in principle will set the maximum amount of time an applicant is given to submit an application for technical details consent before the permission in principle expires. The date a permission in principle is granted will be:

- the date that a plan that allocates land with permission in principle is adopted or approved;
- the date that land allocated as having permission in principle granted to it is formally placed on the brownfield register; or
- the date that an application for permission in principle is granted.

#### Duration of permission in principle on allocation

2.42 Where local planning authorities, parishes and designated neighbourhood planning groups propose to grant permission in principle through their plans and registers, we propose that it will have a maximum duration of 5 years. In order to grant permission in principle for a duration beyond 5 years, the plan or register granting it would need to be reviewed.

2.43 We are keen to hear views about whether we should allow for some local variation to the duration to facilitate plan led development – for example, to allow different start dates based on triggers like delivery of infrastructure and to allow the expiry date to be locally set.

#### Expiry of permission in principle on application

2.44 For expiry of permission in principle granted on application, we are considering setting a nationally prescribed period. Two alternative options for this are:

Option A – to set the expiry of a permission in principle granted on application at three years. This would achieve consistency with outline planning permissions.

Option B – to set the expiry at one year. This is to encourage applicants to bring forward an application for technical details consent quickly after receiving permission in principle.

2.45 We would welcome views about also giving local authorities the ability to vary the duration of permission in principle for shorter or longer periods, having regard to the provisions of the development plan and other material considerations, in a

similar way to section 91 of the Town and Country Planning Act 1990.

### Expiry of permission of technical details consent

- 2.46 When technical details consent is granted by a local planning authority, the same standard condition limiting the duration of planning permission to three years will be implied as is the case for other planning permissions (unless the local planning authority provides otherwise). This is because a grant of technical details consent is a form of planning permission, so the existing provisions apply.

Question 2.9: Do you agree with our proposals for the expiry of on permission in principle on allocation and application? Do you have any views about whether we should allow for local variation to the duration of permission in principle?

### The maximum determination periods for permission in principle on application and technical details consent

- 2.47 The maximum determination period is the timeframe set by government for the local planning authority to decide applications. It is used as the trigger point for when appeals can be made against non-determination and for monitoring the performance of local planning authorities.
- 2.48 In order to consider the most appropriate determination periods for permission in principle on application and technical details consent, we have examined other determination periods in the planning process. For example, an application for outline planning permission has a determination period of 8 weeks for minor applications, and a further 8 weeks for subsequent applications for reserved matters.
- 2.49 We think that the early certainty given by permission in principle about the acceptability of a development offers the potential to improve the efficiency of planning system overall. Reflecting this, we propose that permission in principle applications and applications for technical details consent should be subject to the following maximum determination periods:

Application:	Determination period:
Permission in principle minor application	5 weeks
Technical details consent for minor sites	5 weeks
Technical details consent for major sites	10 weeks

Question 2.10: Do you agree with our proposals for the maximum determination periods for a) permission in principle minor applications, and b) technical details consent for minor and major sites?



# Chapter 3: Brownfield register

- 3.1 Brownfield land has an important role to play in meeting the country's need for new homes. We are supporting the regeneration of brownfield land for housing through a range of measures, including the creation of a £2 billion Long Term Housing Development Fund to unlock housing development and providing £1.2 billion to unlock at least 30,000 Starter Homes on brownfield land.
- 3.2 The National Planning Policy Framework sets out that planning policies and decisions should encourage the effective use of land by reusing brownfield sites, provided they are not of high environmental value, and that local planning authorities may set locally appropriate targets for the use of brownfield land. Planning Practice Guidance also stresses the importance of bringing brownfield land back into use.
- 3.3 We want to go further to maximise the number of new homes built on suitable brownfield land. We have set out our commitment to introduce a statutory brownfield register, and ensure that 90% of suitable brownfield sites have planning permission for housing by 2020. Through brownfield registers, a standard set of information will be kept up-to date and made publicly available to help provide certainty for developers and communities and encourage investment in local areas.

## Background

- 3.4 Local planning authorities and communities share our ambition to maximise the use of brownfield land, and we are supporting them in a number of ways to drive up the number of permissions for new homes on suitable sites including:
- through brownfield registers which we propose will be a vehicle for granting permission in principle for new homes on suitable brownfield sites;
  - by offering financial support to authorities that are piloting the preparation of brownfield registers ahead of the proposed statutory requirement; and,
  - by supporting authorities that are spearheading the use of local development orders for housing. These orders help speed up the planning process and provide investor certainty. They are a valuable tool to help local planning authorities get planning permissions in place.
- 3.5 As set out in the previous chapter, we propose that brownfield registers should be a qualifying document to grant permission in principle<sup>16</sup>. We expect authorities to take a positive, proactive approach when including sites in their registers, rejecting potential sites only if they can demonstrate that there is no realistic prospect of sites being suitable for new housing. We also expect that the large majority of sites on registers that do not already have an extant planning permission will be granted permission in

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<sup>16</sup> See Chapter 2 Permission in Principle.

principle, and technical details consent subsequently, for housing. In a small number of cases, we recognise that it may not be appropriate for local registers to grant permission in principle, for example because there is a proposed planning application or local development order in the pipeline; or where the development raises environmental impacts or habitats issues that would be more appropriately dealt with through a planning application. We will publish Planning Practice Guidance to confirm our expectations on how brownfield registers should be drawn up and kept under review.

## What are we proposing?

- 3.6 This consultation seeks views on proposals for preparing brownfield registers and keeping them up to date. This section sets out our proposals for identifying suitable sites, publicity and consultation, the proposed content of the registers and our intended requirements for publishing and updating the data.
- 3.7 Brownfield registers will comprise a comprehensive list of brownfield sites that are suitable for housing, including housing led schemes where housing is the predominant use with a subsidiary element of mixed use.

## Preparing registers of brownfield land suitable for housing

### Identifying provisional sites

- 3.8 Local planning authorities currently identify sites suitable for housing development as part of the evidence for their local plans and to demonstrate a five year supply. This plays a central role in meeting their communities' housing need. A key component of the evidence base for this work is the Strategic Housing Land Availability Assessment process which identifies a future supply of land that is suitable, available and capable of being developed for housing.
- 3.9 We are proposing that local planning authorities should use existing evidence within an up to date Strategic Housing Land Availability Assessment as the starting point for identifying suitable sites for local brownfield registers. To support this, we will encourage authorities to consider whether their Assessments are up to date and, if not, to undertake prompt reviews.
- 3.10 While sites contained within the Strategic Housing Land Availability Assessment are a useful starting point, we will encourage local authorities to ensure they have considered any other relevant sources if these are not included in their Assessments. This could include sites with extant planning permission and sites known to the authority that have not previously been considered (for example public sector land).
- 3.11 We will also expect authorities to use the existing call for sites process to ask members of the public and other interested parties to volunteer potentially suitable sites for inclusion in their registers. We propose that this would be a short targeted exercise aimed at as wide an audience as is practicable. That will enable windfall sites to be put forward by developers and others for consideration by the authority.

- 3.12 Authorities that have recently undertaken a full Strategic Housing Land Availability Assessment may not consider this to be necessary when initially compiling a register. However, in areas without up to date evidence and for all authorities completing subsequent annual reviews of their register, the process of volunteering potentially suitable sites will play an important role in refreshing the evidence base and help ensure all suitable sites, including windfall sites, are included.

Question 3.1: Do you agree with our proposals for identifying potential sites? Are there other sources of information that we should highlight?

### Identifying brownfield land that is suitable for housing

- 3.13 Brownfield or previously developed land is defined in Annex 2 of the National Planning Policy Framework<sup>17</sup>. Sites on brownfield registers will be required to meet this definition of previously developed land. This is a very broad definition and, apart from the exclusions, covers all land in England where there are or have been buildings or other development. Much of this land is already in productive use and would not be suitable for new housing.
- 3.14 We also intend to require potential sites to be assessed against specific criteria that we will set out in regulations to ensure that they are suitable for housing. In deciding whether to include a site on the register authorities will have to have regard to the National Planning Policy Framework and Planning Practice Guidance.
- 3.15 Authorities should also have regard to their local plan. Where a brownfield site is subject to an allocation for a use other than housing in an up to date local plan and there is compelling evidence supporting that allocation, it is unlikely that the site would be regarded as being suitable for housing.
- 3.16 Authorities should adopt a positive, proactive approach and consider both large and small sites. They should only reject potential sites if they can demonstrate that there is no realistic prospect of sites being suitable for new housing.
- 3.17 In defining the criteria in regulations we intend to draw from policy in the National Planning Policy Framework. To be regarded as suitable for housing our proposed criteria are that sites must be:
- Available. This means that sites should be either deliverable or developable<sup>18</sup>. Sites that are deliverable should be available and offer a suitable location for development now and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. To be considered developable sites are likely to come forward later on (e.g. between six and ten years). They should be in a suitable location for housing development and there should be a reasonable prospect the site will be available and that it could be viably developed at the point envisaged. Consideration about site viability should be proportionate having

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<sup>17</sup> See <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

<sup>18</sup> See National Planning Policy Framework footnotes 11 and 12.



regard to the particular circumstances of the site and any other relevant factors. Sites that are not allocated in the local plan should be included in local registers where they meet the relevant criteria and local planning authorities conclude that they will come forward over a reasonable period of time.

- Capable of supporting five or more dwellings or more than 0.25 hectares. This approach to defining a minimum site size threshold is intended to be proportionate and is in line with Planning Practice Guidance on conducting Strategic Housing Land Availability Assessments. Authorities should also aim to seek suggestions for smaller sites from the public and other interested parties and include these sites in their registers whenever possible because of their valuable contribution to overall housing supply.
- Capable of development. Local authorities should ensure that sites are suitable for residential use and free from constraints *that cannot be mitigated*. The National Planning Policy Framework has strong policies for conserving and enhancing both the natural and the historic environment which should be taken into account, together with other specific policies in the Framework that indicate development should be restricted. Authorities will need to support decisions about potential constraints with strong evidence and appropriate mitigations should be considered wherever possible to enable sites to be included on the register.

Question 3.2: Do you agree with our proposed criteria for assessing suitable sites? Are there other factors which you think should be considered?

The approach to development raising environmental impacts or habitats issues

## Environmental Impact Assessment and Habitats Directives

3.18 When compiling brownfield registers, local planning authorities will need to have in mind obligations in relation to European Directives. We are considering options for addressing the requirements of the EIA Directive<sup>19</sup>. We propose that where development on a site falls within Schedule 2 of the EIA Regulations<sup>20</sup>, it may only be included in local registers as a site suitable for a grant of permission in principle where:

- the local planning authority has sufficient information about the proposed development on that site to be able to screen it (i.e. the authority is in a position to determine the main or significant effects of the development) and as a result of screening the project, the authority determines that an environmental impact assessment is not required; or

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<sup>19</sup> EIA directive 85/337/EEC, as amended and consolidated.

<sup>20</sup> Town and Country Planning (Environmental Impact Assessment) Regulations 2011, SI 2011/1824, as amended.

- as a result of that screening, the authority decides that the development would be EIA development, that it carries out an Environmental Impact Assessment, including consultation, and if it determines that development should be included on the register, notes as part of the information to be contained on the register any measure necessary to address the significant impacts of that proposal.

3.19 The Habitats Directive<sup>21</sup> will be of relevance when preparing registers. The Directive provides protection for Special Areas of Conservation and Special Protection Areas. Plans or projects which are likely to have a significant effect on these areas, but are not directly connected with or necessary to the management of that area, must be subject to an appropriate assessment of its implications for the site. A plan or project may only proceed if it will not adversely affect the integrity of the site concerned. It would be inappropriate for a site to be placed on the register if its development would be prohibited by the Habitats Directive.

Question 3.3: Do you have any views on our suggested approach for addressing the requirements of Environmental Impact Assessment and Habitats Directives?

## Strategic Environmental Assessment

3.20 The Environmental Assessment of Plans and Programmes Regulations 2004<sup>22</sup> which transpose the requirements of the Strategic Environment Assessment Directive require an environmental assessment to be carried out for certain plans and programmes which are likely to have significant environmental effects. The directive requires an assessment for plans or programmes which:

- set the framework for future development consent of projects listed in the EIA Directive; or
- have been determined to require a Habitats Regulations Assessment.

3.21 The regulations also say that plans and programmes which determine the use of small areas at local level, and minor modifications to plans and programmes, require an environmental assessment only where they are likely to have significant environmental effects. The Supreme Court has recently considered the circumstances in which a plan or programme will be subject to the requirements of the directive.

3.22 Depending on the content of brownfield registers, there may be potential for the regulations to apply. We are considering this and how this might be handled. Our initial assessment is that in cases where it did apply, given the nature of the register, the content of the environmental assessment is likely to be limited in scope. It may also be appropriate in some cases to use the environmental assessment undertaken during the preparation of the local plan to assess the likely environmental effects of the register. Subsequent reviews of a register would only need an environmental assessment if it is considered likely that this would lead to significant effects.

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<sup>21</sup> Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

<sup>22</sup> SI 2004/1633, as amended.

Question 3.4: Do you agree with our views on the application of the Strategic Environment Assessment Directive? Could the Department provide assistance in order to make any applicable requirements easier to meet?

## Publicity and consultation requirements

3.23 A key purpose of brownfield registers is to provide transparent information about suitable sites to local communities, developers and others. We propose that information about potentially suitable sites should be available at local authority offices and online. Once local authorities have considered representations on their proposed list of sites, we will encourage them to publicise their decisions, including reasons why sites have or have not been granted permission in principle.

3.24 We intend, through regulations, to require local planning authorities to carry out consultation and other procedures on their registers. This will give communities and other interested parties the opportunity to have their views heard or provide specialist advice where sites on brownfield registers are being considered for permission in principle for housing development. Engagement should be proportionate and follow the approach set out for our proposals for permission in principle.

3.25 Where a site is included in a register but is not suitable for a grant of permission in principle, the Housing and Planning Bill also contains a provision, which we intend to use, for the Secretary of State to give local authorities the discretion to consult their local communities and other interested parties, such as those who can offer specialist advice, about those sites. This recognises that local planning authorities are best placed to determine whether consultation with local communities and others would be helpful, and it provides authorities with flexibility to adapt their approach to particular circumstances. If planning permission for housing on suitable sites is to be granted through a planning application or local development order, separate consultation arrangements will apply.

Question 3.5: Do you agree with our proposals on publicity and consultation requirements?

## Content of brownfield registers

3.26 Once local planning authorities are satisfied that sites are suitable for housing, they will be required to include them in their brownfield registers. This section sets out our proposals for the content of registers.

3.27 Brownfield registers will improve the availability and transparency of information on brownfield land that is suitable for housing. Authorities will be expected to include all sites considered suitable irrespective of their planning status and registers should include sites that:

- have extant outline or full planning permission or permission granted by local development order where sites have not yet been developed, and sites where

planning permissions are under consideration and local development orders are being prepared;

- have permission in principle for housing;
- are suitable for housing but have no form of existing permission.

3.28 The usefulness of local brownfield registers will be maximised if the data held across all local authority areas is consistent. We therefore propose that for each site in the brownfield register local planning authorities will be required to provide:

- site reference - Unique Property Reference Number (UPRN)
- site name and address
- grid reference
- size (in hectares)
- an estimate of the number of homes that the site would likely to be support, preferably a range of provision
- planning status (including link to details held elsewhere of planning permissions, permission in principle/associated technical details consents, and local development orders)
- ownership (if known and in public ownership)

3.29 In addition local planning authorities will be expected to include any other information that is considered useful, such as information on site constraints and site history.

3.30 We propose to work with local authorities to establish standards which define and describe which data items comprise a local register, and how they will be structured, organised and made openly available. This national standard will meet 'Open Data' principles (see below) and result in the data held in registers being freely available for aggregation and use by everyone with an interest in brownfield land that is suitable for housing.

Question 3.6: Do you agree with the specific information we are proposing to require for each site?

## Published data requirements

3.31 We propose to require local planning authorities to meet 'Open Data' standards<sup>23</sup> by publishing their brownfield registers online on their own local websites, in an agreed standard form. This standardised uniform approach has various benefits including allowing data to be aggregated at local and national levels. We also propose that links to these local registers will be recorded or advertised via established data portals<sup>24</sup>, so that there are opportunities for users to discover and re-use the data held in registers from multiple local authorities.

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<sup>23</sup> See <https://www.gov.uk/service-manual/technology/open-data.html>

<sup>24</sup> Examples of potential data portals for recording links to local registers are data.gov.uk and the LGA's Local Open Data site.

Question 3.7: Do you have any suggestions about how the data could be standardised and published in a transparent manner?

### Updating brownfield registers

3.32 As sites are developed and new sites become available, authorities will need to review their stock of brownfield land and its permission status on a regular basis. We expect this to be at least once a year. This will require a review and update of the information on sites already in registers. It will also require the addition of new sites that have been identified and assessed as suitable since registers were last updated, including sites that have come forward following local authority requests for potential sites to be identified by the public, developers and others on a voluntary basis.

Question 3.8: Do you agree with our proposed approach for keeping data up-to-date?

### Assessing progress

3.33 We expect authorities to drive progress in getting permission for housing in place on suitable brownfield land, in particular through entering sites on registers in order for those sites to gain a grant of permission in principle and by timely consideration of the subsequent stage of technical details consent.

3.34 The Chancellor's Mansion House Speech in June 2014 made a commitment to maximising the use of suitable brownfield land for new homes, and for measures to underpin this ambition. The Government wishes to ensure that 90% of suitable brownfield sites have planning permission for housing by 2020.

3.35 It is our intention to assess data held in brownfield registers annually from 2017 to track progress against this 90% commitment. We propose that both the baseline against which local authorities are making progress and their achievement against that baseline will be rolling rather than set against a fixed point in 2017, given that new land is likely to become available over time. Permission in principle will be treated as a planning permission when assessing progress given the degree of certainty that it provides.

3.36 We intend to introduce measures that will apply where additional action is needed to ensure that sufficient progress is being made. These measures could include a policy based incentive which would mean that local planning authorities that had failed to make sufficient progress against the brownfield objective would be unable to claim the existence of an up-to-date five year housing land supply when considering applications for brownfield development, and therefore the presumption in favour of sustainable development would apply.

3.37 We propose that the measures we adopt would take effect fully from 2020, and would apply to any local planning authority that had not met the 90% commitment by that date. However, in light of the need for local planning authorities to make continuous

progress towards the 90% commitment, we are also interested in views on any intermediate objectives and actions that might apply.

Question 3.9: Do our proposals to drive progress provide a strong enough incentive to ensure the most effective use of local brownfield registers and permission in principle?

Question 3.10: Are there further specific measures we should consider where local authorities fail to make sufficient progress, both in advance of 2020 and thereafter?

# Chapter 4: Small sites register

4.1 Development on small sites, whether in rural or urban locations, can deliver a range of economic and social benefits, including:

- providing opportunities for smaller companies or individuals interested in self-build and custom housebuilding to enter the development market;
- increasing residential build out rates (especially if they can make use of existing infrastructure);
- creating local jobs and sustaining local growth, particularly in rural areas; and,
- making effective use of land which can be developed.

4.2 In particular, small sites of between one and four plot size play an important role in helping meet local housing need and are often ideally suited to self-build and custom housebuilding. In many other European countries individuals commission over half of new build housing, whereas in England this number is still below 10%. We believe there is significant demand for self-build and custom housebuilding in England which, if realised, would increase housing supply in general and has the potential to lead to higher quality housing.

4.3 There are still many challenges in bringing forward small sites for development. In particular, they are less likely to be part of the local plan process. Areas which have a neighbourhood plan are, however, more likely to allocate specific small sites for development. We are currently consulting on how to best use national policy to support proposals for sustainable development on small sites of less than 10 units<sup>25</sup>.

What are we proposing?

4.4 We consider that a published list of small sites will make it easier for developers and individuals interested in self-build and custom housebuilding to identify suitable sites for development, and will also encourage more land owners to come forward and offer their land for development. A small sites register has particular utility in areas of high demand for self-build and custom housebuilding, as councils will be required to permission sufficient serviced land to match demand. A small sites register will also have a wider utility and support development on small sites more generally. Sites on the register will not necessarily have been subject to an assessment of their suitability for development therefore anyone wishing to develop a site on the register will need to apply for planning permission in the usual way. This will ensure that inappropriate development, for example in back gardens, does not occur. The Housing and Planning Bill contains a power to make regulations requiring local planning authorities in England to keep and publish a register of particular types of land in the authority's area. We are proposing to use this power to require local planning

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<sup>25</sup> <https://www.gov.uk/government/consultations/national-planning-policy-consultation-on-proposed-changes>

authorities to have a part of their register dedicated to “small sites”. We believe that the definition of small sites for this purpose should be sites which are between one and four plots in size.

Question 4.1: Do you agree that for the small sites register, small sites should be between one and four plots in size?

4.6 So as not to discourage landowners from offering their sites for potential development or place an unreasonable burden on local authorities, we consider that there should be no need for any suitability assessment associated with placing a site on the register. Although this will mean that there is no guarantee that land on the register can be used for development, it will still achieve its overall objective of increasing awareness of the location of small sites.

Question 4.2: Do you agree that sites should just be entered on the small sites register when a local authority is aware of them without any need for a suitability assessment?

4.7 We would be interested in understanding whether local planning authorities should be permitted to exclude sites from the register which they deem completely unsuitable for development. If so, we are keen to understand views on what level of screening should be carried out in a way which imposes minimal expectations on local planning authorities.

Question 4.3: Are there any categories of land which we should automatically exclude from the register? If so what are they?

4.8 We consider that the minimum information which the register should contain is:

- the location of the site (such as a six figure grid reference);
- the approximate size of the site (number of square metres); and
- contact details for the owner.

Question 4.4: Do you agree that location, size and contact details will be sufficient to make the small sites register useful? If not what additional information should be required?



# Chapter 5: Neighbourhood planning

5.1 The Localism Act 2011 gave communities direct power to shape the development and growth of their local area through a neighbourhood plan or neighbourhood development order. By the start of January 2016, over 1,730 communities across England have taken up their new neighbourhood planning powers<sup>26</sup>. There have been 135 neighbourhood planning referendums, all of which have been successful, with an average yes vote of 89%. We would like to see many more communities make use of their neighbourhood planning powers.

## Background

5.2 In July 2014, we consulted on a number of proposals to make it easier for residents and businesses to come together to produce a neighbourhood plan or Order<sup>27</sup>. In response to the consultation, steps were taken to speed up the first stage of the process by setting a period of time within which local authorities must decide applications to designate a neighbourhood area. This earlier consultation also sought views on whether there are other stages in the process where time periods may be beneficial. Greater use of time periods for decisions was supported by 50% of respondents from organisations that are, or could be, neighbourhood groups<sup>28</sup> and by 54% of those with a development interest.

5.3 We want to encourage communities already engaged in neighbourhood planning to complete the process successfully, and assist others to draw up their own plans or Orders. The Housing and Planning Bill will give new powers for government to set time periods for various local planning authority decisions, and give a new power for the Secretary of State to intervene to send a plan or Order to referendum.

## What are we proposing?

5.4 We are proposing to set the various time periods for local planning authority decisions on neighbourhood planning; to set the procedure to be followed where the Secretary of State chooses to intervene in sending a plan or Order to a referendum; and to introduce a new way for neighbourhood forums to better engage in local planning.

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<sup>26</sup> Based on informal monitoring using automatic reporting of updates from local authority websites, media and other sources.

<sup>27</sup> See [gov.uk/government/consultations/technical-consultation-on-planning](http://gov.uk/government/consultations/technical-consultation-on-planning)

<sup>28</sup> See <http://planningguidance.planningportal.gov.uk/blog/guidance/neighbourhood-planning/who-leads-neighbourhood-planning-in-an-area/>

## Designation of neighbourhood areas

- 5.5 The first stage in the process is for an application to be made by a neighbourhood planning group<sup>29</sup> to the local planning authority for a neighbourhood area to be designated. Currently when a parish or town council apply for designation of the whole of their parish area, the authority has eight weeks to decide the application, and they have discretion to amend the boundary. Where the proposed boundary falls within two or more authority areas, the period is 20 weeks. In all other cases a decision must be made within 13 weeks of the application first being publicised.
- 5.6 We are now proposing that in certain circumstances a local planning authority must designate all of the neighbourhood area applied for, with no discretion to amend the boundary. The circumstances we propose are when:
- a parish council applies for the whole of the area of the parish to be designated as a neighbourhood area, or applies to enlarge an existing designation of part of the parish to include the whole of the parish area; or
  - in other cases, a local planning authority has not determined an application for designation of a neighbourhood area within the current time periods described above.
- 5.7 There would be an exception if any of the area had already been designated (other than where a parish want to enlarge an existing designated area), or if there was an outstanding application for designation. This is to avoid boundary changes that could impact on neighbourhood plans or Orders in preparation or already made.
- 5.8 Ninety per cent of all applications to designate a neighbourhood area are from parish councils and 90% of those applications are for the whole parish area. Experience suggests that nearly all such applications are successful. The changes would mean that a local planning authority's current requirement to consider parish applications and make a decision within eight weeks (with four weeks of publicity) will no longer apply. Instead, the designation should be made as soon as possible, once the authority is satisfied that the application is valid and complete. Our proposals would also act as a safeguard where a local planning authority is not meeting its statutory duty to decide other types of applications for neighbourhood areas within the current time periods, so that communities are not disadvantaged by the delay.

Question 5.1: Do you support our proposals for the circumstances in which a local planning authority must designate all of the neighbourhood area applied for?

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<sup>29</sup> a parish council, a town council, or a prospective neighbourhood forum, or a community organisation in the case of a Community Right to Build Order

## Designation of neighbourhood forums

- 5.9 When a community wants to take up the opportunities offered by neighbourhood planning and there is no parish council, a 'neighbourhood forum' must be designated by the local planning authority to lead the process. To be designated as a neighbourhood forum, the community group must meet certain conditions<sup>30</sup>.
- 5.10 Based on information gathered in 2015, it appears to be taking local planning authorities on average 26 weeks to take decisions on applications to designate a neighbourhood forum<sup>31</sup>. 30 per cent of decisions took longer than six months. A number of communities have waited more than a year for a decision on their forum application.
- 5.11 We propose that local planning authorities should reach a decision on an application to designate a neighbourhood forum within 13 weeks. Where the application must be submitted to more than one local planning authority, we propose that this time period should be 20 weeks to allow time for the authorities to cooperate in considering the application. The proposed time periods for designating a neighbourhood forum are the same as the time periods for considering applications for a neighbourhood area to be designated, as these applications are often submitted and considered together. The time period would run from the date immediately following that on which the application is first publicised by a local planning authority (which must be as soon as possible after receiving the application). The local planning authority has to be satisfied that the application is valid and complete before publicising it.
- 5.12 There would be an exception to the time period where more than one neighbourhood forum application has been made in relation to the same or overlapping areas, including any under consideration. This will give groups, with the help of the local planning authority, time to resolve competing applications.

Question 5.2: Do you agree with the proposed time periods for a local planning authority to designate a neighbourhood forum?

## Consideration by a local planning authority of the recommendations made by an independent examiner

- 5.13 An independent examiner of a neighbourhood plan or Order must send their report to the local planning authority, who must then decide what action to take in response to each of the report's recommendations. If the local planning authority is satisfied that a draft neighbourhood plan or Order meets the basic conditions and other legal tests (or would with modifications), then a referendum must be held.

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<sup>30</sup> These are set out in [section 61F\(5\) of the Town and Country Planning Act 1990, as applied to neighbourhood plans by section 38C\(1\) and \(2\)\(a\) of the Planning and Compulsory Purchase Act 2004](#) (these provisions were inserted by Schedule 9 to the Localism Act 2011 <http://www.legislation.gov.uk/ukpga/2011/20/schedule/9/enacted>). No conditions have yet been prescribed for designation under section 61F(5)(e) or (6) of the 1990 Act.

<sup>31</sup> As of June 2015, the average time taken to designate a forum is 26 weeks (based on a sample of 72). 26 forums took longer than 6 months (26 weeks) to designate.

5.14 Information gathered earlier this year suggests that, on average, local planning authorities are taking between five and six weeks to issue their decision on whether to submit a neighbourhood plan or Order to a referendum<sup>32</sup>. There have been instances where authorities have taken over three months to reach a decision and in one case no decision had been taken a year after receiving an examiner's report.

5.15 Based on this average, we propose that there should be a time period of five weeks (from the date the authority receive the examiner's report) within which this decision must be taken. The exceptions to this would be when:

- a local planning authority proposes to make a decision which differs from that recommended by the examiner.
- a local planning authority and a neighbourhood group agree that more time than the proposed five week period will be required to reach a decision.

Question 5.3: Do you agree with the proposed time period for the local planning authority to decide whether to send a plan or Order to referendum?

5.16 When an authority's proposed decision differs from that recommended by the examiner the Secretary of State may prescribe people who must be notified and consulted. We propose that these should be the neighbourhood planning group and anyone who made representations during the period the plan was publicised by the local planning authority. This would also apply when the Secretary of State has intervened following a request from a neighbourhood planning group as set out below.

Question 5.4: Do you agree with the suggested persons to be notified and invited to make representations when a local planning authority's proposed decision differs from the recommendation of the examiner?

5.17 When a local planning authority comes to a different view to that of the examiner, this should not mean that there are long delays. We propose that the period during which further representations can be made should be limited to six weeks; and that the local planning authority should issue its final decision within five weeks of the end of that period (unless the authority considers it appropriate to refer the issue to independent examination).

Question 5.5: Do you agree with the proposed time periods where a local planning authority seeks further representations and makes a final decision?

## Setting the referendum date

5.18 Before a neighbourhood plan or Order can come into force, it must be voted on by the local community in a referendum. Where the neighbourhood area has been designated as a business area, there is an additional referendum for the businesses in the area. We propose that local planning authorities should hold a referendum within ten weeks

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<sup>32</sup> Based on 52 cases as at January 2015.

of the decision that a referendum should be held (or 14 weeks where there is also a business referendum).

5.19 We propose three exceptions to this. First, where a neighbourhood planning referendum can be combined with another poll that is due to be held within three months of the end of the 10 or 14 week period described above. Secondly, where there are unresolved legal challenges to the decision to hold a referendum. Thirdly, where a local planning authority and the neighbourhood group agree an alternative time period.

Question 5.6: Do you agree with the proposed time period within which a referendum must be held?

### Bringing neighbourhood plans into force

5.20 A local planning authority is required to make a neighbourhood plan or Order as soon as reasonably practicable after a successful referendum (or referendums). This brings the plan or Order into legal force as part of the development plan for an area, with the same legal status as the local plan. New powers in the Housing and Planning Bill allow the Secretary of State to set a date by which this must be done. We propose that this should be eight weeks from the date of the referendum or referendums, unless there are unresolved legal challenges to the decision to hold either referendum or around the conduct of either referendum<sup>33</sup>.

Question 5.7: Do you agree with the time period by which a neighbourhood plan or Order should be made following a successful referendum?

Question 5.8: What other measures could speed up or simplify the neighbourhood planning process?

### Requests for the Secretary of State to intervene

5.21 Once an examiner's report has been considered by the local planning authority, they have to decide if the draft plan or Order meets the 'basic conditions'<sup>34</sup> and other legal requirements (or would with modifications) and if so, they must put the plan to a referendum. New powers in the Housing and Planning Bill would enable the Secretary of State to intervene in this process, at the request of a neighbourhood planning group, in three circumstances:

- where the local planning authority has failed to take a decision within the period prescribed, or
- where the local planning authority do not accept all of the examiner's recommendations; or

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<sup>33</sup> This will not affect the very narrow circumstances in which a local planning authority is required to make the plan or Order, where they consider this would be incompatible with EU law or Convention rights.

<sup>34</sup> <http://planningguidance.communities.gov.uk/blog/guidance/neighbourhood-planning/the-basic-conditions-that-a-draft-neighbourhood-plan-or-order-must-meet-if-it-is-to-proceed-to-referendum/>

- where the local planning authority propose to modify the plan or Order proposal in a way that was not recommended by the examiner.

- 5.22 These measures provide communities with an alternative route to a decision where the local planning authority disagrees with the report of the examiner, or when they do not make a timely decision. Such cases are currently extremely rare and we expect this to remain the case.
- 5.23 Following a decision to intervene, the Secretary of State could direct the local planning authority to send a neighbourhood plan or Order to referendum with any modifications made by the Secretary of State, or to refuse the proposal. The Secretary of State may also extend the referendum area.
- 5.24 The local planning authority may be required to notify certain persons of any decision the Secretary of State proposes to make that is not in accordance with the examiner's recommendations. We propose that these should be the same people set out in paragraph 5.16 above. The Secretary of State also has the option of requiring the local planning authority to refer the issue to a further examination.
- 5.25 The Secretary of State may prescribe the form and content of a request for intervention by a neighbourhood group and the date by which it must be made. We propose that a request for intervention must be made in writing, giving clear reasons why the proposed decision of the local planning authority should be reconsidered by the Secretary of State. In considering a request, the Secretary of State will consider whether the plan or Order plans positively for local development needs, taking account of the latest evidence. For instance where a neighbourhood plan allocates sites or contains policies for the supply of housing, the Secretary of State would expect that the neighbourhood plan has fully taken into account the latest, up-to-date evidence of housing need. In cases where the local planning authority has failed to make a decision within the set time period, the length and reasons for the delay and the likelihood of an imminent decision would also be taken into account. Each case would be considered on its individual merits.
- 5.26 In cases where the neighbourhood group is making the request because the local planning authority decides not to follow a recommendation of the examiner; or makes modifications that the examiner has not recommended, we propose that the request must be submitted within six weeks of the date that the authority publish their decision.
- 5.27 We also propose using new powers to prevent a local planning authority from taking their final decision on whether a neighbourhood plan or Order should proceed to a referendum until the Secretary of State has decided whether to intervene.
- 5.28 Once the Secretary of State has decided whether to intervene, we propose that the neighbourhood planning group and the local planning authority will be informed and invited to make representations. Views will also be sought from those who made representations during the original publicity period.
- 5.29 We propose using new powers to enable the Secretary of State to appoint a planning inspector to take the decision on the Secretary of State's behalf.

5.30 New powers allow certain matters to be set out, that the Secretary of State or an inspector must take into account when taking the decision on whether a neighbourhood plan or Order should proceed to referendum; and require a local planning authority to provide certain information to the Secretary of State or an inspector. We propose that the information provided should include: the examiner's report; all the documents submitted by the neighbourhood group with a neighbourhood plan or Order; any other documents submitted to the local planning authority by the neighbourhood group in relation to a neighbourhood plan or Order; any representations that were sent to the examiner; representations made in response to a local planning authority's proposal to depart from the examiner's recommendation; and the local planning authority's decision statement.

5.31 New powers allow for the Secretary of State, or a local planning authority on the direction of the Secretary of State, to notify certain persons and to publish the decision made on sending the plan or Order to referendum, as well as the reasons for making those decisions, and other matters relating to those decisions. We propose that the Secretary of State must notify the neighbourhood planning group and the local planning authority of the decision and reasons for it; publish the decision and the reasons for it; and send, to any person who had asked to be notified of the decision in relation to the neighbourhood plan or Order, a notice explaining that the decision has been made, and where details can be found.

Question 5.9: Do you agree with the proposed procedure to be followed where the Secretary of State may intervene to decide whether a neighbourhood plan or Order should be put to a referendum?

## Engagement in local planning

5.32 Finally, we propose to amend existing regulations to include designated neighbourhood forums as consultation bodies that local planning authorities must notify and invite representations from where they consider the forum may have an interest in the preparation of a local plan. This proposal complements the measure in the Housing and Planning Bill which would enable neighbourhood forums to request notification of planning applications in their area, in the same way that parish councils can.

Question 5.10: Do you agree that local planning authorities must notify and invite representations from designated neighbourhood forums where they consider they may have an interest in the preparation of a local plan?

# Chapter 6: Local plans

- 6.1 We have made clear our expectation that all local planning authorities should have a local plan<sup>35</sup> in place. Local plans are the primary basis for identifying what development is needed in an area and for deciding where it should go, providing the certainty communities and businesses deserve.
- 6.2 Local planning authorities have had more than a decade since the introduction of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) to prepare a local plan, and most have done so. At the end of January 2016, 84% had published a local plan and 68% had adopted a local plan<sup>36</sup>.
- 6.3 We expect local plans to be kept up-to-date to ensure policies remain relevant. The National Planning Policy Framework is clear that housing policies should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites<sup>37</sup>. Furthermore, guidance sets out clearly that most local plans are likely to require updating in whole or in part at least every five years<sup>38</sup>. At the end of Jan 2016, 45% of authorities had a local plan which had been adopted in the last 5 years<sup>39</sup>.
- 6.4 Local plans adopted since the National Planning Policy Framework was published in March 2012 allocate substantially more housing than those adopted before the Framework was published. The average post- National Planning Policy Framework plan makes provision for 109% of household projections<sup>40</sup> compared to only 86% for pre-Framework plans.
- 6.5 We have set out our commitments to take action to get plans in place and ensure plans have up-to-date policies by:
- publishing league tables, setting out local authorities' progress on their local plans;
  - intervening where no local plan has been produced by early 2017, to arrange for the plan to be written, in consultation with local people, to accelerate production of a local plan<sup>41</sup>; and
  - establishing a new delivery test on local authorities, to ensure delivery against the number of homes set out in local plans<sup>42</sup>

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<sup>35</sup> The local plans referred to in this consultation are development plan documents adopted or approved under the 2004 Act that set the strategic planning policies for a local planning authority's area.

<sup>36</sup> Planning Inspectorate Data reporting on local plans <https://www.gov.uk/guidance/local-plans>

<sup>37</sup> The National Planning Policy Framework, paragraph 49, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60777/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60777/2116950.pdf)

<sup>38</sup> The National Planning Policy Framework, paragraph 49, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60777/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60777/2116950.pdf)

<sup>39</sup> A further 23% of authorities have a Local Plan compliant with the 2004 Act which was adopted over 5 years ago (before 1st Jan 2016), a number of which have adopted or are in the process of preparing a Local Plan review

<sup>40</sup> Household projections are from census data indicating future household formation

<sup>41</sup> Fixing the foundations: Creating a more prosperous nation 2015 (HM Treasury)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/443898/Productivity\\_Plan\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443898/Productivity_Plan_web.pdf)

<sup>42</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/479749/52229\\_Blue\\_Book\\_PU1865\\_Web\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479749/52229_Blue_Book_PU1865_Web_Accessible.pdf)



## Background

- 6.6 We are consulting on criteria that will inform our decision on whether to intervene to deliver our commitment to get plans with up-to-date policies in place. We want to engage with authorities early on, and therefore we do not expect any authority to be surprised if we are considering intervention. We want to see local government take action to get plans in place and would be interested to receive details of examples of where authorities have worked collaboratively, including where one authority has supported another to bring forward local plans.
- 6.7 In those instances where progress is not being made, we will intervene to ensure plans with up-to-date policies are put in place in consultation with local communities. The Secretary of State can intervene in local plans using his powers under the 2004 Act<sup>43</sup>. He may direct a local planning authority to review their existing plan, or to modify an emerging plan or submit the document for his approval. He may also arrange for a document to be prepared or revised for a local planning authority that is failing to do so and must be reimbursed by the authority for any costs incurred. We envisage that where it is necessary to intervene in this way, we will appoint an external party to undertake the work and we are considering potential sector-led approaches to this work.
- 6.8 In many instances, where the Secretary of State intervenes under these powers, the only option is to take over responsibility for the remaining process of plan-making. Measures in the Housing and Planning Bill refine these powers, enabling the Secretary of State to intervene in a more proportionate way, allowing responsibility for plan-making to be retained by the local planning authority wherever possible, while still ensuring that local plans are in place.
- 6.9 Where we have to intervene to get local plans in place or ensure that policies are up-to-date, because an authority has not done so, this should not compromise effective community engagement. Local plans, including those prepared or revised following intervention, are subject to a legal requirement to consult the public and others, along with the right to make representations on the plan. This provides a strong framework for protecting rights of public participation.

## What are we proposing?

- 6.10 Local authorities need to put local plans in place to provide certainty to communities and developers on how local housing needs will be met. There is significant shortfall between the number of homes that we need to build to keep up with housing requirements and the net additions to the housing stock. We have therefore been clear that we will take action where there is a sustained under delivery of housing.
- 6.11 We are proposing to prioritise intervention where:
- there is under delivery of housing in areas of high housing pressure;

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<sup>43</sup> See sections 21, 26 and 27 of the Planning and Compulsory Purchase Act 2004 <http://www.legislation.gov.uk/ukpga/2004/5/contents> (section 21 is amended by section 112(5) of the Localism Act 2011: <http://www.legislation.gov.uk/ukpga/2011/20/section/112/enacted>). The Housing and Planning Bill amends sections 21 and 27: <http://services.parliament.uk/bills/2015-16/housingandplanning.html>.

- the least progress in plan-making has been made;
- plans have not been kept up-to-date;
- intervention will have the greatest impact in accelerating local plan production.

6.12 We have sought views on our proposals to implement a housing delivery test<sup>44</sup>, which will inform our decision on how to assess housing pressure.

6.13 We propose that decisions will also be informed by the wider planning context of an area. We propose to publish information on each authority which shows the age of the existing local plan, and measures of local plan-making progress, on a six monthly basis.

## Criteria that will inform decisions on government intervention

6.14 National planning guidance is clear that local plans should be kept up-to-date if they are to be effective<sup>45</sup>. The date a local plan was adopted or last reviewed provides a clear indication of how relevant the policies in the plan are.. Authorities without a local plan in place, and authorities which have not kept the policies in their local plan up-to-date will be a high priority for intervention.

6.15 In July 2011 the government asked local planning authorities to keep the Planning Inspectorate up-to-date on the progress of their local plan-making<sup>46</sup>. The Planning Inspectorate publishes this information for all authorities across England. We intend to use this data to identify the date a local plan was adopted. Where the Planning Inspectorate does not hold this data for an authority, we will obtain this information from the authority's website.

6.16 Local planning authorities are required<sup>47</sup> to publish and keep up to date a local development scheme which sets out the documents which will comprise their local plan<sup>48</sup>. The National Planning Policy Framework makes clear that wherever possible there should only be a single local plan, and any additional documents need to be clearly justified.

6.17 Local development schemes set out when an authority expects to reach key milestones in the plan-making process. Explanations of these milestones and stages of the plan-making process can be found in our planning guidance<sup>49</sup>. We will establish when an authority expects to publish, submit and adopt its new or reviewed local plan from its local development scheme. By comparing this information against information on plan progress published by the Planning Inspectorate<sup>50</sup> we will establish whether an authority is meeting the timetable it has set itself. We will also compare this information against any subsequent updates to an authority's local

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<sup>44</sup> National planning policy: A consultation on proposed changes <https://www.gov.uk/government/consultations/national-planning-policy-consultation-on-proposed-changes>

<sup>45</sup> Planning Practice Guidance <http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/>

<sup>46</sup> Planning Inspectorate Data reporting on local plans <https://www.gov.uk/guidance/local-plans#monitoring-local-plans>.

<sup>47</sup> Section 15 of the Planning and Compulsory Purchase Act 2004 <http://www.legislation.gov.uk/ukpga/2004/5/contents> (as amended by: section 30 of the Greater London Authority Act 2007 <http://www.legislation.gov.uk/ukpga/2007/24/section/30>; section 180(2) of, and Schedule 13 to, the Planning Act 2008 <http://www.legislation.gov.uk/ukpga/2008/29/contents>; and section 111(3) of, and Part 17 of Schedule 25 to, the Localism Act 2011 <http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>), The Housing and Planning Bill amends section 15(4): <http://services.parliament.uk/bills/2015-16/housingandplanning.html>.

<sup>48</sup> Planning Practice Guidance <http://planningguidance.communities.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/>

<sup>49</sup> Planning Practice Guidance <http://planningguidance.communities.gov.uk/blog/guidance/local-plans/local-plans-key-issues/>

<sup>50</sup> Planning Inspectorate monitoring data at <https://www.gov.uk/guidance/local-plans#monitoring-local-plans>.

development scheme to identify any slippage or acceleration in plan-making progress. We propose to take into account slippage against the timetable authorities have set for themselves when assessing the extent of progress.

- 6.18 Local planning authorities play a key role in supporting housing delivery. Getting a plan in place and ensuring that the policies in it remain up-to-date is particularly important in areas of high housing demand. We propose that in taking decisions about prioritising our intervention, we will take into account the extent of housing pressure and performance on housing delivery.

Question 6.1: Do you agree with our proposed criteria for prioritising intervention in local plans?

### Wider planning context

- 6.19 In reaching decisions on prioritising our intervention in local plan-making, we also intend to take the following wider planning context into consideration:

- 6.20 Collaborative and strategic plan-making: we recognise the advantages of strong strategic plan-making across local planning authority boundaries, in particular in addressing housing need across housing market areas. Many authorities successfully achieve this through the duty to cooperate and others are putting forward proposals to work strategically through devolution deals. We propose to have regard to how authorities are working cooperatively to get plans in place, including progress that has been made in devolution deal areas.

- 6.21 Neighbourhood planning: without a local plan with up-to-date policies, work on neighbourhood plans is more challenging. Local authorities that fail to bring forward or fail to update their local plan limit the opportunities for communities to participate in the planning and long-term design of their areas. We propose to take into account the potential impact that not having a local plan has on neighbourhood planning activity.

Question 6.2: Do you agree that decisions on prioritising intervention to arrange for a local plan to be written should take into consideration a) collaborative and strategic plan-making and b) neighbourhood planning?

Question 6.3: Are there any other factors that you think the government should take into consideration?

### Exceptional circumstances

- 6.22 Before taking decisions on intervention in a local plan, we will give authorities an opportunity to explain any exceptional circumstances which, in their view, would make intervention at the proposed time unreasonable. What constitutes an 'exceptional circumstance' cannot, by its very nature, be defined fully in advance, but we think it would be helpful to set out the general tests that will be applied in considering such cases. We propose these should be:

- whether the issue significantly affects the reasonableness of the conclusions that can be drawn from the data and criteria used to inform decisions on intervention;

- whether the issue had a significant impact on the authority's ability to produce a local plan, for reasons that were entirely beyond its control.

Question 6.4: Do you agree that the Secretary of State should take exceptional circumstances submitted by local planning authorities into account when considering intervention?

### Publishing local planning authorities' progress in plan-making

6.23 We have made clear our intention to provide increased transparency for local communities on local authorities' progress in plan-making. We propose to publish the information set out below for each local planning authority in England:

- the date that the local plan was adopted or last reviewed (for areas without an adopted local plan it would be the date of their last plan prior to the 2004 Act)
- for the publication and submission stages of the plan-making process, the date these stages have been achieved
- for each stage in the plan-making process (publication, submission, adoption) that has not been achieved:
  - a) the forecast date for achieving that stage as set out in the authority's local development scheme at a baseline date (likely to be April 2016)
  - b) for subsequent publications of this information, the most recent forecast dates. If this remains the same as the baseline date it will still be published to show the authority is meeting their timetable
  - c) any slippage or acceleration between the original baseline date and the most recent forecast dates.

6.24 Local development schemes may be formatted differently, so to measure slippage or acceleration consistently we intend to rationalise how we present information on dates. We propose to translate dates from local development schemes so that they are presented as quarters of the financial year.

6.25 We aim to publish our data on plan-making performance from June 2016, on a six monthly basis. We will give local planning authorities an opportunity to confirm the accuracy of the data prior to its publication.

Question 6.5: Is there any other information you think we should publish alongside what is stated above?

Question 6.6: Do you agree that the proposed information should be published on a six monthly basis?

# Chapter 7: Expanding the approach to planning performance

- 7.1 Timely and well-considered decisions on planning applications are a key part of delivering an effective planning service. Applicants and local communities should be confident that a decision on development proposals will be reached within a reasonable time – whether that is within the statutory timescale or a longer period agreed transparently with the local planning authority.
- 7.2 Equally, everyone should have confidence in the quality of the development decisions being made by local planning authorities – that all relevant considerations are being taken into account, and that the weight being given to different considerations is reasonable in the context of national and local policies.
- 7.3 The Growth and Infrastructure Act 2013 introduced the existing performance approach for applications for major development:
- This assesses the speed<sup>51</sup> and quality<sup>52</sup> of decisions taken by local planning authorities against thresholds set out in a [Criteria Document](#);
  - If local planning authorities do not meet either (or both) performance standards, they risk being designated as underperforming, once any data corrections and other exceptional circumstances have been taken into account;
  - An authority that is designated by the government as underperforming is required to produce an action plan to address areas of weakness. Also, applicants for major development in that authority's area have the choice of submitting their application direct to the Secretary of State instead of to the authority;
  - Designation lasts for at least a year and is subject to review before the year ends, so a designated authority has an opportunity to improve its performance so that the designation can be lifted.
- 7.4 This approach has been effective in speeding up decisions on applications for major development<sup>53</sup>.

## What are we proposing?

- 7.5 Through the Housing and Planning Bill, we are extending this approach to include applications for non-major development, to ensure that all applicants can have certainty in the level of service to be provided. The assessment of applications for

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<sup>51</sup> Speed is assessed as the percentage of applications determined in the statutory period (including any agreed extended period) over a two year period.

<sup>52</sup> Quality is assessed as the proportion of all decisions on applications for major development that are overturned at appeal, over a two year period.

<sup>53</sup> 79% of major applications were decided on time in July to September 2015, compared with 57% in July to September 2012, the quarter in which the designation approach was first announced.

non-major development would run alongside the existing performance approach to assessing applications for major development. Autumn Statement published on 25 November also set out a proposal to reduce the threshold for assessing the quality of local planning authorities' decisions to 10 per cent of applications for major development overturned at appeal, subject to considering an authority's appeal decisions prior to confirming designation on the basis of this measure.

#### 7.6 We are now consulting on:

- revised thresholds for assessing the quality of performance on applications for major development and new thresholds for non-major development for both speed and quality;
- the approach to designation and de-designation for non-major development; and,
- which applications may be submitted to the Secretary of State in areas that are designated for their handling of non-major development.

7.7 We consider 'non-major development' to constitute applications for minor developments, changes of use (where the site area is less than one hectare) and householder developments<sup>54</sup>. This is consistent with the data we have been publishing since March 2015 on the speed and quality of decisions on non-major development<sup>55</sup>.

### Thresholds for assessing performance

7.8 In considering the minimum performance thresholds for handling applications for non-major development, we wish to take into account both existing levels of performance and the scope for further improvement. In the two years to the end of September 2015, nationally an average of 79% of applications for non-major development were decided on time, and the average proportion of decisions on non-major development overturned at appeal was around 1%<sup>56</sup>.

7.9 Against this background we think that the thresholds at which authorities would become liable for designation in relation to non-major development should fall within the following ranges:

- speed of decisions: where authorities fail to determine at least 60-70 per cent of applications for non-major development on time<sup>57</sup>, over the two year assessment period, they would be at risk of designation
- quality of decisions: where authorities have had more than 10-20 per cent of their decisions on applications for non-major development overturned at appeal, they would be at risk of designation.

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<sup>54</sup> This is set out in the the Town and Country Planning (Development Management Procedure) (England) Order 2015 [http://www.legislation.gov.uk/ukxi/2015/595/pdfs/ukxi\\_20150595\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/595/pdfs/ukxi_20150595_en.pdf)

<sup>55</sup> <sup>55</sup> [Live tables P153 and P154 https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics](https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics)

<sup>56</sup> This is the figure for local planning authority decisions up to September 2014, and related appeal decisions up to June 2015.

<sup>57</sup> i.e. within the relevant statutory period, including any agreed extension of time

7.10 Prior to any initial designations the Housing and Planning Bill will need to be enacted, regulations made and the criteria for designation laid before Parliament. The earliest that the first designations would be made is therefore the final calendar quarter of 2016

7.11 For applications for major development, we have raised the designation threshold for the speed of decisions to 50 per cent made on time, and will continue to keep this under review. The threshold for the quality of decisions on applications for major development has remained at 20 per cent since 2013. The threshold needs to be at a level that drives improvement and safeguards against genuinely poor performance, and the Autumn Statement proposed that the threshold could now be reduced to 10 per cent of decisions on applications overturned at appeal.

Question 7.1: Do you agree that the threshold for designations involving applications for non-major development should be set initially at between 60-70% of decisions made on time, and between 10-20% of decisions overturned at appeal? If so what specific thresholds would you suggest?

Question 7.2: Do you agree that the threshold for designations based on the quality of decisions on applications for major development should be reduced to 10% of decisions overturned at appeal?

## Approach to designation and de-designation

7.12 We are proposing that the general approach to designating and de-designating authorities for non-major development should mirror that which exists already for major development, as set out in the current criteria document<sup>58</sup>: for example, taking into account performance data over a rolling two year period, allowing for data corrections and exceptional circumstances, and the tests that are required to be satisfied before an authority may be de-designated. This will include taking into account applications that are subject to Planning Performance Agreements and Extension of Time Agreements and setting the same thresholds for exempting authorities from designation in circumstances where very few applications have been submitted.

7.13 The data for major and non-major applications will not be aggregated, so the designation and de-designation processes for major and non-major development would be conducted separately (so that an authority could be designated on the basis of handling applications for major development, or non-major development, or both). This ensures the existing approach can continue and suitable thresholds can be applied to different categories of application.

7.14 However, there is one change we are proposing in the assessment of any exceptional circumstances that relate to the quality of decisions (for applications involving both major and non-major development): we would in future take into

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<sup>58</sup> Improving planning performance: criteria for designation (July 2015) <http://tinyurl.com/odqu8v8>

account any situations where appeals have been allowed despite the authority considering that its initial decision was in line with an up-to-date plan<sup>59</sup>. This is to ensure that this measure does not inadvertently discourage any authorities from making decisions that they believe to be in line with an up-to-date local plan or neighbourhood plan.

Question 7.3: Do you agree with our proposed approach to designation and de-designation, and in particular

- (a) that the general approach should be the same for applications involving major and non-major development?
- (b) performance in handling applications for major and non-major development should be assessed separately?
- (c) in considering exceptional circumstances, we should take into account the extent to which any appeals involve decisions which authorities considered to be in line with an up-to-date plan, prior to confirming any designations based on the quality of decisions?

Effects of designation in respect of applications for non-major development

7.15 Applicants can only apply directly to the Secretary of State for the category of applications to which a designation relates. As with the approach to major development, we are proposing that applicants would have a choice of applying directly to the Planning Inspectorate (on behalf of the Secretary of State) where an authority is designated for its performance in handling applications for non-major development. However we are proposing that this ability would be limited to applications involving minor development and changes of use, and not include householder development.

7.16 We consider that due to the small sized and high volume of householder applications, they are best dealt with at the local level. This does not, however, mean that under-performance in such areas would not be addressed: where authorities are designated on the basis of non-major development we will want to make sure that all aspects of their service improve, including then handling of applications for householder developments. We would therefore require a detailed improvement plan which focuses on improving processes for householder developments from designated authorities, where this relates to the reasons for their under-performance.

Question 7.4: Do you agree that the option to apply directly to the Secretary of State should not apply to applications for householder developments?

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<sup>59</sup> An up-to-date Development Plan Document



# Chapter 8: Testing competition in the processing of planning applications

- 8.1 It is important that the planning process is resourced in a way that allows an efficient and effective service to be provided. Chapter 1 of this consultation proposes changes to planning application fees, linked to performance and the provision of innovative services. One form of innovation that we are keen to explore is competition in the processing of planning applications. This will not include any changes to decision-making on planning applications which will remain with the local authority whose area the application falls within. Nor is this about preventing local authorities from processing planning applications or forcing them to outsource their processing function. This section seeks views on how we could implement a programme to test how we can most effectively introduce competition in the processing of planning applications.

## Background

- 8.2 Outsourcing and shared services are common for some local authority services. Some authorities have introduced such approaches to planning application processing, and shown that performance can be improved and costs reduced. The majority of research studies suggest cost savings of up to 20 per cent for competitively tendered or shared services<sup>60</sup>.
- 8.3 Choice for the user also has an important part to play in the provision of effective public services<sup>61</sup>. In Building Control, applicants can choose to have their building work checked by the local authority or an approved inspector. Approved inspectors were first introduced in 1985, and now roughly 80 per cent of housing and 50 per cent of non-housing work is carried out by them.
- 8.4 We think there is merit in drawing on this experience, to test the benefits of competition in the processing of planning applications. These benefits could include giving the applicant choice, enabling innovation in service provision, bringing new resources into the planning system, driving down costs and improving performance.

## What are we proposing?

- 8.5 The Housing and Planning Bill contains powers to enable the testing of competition in the processing of planning applications. We are proposing that in a number of specific geographic areas across the country, for a limited period of time, a planning applicant would be able to apply to either the local planning authority for the area or an 'approved provider' (a person who is considered to have the expertise to manage

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<sup>60</sup> Domerberger et al in 1986 found that competitive tendering reduced the costs of refuse collection services by broadly 20 per cent, irrespective of whether contracts were awarded to the private sector or in-house teams. Hodge in 1999 concluded that outsourcing could achieve savings of between 6 and 12 per cent, while DeAnne Julius in 2008 concluded that the rigorous work on cost savings associated with contracting showed savings of around 20 per cent. The Confederation of British Industry claimed in 2012 that further outsourcing could secure cost savings of 10 per cent.

<sup>61</sup> 2009 research from the British Social Attitudes (BSA) survey, reported by the Institute for Government in 2013, concluded 'There is widespread public support for the idea that people should be able to exercise choice when using public services'.

the processing of a planning application) to have their planning application processed. This does not prevent local planning authorities from continuing to process planning applications nor does it force them to outsource their development management service – it means that other approved providers will be able to compete to process planning applications in their area. A number of companies already provide outsourced processing services for local planning authorities. Local planning authorities, in addition to processing planning applications in relation to land in their area, would also be able to apply to process planning applications in other local authorities' areas.

- 8.6 The democratic determination of planning applications by local planning authorities is a fundamental pillar of the planning system. This will remain the case - decisions on applications would remain with the local planning authority. However, an approved provider would be able to process the application, having regard to the relevant statutory requirements for notification, consultation and decision making, and make a recommendation to the local planning authority giving their view on how the application should be decided. But, it would be for the local planning authority to consider the recommendation and make the final decision, ensuring no loss of democratic oversight of local planning decisions.
- 8.7 We are consulting now on the broad principles for how this would operate.

## Scope

- 8.8 The final decision on individual planning applications would remain the responsibility of the local planning authority, based on a report and recommendations from their own officers or from an approved provider where the applicant has chosen to go to one.
- 8.9 Competition can be tested in different ways within this overall approach. More innovation may be possible and better use of resources, efficiency and performance, with full competition involving both approved private providers and local authorities competing for the processing of all planning applications in test areas. However, competition could be limited to just local authorities or specific types of planning application.

Question 8.1: Who should be able to compete for the processing of planning applications and which applications could they compete for?

## Fees

- 8.10 A market for planning application processing might operate best by allowing approved providers and the local planning authority in test areas to set their own fee levels, enabling them to set different levels of fee for different levels of service<sup>62</sup>. The legislation would allow us to intervene if we considered that excessive fees were being charged and the market was not self-regulating them. It will also allow for fees

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<sup>62</sup> We currently have no plans to change the legislative time limit for determination of planning applications: 8 weeks (minor development) and 13 weeks (major development) and 16 weeks (Environmental Impact Assessment development).

to be returned to the applicant where promised service and performance standards are not met by approved providers and/or the local planning authority in test areas.

- 8.11 However, in competition test areas we could, as an alternative approach, restrict approved providers and local planning authorities to setting fee levels within a range. Local authorities could be limited to charging no more than cost recovery for processing planning applications. A requirement for providers in test areas to provide a low-cost processing option could also be explored. It is likely that even where an approved provider processes a planning application the local planning authority will incur small costs, for example reviewing the provider's report and recommendation to be able to take a decision. A balance will need to be struck between ensuring costs can be recovered fairly but without introducing duplication and additional costs to the applicant.

Question 8.2: How should fee setting in competition test areas operate?

The role of applicants, approved providers and local planning authorities in competition test areas

- 8.12 In competition test areas, applicants would select who they want to process their planning application and pass it direct to the provider with the appropriate fee.
- 8.13 We envisage an approved provider will undertake all the tasks a local planning authority would ordinarily undertake. This includes, for example, checking and validating the application, posting site and neighbour notices, undertaking site visits, undertaking statutory consultation<sup>63</sup>, carrying out informal engagement with the community, seeking more information from the applicant, negotiating section 106 agreements and undertaking Environmental Impact Assessment screening<sup>64</sup>. Local people and councillors will need to be able to comment on planning applications as they can at the moment. An approved provider would not be able to decide the planning application – they would need to pass a report and recommendation to the local planning authority for decision.
- 8.14 When a local planning authority in a test area receives a report and recommendation from an approved provider for a decision, it would be required to take the decision within a short specified period (perhaps a week or two); we will ensure that the application could not be delayed unreasonably. Authorities would continue to process in the normal way any planning applications they received directly from applicants.

Question 8.3: What should applicants, approved providers and local planning authorities in test areas be able to?

Standards and performance

- 8.15 Approved providers would not be able to process applications in which they and the member(s) of staff dealing with the application have an interest. They would also

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<sup>63</sup> Under the Town and Country Planning (Development Management Procedure) (England) Order 2015 (made under section 74 of the Town and Country Planning Act 1990).

<sup>64</sup> Under section 62 of the Town and Country Planning Act 1990.

need to demonstrate that they have the professional skills and capabilities to process planning applications on behalf of applicants, and we are interested in your views on how this should be established. We would expect high levels of performance both from approved providers and local planning authorities involved in the test, but may need to relax the current designation approach<sup>65</sup> for local planning authorities participating in the testing of competition, given the different circumstances in which they would be operating.

Question 8.4: Do you have a view on how we could maintain appropriate high standards and performance during the testing of competition?

## Information

- 8.16 Local planning authorities and approved providers would need to share information so that planning applications are processed effectively during the test. Local planning authorities would need to provide an approved provider with the planning history for the site relevant to the application, so the provider could for example ascertain whether it is a repeat application<sup>66</sup> and whether there are any other outstanding planning permissions in relation to the site.
- 8.17 Approved providers would need to provide summary details to the relevant local planning authority of any planning applications they receive directly, so that the application could be listed on the planning register. We intend to provide that information can only be shared between providers and planning authorities for the purposes of processing planning applications during the testing of competition and must not be disclosed to any other persons.

Question 8.5: What information would need to be shared between approved providers and local planning authorities, and what safeguards are needed to protect information?

- 8.18 Competition could benefit both communities and applicants. A more effective and efficient planning system would be better able to secure the development of the homes and other facilities that communities need. Improved choice in the services on offer would mean that applicants would be able to shop around for the services which best met their needs.

Question 8.6: Do you have any other comments on these proposals, including the impact on business and other users of the system?

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<sup>65</sup> Under section 62A of the Town and Country Planning Act 1990.

<sup>66</sup> Under section 70A of the Town and Country Planning Act 1990.

# Chapter 9: Information about financial benefits

9.1 The potential financial benefits of planning applications are not always set out fully in public during the course of the decision making process, particularly for larger, more significant or controversial applications which are more likely to be considered by a planning committee. This has a negative impact on local transparency and prevents local communities from both understanding the full benefits that development can bring and fully holding their authority to account for the decisions it makes.

9.2 Financial benefits can accrue to local areas as a result of development, which can influence how local communities perceive development. An evaluation of the New Homes Bonus found that the bonus has had a positive impact on local authority attitudes towards new housing<sup>67</sup>. The 2013 British Social Attitude survey found that people might be more supportive of the development of new homes in their area if they thought that local authorities might receive more funding<sup>68</sup>.

9.3 Despite amending Planning Practice Guidance to make clear that local finance considerations may be cited for information in planning committee reports (even where they are not material to the decision), we remain concerned that potential financial benefits may not be being fully set out publicly in planning committee reports<sup>69</sup>. This prevents local communities from seeing the financial benefits of development, potentially preventing a change in attitudes towards development. We are addressing this issue through the Housing and Planning Bill.

What are we proposing?

9.4 The Housing and Planning Bill proposes to place a duty on local planning authorities to ensure that planning reports, setting out a recommendation on how an application should be decided, record details of financial benefits that are likely to accrue to the area as a result of the proposed development. It also explicitly requires that planning reports list those benefits that are “local finance considerations”<sup>70</sup> (sums payable under Community Infrastructure Levy and grants from central government, such as the New Homes Bonus).

9.5 The Bill also provides for the Secretary of State to prescribe, through regulations:

- other financial benefits beyond “local finance considerations”, that must be listed in planning reports if they are likely to be obtained as a result of the proposed development;

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<sup>67</sup> Evaluation of the New Homes Bonus, DCLG, December 2014 - around 40 per cent of planning officers agreed the Bonus had resulted in officers and their elected members being more supportive of new homes.

<sup>68</sup> People were asked if they would be more supportive of new homes if the government provided local authorities with more money to spend on services for each new home that is built. 47 per cent of respondents stated that this would result in them becoming more supportive of new homes.

<sup>69</sup> Evaluation of the New Homes Bonus – 56 per cent of officers said that they never took into account Bonus revenues when considering planning applications. The research found that views on the Bonus are evolving and consideration of it in the context of planning applications was likely to change.

<sup>70</sup> Section 70 of the Town and Country Planning Act as amended by section 143 of the Localism Act 2011.

- information about a financial benefit that must be recorded in a planning report; and,
- A financial benefit to be listed in the planning report where it is payable to another person or body other than to the authority making the planning decision.

## Other financial benefits that should be listed

9.6 The Bill proposes a requirement for “local finance considerations” to be listed in planning reports. However, new development can bring a number of other financial benefits beyond “local finance consideration”. New homes will be chargeable for council tax and therefore bring additional revenue to the relevant local authority. New business development will be subject to business rates and similarly bring additional revenue to the relevant local authority. Also section 106 agreements<sup>71</sup> can require a sum or sums to be paid to mitigate the impact of development.

9.7 We are therefore proposing that, alongside “local finance considerations” as defined in section 70 of the Town and Country Planning Act, the following benefits should be listed in planning reports where it is considered likely they will be payable if development proceeds:

- Council tax revenue;
- Business rate revenue;
- Section 106 payments.

Question 9.1: Do you agree with these proposals for the range of benefits to be listed in planning reports?

## Information about a financial benefit that must be recorded

9.8 Local communities may be particularly interested in the estimated level of the financial benefits that might result from a proposed development and we are proposing that this should be reported for each financial benefit that is listed in a planning report. However, this needs to be proportionate and in practice a report to a planning committee will include an estimate of what appears to the person making the report to be the likely value of the benefit to be obtained (i.e. the best estimate at the time the report is produced). This is likely to mean:

- Community Infrastructure Levy - the tariff from the authority’s charging schedule that is likely to be applied for the proposed development;
- government grant<sup>72</sup> – calculating an estimate of the of the likely grant to be received;
- council tax revenue – making a broad judgement about the likely council tax band for new properties and subsequently estimating the likely additional council tax revenue, or for existing properties estimating the impact of the development on the current council tax band;

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<sup>71</sup> Under section 106 of the Town and Country Planning Act 1990. Section 106 agreements may only be a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. Such payments should be material to a planning decision and therefore already included in a planning report.

<sup>72</sup> Under “local finance considerations” such as the New Homes Bonus.

- business rates revenue – making a broad judgement about the potential rateable value for the property following development and subsequently estimating the likely additional business rate revenue; and,
- section 106 payments – the payment level that has been negotiated with the developer where this has taken place at the time of the report.

## Other persons or bodies receiving a financial benefit

9.9 A financial benefit might accrue to a local authority or body other than the one making the planning decision. For example, a National Parks Authority or the Broads Authority may grant planning permission but the additional council tax or business rate revenue from the development will go to the relevant local authority. In addition to any payments made to the local planning authority making the decision, we are therefore proposing to prescribe that financial benefits accruing to any local authority, or if and where relevant a Combined Authority or Community Infrastructure Levy charging authority<sup>73</sup>, should be listed in the planning report, recognising that authorities may need to liaise to collate some of the information required to be reported in the planning report.

9.10 In a few circumstances, developers may make financial payments to a local community where they propose to develop a site as for example, shale gas companies are committed to doing or for wind development. We are, therefore, interested to hear if there are other beneficiaries, such as a local community, that we should be considering when preparing regulations and the type of developments they might receive benefits or payments from.

Question 9.2: Do you agree with these proposals for the information to be recorded, and are there any other matters that we should consider when preparing regulations to implement this measure?

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<sup>73</sup> Section 206 of the Planning Act 2008 provides for the Mayor of London to be a charging authority for the Community Infrastructure Levy.

# Chapter 10: Section 106 dispute resolution

10.1 We are introducing a new dispute resolution mechanism for section 106 agreements, to speed up negotiations and allow housing starts to proceed more quickly. This consultation seeks views on some of the detail about our proposals for how this new process will work, including the proposed scope, processes for commencing and running the dispute resolution, appointed persons and post-dispute resolution.

## Background

10.2 Obligations under section 106 of the Town and Country Planning Act 1990 help mitigate the impact of development to make it acceptable in planning terms. Policy and law on this is set out within the National Planning Policy Framework and in the Community Infrastructure Levy Regulations 2010. Delays in granting planning permission slow the rate at which new development is delivered and can increase costs.

## What are we proposing?

10.3 We are introducing a dispute resolution mechanism for section 106 agreements through the Housing and Planning Bill. The dispute resolution process is intended to be provided by a body on behalf of the Secretary of State, concluded within prescribed timescales, and to provide a binding report setting out appropriate terms where these had not previously been agreed by the local planning authority and the developer.

## Scope of the dispute resolution process

10.4 The dispute resolution process will potentially apply to any planning application where the local planning authority would be likely to grant planning permission where there are unresolved issues relating to section 106 obligations. Regulations may set a size threshold or other criteria that applications must meet in order to be eligible for dispute resolution, though we propose not to set any thresholds or criteria at this stage. This would mean that the dispute resolution process would be available in a broad range of cases, including some small scale ones with relatively simple section 106 obligations. We consider that delays to section 106 agreements may affect smaller developers particularly acutely and that they should also benefit from measures to speed up the process.

Question 10.1: Do you agree that the dispute resolution procedure should be able to apply to any planning application?

## Commencing the dispute resolution process

10.5 The dispute resolution process can be initiated at the request of the applicant, the local planning authority or another person as set out in regulations, by making a request to the Secretary of State. We consider that the existing statutory timeframes (8 weeks for a minor application, 13 weeks for a major application and 16 weeks for an application accompanied by an Environmental Impact Assessment), with



extensions possible where agreed, are the most appropriate time limits before the dispute resolution process can be triggered.

10.6 The regulations can set out when requests for dispute resolution can be made as well as their form and manner. We consider that such requests should be made in writing, provide full details of the planning application in question (including plans and supporting documents), a draft section 106 agreement and a statement clearly setting out the matters which are the subject of dispute.

10.7 Upon receiving a request, there would be a statutory duty on the Secretary of State to appoint someone to help resolve any section 106 issues that are still in dispute. This would only apply if the Secretary of State considers that the local planning authority were likely to grant planning permission if satisfactory planning obligations were entered into. The new duty would not apply where the relevant planning application is being appealed or is before the courts, or has been called in by the Secretary of State for determination.

10.8 Where a request is made to initiate the dispute resolution process, it is intended that there will be a short 'cooling off' period prior to a person being appointed. This will give the local planning authority and applicant a final opportunity to focus minds and resolve outstanding issues. Where this is achieved the party requesting dispute resolution can withdraw the request. . We consider that two weeks would be an appropriate length of time for the cooling off period, striking a balance between allowing a late agreement on matters of dispute and enabling a speedy process.

Question 10.2: Do you agree with the proposals about when a request for dispute resolution can be made?

Question 10.3: Do you agree with the proposals about what should be contained in a request?

Question 10.4: Do you consider that another party to the section 106 agreement should be able to refer the matter for dispute resolution? If yes, should this be with the agreement of both the main parties?

Question 10.5: Do you agree that two weeks would be sufficient for the cooling off period?

#### Appointed person to deliver the dispute resolution process

10.9 We intend that the dispute resolution process would be undertaken by an independent body on behalf of the Secretary of State. We envisage that this body will consider requests and appoint people who will help resolve outstanding issues once the dispute resolution process has been requested. There is scope for the level of qualifications of the appointed person to be set out in the regulations.

Question 10.6: What qualifications and experience do you consider the appointed person should have to enable them to be credible?

## Running the dispute resolution process

- 10.10 The Secretary of State will have discretion, through regulations, to set the level of fees payable. Regulations could also give the appointed person the ability to award costs where, for example, either side does not engage in the resolution process or if one party is found to have acted unreasonably. We propose that fees should be set in such a way that in normal circumstances the costs of the process would be shared evenly between the local planning authority and the applicant.
- 10.11 The appointed person would have a set time for producing a report. We envisage that in many cases they could produce their report in four weeks. We would like to explore through consultation what the maximum time should be for the appointed person to prepare their report and send it. The local planning authority and applicant would be required to cooperate with the appointed person throughout the process, comply with requests for information and to participate in any meetings that are arranged. Regulations can also set out what the appointed person must and must not take account of as part of their consideration of the matter and how corrections can be made to the report. We consider that the matters open to be considered by the appointed person should be limited to those in dispute between the parties.
- 10.12 The appointed person's report would set out the matters in dispute, the steps taken to resolve these and the terms of the section 106 (if both sides are in agreement) or recommendations as to what the appropriate terms would be (if parties continue to disagree). The regulations will also set out the manner and timing of the appointed person's report. We propose that the report should be published on the local planning authority's website as soon as reasonably practical to ensure the transparency of the process.
- 10.13 In circumstances where there may be an error in the appointed person's report, we consider that there should be a mechanism for this to be corrected. This is so that the validity of the report and its recommendations are not undermined. It is acknowledged that there is a risk that such a process, framed too broadly, could act like an informal appeal process, delaying the outcome of dispute resolution. We therefore propose that either party would be able to request the correction of errors.

Question 10.7: Do you agree with the proposals for sharing fees? If not, what alternative arrangement would you support?

Question 10.8: Do you have any comments on how long the appointed person should have to produce their report?

Question 10.9: What matters do you think should and should not be taken into account by the appointed person?

Question 10.10: Do you agree that the appointed person's report should be published on the local authority's website? Do you agree that there should be a mechanism for errors in the appointed person's report to be corrected by request?

## Post-dispute resolution

- 10.14 We would like to explore through consultation what the most appropriate maximum time should be for entering into section 106 obligations and determining the planning application following the issuing of the report, which we consider could be between two and four weeks after the report is received. Regulations could allow for different periods to be set to take account of circumstances, including the scale and complexity of certain section 106s. The parties can still enter into an agreement during the prescribed period with terms that differ from the report as long as the parties agree.
- 10.15 The range of decisions that the authority can take after the report is received will be limited. As such, the local planning authority would be unable to refuse the application on a ground that relates to the appropriateness of the terms of the section 106, except in prescribed cases or circumstances. If no section 106 obligation is completed within the prescribed period, permission would have to be refused. Where the application is subsequently appealed following dispute resolution, the Inspector (or Secretary of State) must have regard to the report issued by the appointed person.
- 10.16 There may be circumstances where the local planning authority seeks to grant the application and make the grant conditional on the other party undertaking other obligations not specified in the section 106 agreement, for example through use of section 278 (Highways Agreements). We are considering whether to restrict this through regulations.

Question 10.11: Do you have any comments about how long there should be following the dispute resolution process for a) completing any section 106 obligations and b) determining the planning application?

Question 10.12: Are there any cases or circumstances where the consequences of the report, as set out in the Bill, should not apply?

Question 10.13: What limitations do you consider appropriate, following the publication of the appointed person's report, to restrict the use of other obligations?

Question 10.14: Are there any other steps that you consider that parties should be required to take in connection with the appointed person's report and are there any other matters that we should consider when preparing regulations to implement the dispute resolution process?

# Chapter 11: Permitted development rights for state-funded schools

- 11.1 The government is committed to opening at least 500 new state-funded free schools during this Parliament, which could provide up to 270,000 new school places. To support this ambition, we are proposing to increase current permitted development rights that support delivery of new state-funded schools and the expansion of current schools.
- 11.2 Existing permitted development rights allow certain buildings to change use to a state-funded school, allow for extensions to be added to existing schools, and allow the temporary use of buildings as state-funded schools for up to one academic year, without the need to apply for planning permission.
- 11.3 The government is committed to ensuring there is sufficient provision to meet growing demand for state-funded school places, increasing choice and raising educational standards. The current permitted development rights have been developed over recent years to support the delivery of these aims, by making it easier for new schools to open, good schools to expand and all schools to adapt and improve their facilities.

## What are we proposing?

- 11.4 Our proposals seek to build on these rights. They seek to ensure that where there is an identified need for school places, schools can open quickly on temporary sites and in temporary buildings while permanent sites are secured and developed. It is also the intention to allow larger extensions to be made to school buildings in certain cases without the need for a planning application.
- 11.5 The proposals are to:
- Extend from one to two academic years the existing temporary right to use any property within the use classes for a state-funded school;
  - Increase from 100 m<sup>2</sup> to 250 m<sup>2</sup> the threshold for extensions to existing school buildings (but not exceeding 25% of the gross floorspace of the original building); and,
  - Allow temporary buildings to be erected for up to three years on cleared sites where, had a building not been demolished, the existing permitted development right for permanent change of use of a building to a state funded school would have applied.
- 11.6 Free schools on temporary sites contribute to the delivery of new school places, and so these measures will further support the roll out of the free schools programme. In particular, they will help avoid delays for those wishing to set up a new school, and enable providers to respond quickly and flexibly to local demands, while planning permission for a permanent site is being sought.

Extending temporary rights to use any property within the use classes for a state-funded school will also better reflect the lead in time necessary for bringing on stream permanent school sites.

- 11.7 Before changing use of a building or land to a state-funded school for a single year, approval must be sought from the relevant Minister to use the site as a school, who must notify the local authority of the approval. When permanently changing use of a building to a state-funded school, prior approval must be sought from the local planning authority as to highways, noise, and contamination impacts.
- 11.8 As there are often space restraints on existing sites, we would also be interested in views on whether other changes should be made to the thresholds within which school buildings could be extended, such as reducing the limit on building extensions within 5 metres of a boundary of the curtilage of the premises.

Question 11.1: Do you have any views on our proposals to extend permitted development rights for state-funded schools, or whether other changes should be made? For example, should changes be made to the thresholds within which school buildings can be extended?

Question 11.2: Do you consider that the existing prior approval provisions are adequate? Do you consider that other local impacts arise which should be considered in designing the right?

## Section 12: Changes to statutory consultation on planning applications

- 12.1 In certain circumstances, consultation must take place between a local planning authority and certain organisations, prior to a decision being made on a planning application. The organisations in question, known as statutory consultees, are under a duty to respond to the local planning authority within 21 days (or a longer period if agreed with the local authority) and must provide a substantive response to the application in question.

What are we proposing?

### Improving the performance of all statutory consultees

- 12.2 Statutory consultees are required to report their performance in terms of responding to consultation requests about planning applications each year. The most recent performance data, provided by statutory consultees that respond to the majority of planning application consultee requests, indicates that for between 5 and 12% of cases they requested and received additional time from the local planning authority to respond beyond the 21 day statutory period.
- 12.3 The government considers that requests for extension of time may affect the ability of local planning authorities to reach timely decisions on applications and that there is scope to reduce them.
- 12.4 To address this issue, the government is interested in hearing views on the benefits and risks of setting a maximum period that a statutory consultee can request when seeking an extension of time. The performance data indicates that the average extension period is between 7 and 14 days and therefore a period of 14 days may be an appropriate maximum period to set for any extension sought.

Question 12.3: What are the benefits and/or risks of setting a maximum period that a statutory consultee can request when seeking an extension of time to respond with comments to a planning application?

Question 12.4: Where an extension of time to respond is requested by a statutory consultee, what do you consider should be the maximum additional time allowed? Please provide details.

# Chapter 13: Public Sector Equality Duty

13.1 The proposals covered in this consultation have been assessed by reference to the public sector equality duty contained in the Equality Act 2010. The overall aim of these proposals is to speed up and simplify the planning system and ensure it is supporting the delivery of new homes that the country needs. None of the proposals are specifically aimed at persons with a protected characteristic and we have not identified any adverse cumulative impact of these proposals. The measures covered by this consultation are:

- proposals to link fees for planning applications more effectively to the service which is provided;
- details of the proposed approach to enabling planning bodies to grant permission in principle for housing development on sites allocated in local and neighbourhood plans or identified on brownfield registers; and allowing small builders to apply directly for permission in principle for minor development;
- proposals to require local authorities to have a statutory register of brownfield land that is suitable for housing development and improving the availability and transparency of up-to-date information;
- proposals for creating a small sites register to achieve a doubling in the number of custom build homes by 2020;
- proposals to speed up and simplify neighbourhood planning and giving more powers to neighbourhood forums;
- proposals for criteria to inform decisions on intervention if local plans are not produced by early 2017 together with the content of league tables
- proposals extending the existing designation approach to include applications for non-major development;
- proposals for testing competition in the processing of planning applications;
- detailed proposals for putting the economic benefits of proposals for development before local authority planning committees;
- detailed proposals for a Section 106 dispute resolution service;
- proposals for facilitating delivery of new state-funded school places, including free schools, through expanded Permitted Development Rights; and,

- proposals for improving the performance of all statutory consultees.
- 13.2 These proposals are focused on streamlining and speeding up the planning system and supporting a general increase in housing delivery for the benefit of all groups of people. For example, an increase in house building may reduce demand for rental properties helping to reduce upward pressures on rents. We do not envisage a significant differential impact of any of these proposals on protected groups (those who share a “protected characteristic”; namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity).
- 13.3 Proposals to speed up and simplify the planning system include the measures on neighbourhood plans, permission in principle, the brownfield and small sites register, the s106 dispute resolution service and proposals for improving the performance of statutory consultees. These proposals will improve and speed up the overall operation of the planning system. We have not identified any adverse equalities impacts of these proposals but will be interested to hear views on these proposals and any potential equalities impacts through this consultation.
- 13.4 The proposed criteria to inform decisions on intervention if local plans are not produced by early 2017 and our proposals to extend the designation approach to include non-major developments are focused on improving the performance of local authorities, whilst the proposals for putting the economic benefits of proposals for development before local planning authority committees seeks to enhance local decision making. These proposals will improve the performance of local planning authorities.
- 13.5 We have also included a proposal to support the delivery of free schools through expanded permitted development rights. These changes are intended to facilitate the development of state-funded schools.
- 13.6 There is limited data available about the involvement of protected groups in the planning process or as developers. We are keen to hear about any potential impacts of these new proposals on those with a protected characteristic, suggestions for any appropriate mitigation together with any supporting evidence which can assist in deciding the final policy approach in due course.

Question 13.1: Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equalities Act 2010? What evidence do you have on this matter? Is there anything that could be done to mitigate any impact identified?

Question 13.2 Do you have any other suggestions or comments on the proposals set out in this consultation document?