

# England planning news

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## Headline news

### Housing White Paper: making connections to boost housing delivery

Perhaps no longer a headline, but still the biggest planning news in recent months, the Housing White Paper was published on 7 February, together with a raft of consultation outcomes, new consultations and other documents (see the collection [here](#), and related summaries below).

'Fixing our broken housing market' mainly focuses on proposed measures to increase the supply of housing. Lichfields' review of the White Paper provides a summary of the proposals, analyses what the Government expects of councils in terms of development management, local plans and neighbourhood plans, and what is expected of private developers.

The Lichfields' review also covers the proposals for:

- Build to Rent: longer tenancies and affordable private rental homes;
- Small sites, and more support for small and medium-size builders;
- Statutory plans including design expectations;
- More affordable housing tenures and certainty for how starter homes will be taken forward; and
- The continuing 'defence' of the Green Belt, with a clearer approach for considering land release.

In terms of the detail in the White Paper, the Government defines its proposals as four steps to achieving the objective of boosting new housing supply, to deliver 'between

225,000 and 275,000 homes every year'. The steps are categorised as follows (together with their key proposals, most of which it is proposed will be implemented by changes to the National Planning Policy Framework (NPPF) - and in national Planning Practice Guidance (PPG)):

1. Planning for the right homes in the right places (principally by using local and neighbourhood plan policies):
  - Ensuring local authorities (LAs) have an up-to-date local plan in place (to be reviewed at least every 5 years);
  - Simplifying plan-making;
  - Introducing a standardised approach to assessing housing requirement;
  - A greater focus on joint local plans (through a 'Statement of Common Ground');
  - Clear policies for addressing housing requirements of groups with particular needs, such as older people and disabled people;
  - Greater transparency for land ownership and a greater role for the Land Registry;
  - Making more land available (brownfield, public land, estate regeneration, small and medium sized sites, etc.);
  - Keeping and reinforcing Green Belt protections;
  - Reinforcing the need for good design;
  - Encouraging higher densities; and
  - Legislating to allow locally accountable New Town Development Corporations.
2. Building homes faster (mainly by better linking infrastructure with housing development, more efficient development management and addressing the construction skills' shortages):
  - Local planning authorities (LPAs) having the opportunity to agree their housing land supply on an annual basis (for a one-year period);
  - Increasing nationally set planning fees; ►►

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## QUOTE OF THE MONTH



CIL as currently configured is not fulfilling the original intention of providing a faster, fairer, simpler, more certain and more transparent way of ensuring that all development contributes something towards cumulative infrastructure need.

**A New Approach to Developer Contributions', the newly published report by the Community Infrastructure Levy (CIL) Review Group, 7 February 2017**

## THE LICHFIELDS PERSPECTIVE

Incremental reforms to smooth some rough edges off the planning system – along with other White Paper proposals – should avoid hiatus and improve the environment for delivering housing. That gives us reason to be hopeful.

**Matthew Spry, Senior Director, Head of Economics**

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- Consulting on introducing a fee for making a planning appeal;
  - Requiring more information to be provided about the timing and pace of delivery of new housing;
  - Shortening the timescales for implementing a permission to 2 years;
  - Speeding up and simplifying the completion notice process; and
  - Introducing a new housing delivery test, to ensure that LPAs are held accountable.
3. Diversifying the housing market (focusing on increasing the numbers of small and medium-size builders, promoting more varied forms of tenure and encouraging 'modern methods of construction'):
- Supporting small and medium-house builders, custom build, accelerated construction and modular housing; and
  - Introducing affordable private rental homes for Build to Rent schemes.
4. Helping people now (by meeting all of the population's diverse housing needs):
- Creating an income cap (£80,000 or £90,000 in London) for starter homes, and a 15 year taper period during which if the house is sold some or all of the receipts should be repaid, as well as a 10% affordable home ownership unit requirement for housing sites; and
  - Allowing more flexibility in terms of affordable housing tenures, including rent products;

More details and comment are provided in the summaries of the various consultation outcomes below.

It is of interest that the proposed office to residential permitted development right has seemingly 'gone quiet', and is not mentioned in the White Paper (although we are given to understand from DCLG that it will come into force this summer).

Consultation on the White Paper's proposals closes on 2 May; a series of regional events, led by Housing and Planning Minister Gavin Barwell on the Housing White Paper is currently underway across the country.

## Law

### Secondary legislation

#### The Housing and Planning Act 2016 (Commencement No. 4 and Transitional Provisions) Regulations 2017

The Housing and Planning Act 2016 (Commencement No.4 and Transitional Provisions) Regulations 2017 bring into force several Housing and Planning Act provisions, mostly relating to compulsory purchase and social housing providers.

Most provisions cited in the Regulations came into force on 3 February, but those relating to social housing regulation come into force on 6 April.

### Draft legislation

#### Neighbourhood Planning Bill: Lords' Report stage ended

The Neighbourhood Planning Bill's Report stage in the House of Lords commenced on 23 February and has now been completed. At the time of writing, the date for its Third Reading has yet to be announced.

The updated version of the Bill, as amended in Grand Committee, was published following the conclusion of Committee stage debate on 8 February. A version of the Neighbourhood Planning Bill showing changes made in Committee is also available.

During Report stage, there were a number of amendments of note, including debate on day 1 regarding an amendment (no. (9)) proposed by Baroness Gardner, seeking to extend public consultation periods by a day for every public holiday that they fall on. DCLG's Lord Bourne advised the Chamber that the Government would 'definitely do what she wants us to do in relation to public holidays by the end of the year' as it is a 'common sense provision'. Consequently the amendment was withdrawn. Lord Bourne expressed concerns regarding a second amendment which proposed extending consultation period by a week where it took place during a week that includes a day August, Christmas Day, or Boxing Day, and the amendment was not moved.

Amendment 18, moved by Liberal Democrat

Lord Stunell, was added to the Bill on report; it seeks to ensure that the SoS cannot prevent LPAs from attaching conditions to planning permissions where those conditions meet policy tests in the NPPF. Government amendments to clause 13 were also agreed on report; they add requirements for public consultation and Government guidance on how the restrictions on conditions operate. Key amendments at Committee stage in the Lords included:

1. Definition of when a neighbourhood development plan (NDP) is at examiner's report stage, or not (amendment to Clause 1);
2. Circumstances where a neighbourhood planning body must be notified of a planning application in its area (amendment to Clause 2). Of particular interest, the amendments introduce the obligation (after the NDP has passed the independent examination stage) for an LPA to notify a Parish Council/ Neighbourhood Forum of any valid 'relevant planning application', or alterations to that application, that fall within the Neighbourhood Plan Area and that has been accepted by the LPA.

Lord Bourne represented the Government in the debate and said:

'Amendments 6 and 131 put beyond doubt that neighbourhood planning groups which are well on their way to completing a neighbourhood plan will be aware of future planning applications in their area. These amendments also reaffirm the Government's commitment to ensure that neighbourhood plans are given proper consideration when planning applications are decided. [...] to require local planning authorities to notify neighbourhood planning groups automatically of any future planning applications or alterations to those applications in the relevant neighbourhood area after the neighbourhood plan has successfully passed independent examination.'

3. A requirement of the Secretary of State (SoS) to issue guidance for LPAs on how local development documents (LDDs) - taken as a whole - should address the housing needs that result from old age or disability (amendment to Clause 7(3)); and
4. Various amendments related to compulsory purchase.

During the second day of the Committee stage debate Lord Bourne of Aberystwyth also said: ▶▶

'[...]should there be sufficient appetite we will look into making local bodies accountable for the new town development corporations, with new legislation should local areas show that they would use it.'

This had likewise already been referred to in the Housing White Paper (para 1.36).

### Draft Housing and Planning Act 2016 (Permission in Principle etc) (Miscellaneous amendments) (England) Regulations 2017

The draft Housing and Planning Act (Permission in Principle etc) (Miscellaneous amendments) (England) Regulations 2017 have been debated by the House of Commons Delegated Legislation Committee. The draft Regulations are intended to make minor consequential and miscellaneous amendments to primary legislation, and to ensure that certain provisions that currently only apply to planning permissions will also apply to permission in principle.

### Proposed legislation

#### Response to proposed starter homes regulations: technical consultation

The key outcome of the starter homes regulations consultation, the decision not to implement a compulsory starter homes' percentage requirement in the first instance, is outlined in the Housing White Paper, and in the response to the consultation on changes to the NPPF (see below).

The Government says that this decision has been made in response to consultation outcomes; almost four fifths of respondents supported a locally set threshold for the percentage of starter homes required on certain sites, and just over four fifths said that the 20 per cent requirement would be too high. Almost ninety per cent supported the proposed exemptions from the requirement.

The decision not to proceed with the starter homes' percentage requirement has meant that several elements of the consultation are no longer relevant. Therefore whilst the Government will commence the general duty on councils to promote the supply of starter

homes to support housing delivery, it acknowledges the concerns expressed by many sectors that starter homes could distort the market and 'continues to engage with lenders, developers, valuers and local authorities to address the concerns'. The Government's view is that not proceeding with a percentage requirement, together with the restricted/ taper period, will reduce the likelihood of market distortion.

According to the response, sites that benefit from the Starter Homes Land Fund will include a high proportion of starter homes alongside other forms of affordable housing. Related to this, and as noted below, the Government has launched a consultation on 'changes to the NPPF which propose the introduction of a clear policy expectation that suitable housing sites deliver a minimum of 10% affordable home ownership units'. In addition, the Government now proposes that the Regulations will:

- detail restrictions on the sale and sub-letting of starter homes for a 15 year restricted period, following initial sale (it is not entirely clear yet what 'the steps it is taking around the repayment taper' will mean in practice);
- to require a minimum 25% mortgage, and enable the use of home purchase plans in this requirement (this is to be kept under review);
- exemptions to the age 40 cap, where joint purchasers are both first time buyers but one is over 40 (at present, there is no indication of any relationship requirement), and for injured armed

forces personnel, or the partner of someone who died in service; and  
 • to require the number of starter homes granted planning permission, and the actions taken by the LPA under the duty to promote the supply of starter homes, to be monitored (the report may be annexed to the authority's Annual Monitoring Report).

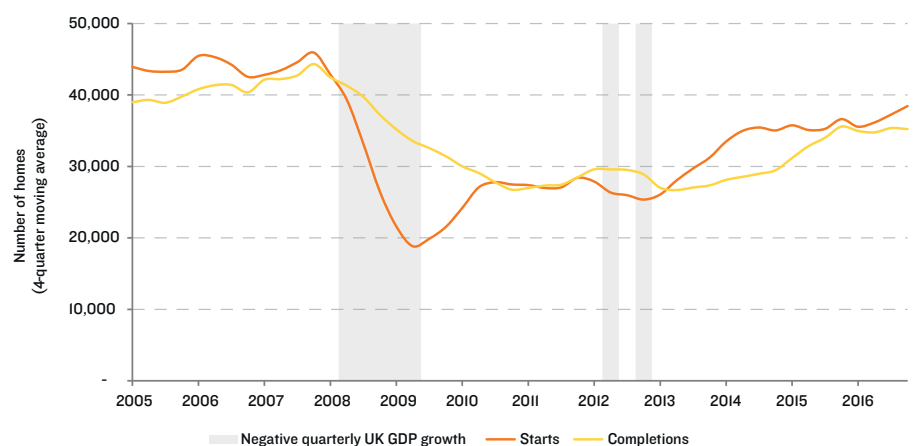
The Response also refers to the previously made decision to change the NPPF to allow more brownfield land to be released for developments with a higher proportion of starter homes, as also consulted on in the March 2016 consultation, following the Spending Review and Autumn Statement 2015.

### Update on proposed permission in principle legislation

During the debate on the draft Housing and Planning Act 2016 (Permission in Principle etc.) (Miscellaneous amendments) (England) Regulations 2017, Housing and Planning Minister Gavin Barwell said:

'Our intention is to lay the secondary legislation to introduce permission in principle through brownfield registers and by application on small sites between spring and summer this year, and then to come back with a further piece of secondary legislation that will introduce permission in principle through development plans – local or neighbourhood – shortly after that. That is the timescale in terms of the substantive regulations.' ■

Figure 1 : Housing starts now at their highest level since 2008 in England



Source: DCLG, Lichfields analysis

The chart shows that housing starts in England increased every quarter in the last three quarters of 2016; by the end of 2016, starts were at their highest level since 2008. Similarly, housing completions throughout the year remained at their highest levels since 2008, at around 35,000 per quarter in 2016.

## In the courts

### Whether local planning authorities should give reasons for decisions

A recent Court of Appeal judgement may lead LPAs to consider whether, in certain circumstances, reasons should be given for decisions made by planning committees, where they are contrary to an officer's recommendation.

In *Oakley v South Cambridgeshire DC* (2017), Lord Justice Elias held that where a planning committee disagrees 'with a careful and clear recommendation from a highly experienced officer on a matter of such potential significance to very many people', this suggests that 'some explanation is required'.

In rejecting the officer's recommendation to refuse planning permission for a 3000 seat stadium on a Green Belt site, it was not clear how the 'numerous factors at play' had been assessed by the planning committee.

A duty to give reasons was not imposed by the judgement, but Lord Justice Sales noted:

'Members of the public are entitled to expect the duty to give reasons to be satisfied in a reasonably clear fashion, and in the absence of some statement of reasons specifically adopted by the local planning authority will naturally look to the relevant officer's report to find out what the reasons for a particular decision were. I do not think that they can reasonably be expected to cast around to look for other documents in the planning file to try to piece together the reasoning of the planning authority.'

The High Court had previously dismissed the claim for judicial review, ruling that there was no common law duty that meant it was necessary to give reasons for a grant of planning permission - even when contrary to officer advice. The Court of Appeal has now upheld the claimant's appeal and declared that, 'the respondent authority was in breach of a common law duty to provide reasons for its decision to grant planning permission for the development'.

The original application for judicial review sought to have the permission quashed but now, the appropriate relief is to be decided once the parties have had an opportunity to respond in writing.

### Timing of neighbourhood plans in relation to local plans

A High Court judgement addressing various matters, including whether a neighbourhood plan may be brought forward in advance of a local plan, has been upheld by the Court of Appeal (*DLA Delivery Ltd., R (On the Application Of) v Lewes District Council* (2017)).

DLA Delivery Ltd., whose site was not included in the draft Newick Neighbourhood Plan (NNP), had challenged the decision by Lewes District Council to proceed to referendum (under para. 12 of Schedule 4B to the Town and Country Planning Act 1990). The NNP was made just prior to the July 2015 High Court judgement.

In order to proceed to referendum stage, a draft NDP must meet the basic conditions set out at para. 8(2) of Schedule 4B, one of which in (8(2)(e) is that the plan 'is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)'.

The Lewes Core Strategy Local Plan Part 1 (2016) had not been adopted in 2015, and the development plan included (and continues to include) the saved policies of the Lewes District Local Plan 2003, pending the adoption of a new 'Local Plan Part 2'.

DLA Delivery Ltd. submitted that it was not possible for the NNP to be in general conformity with the Local Plan because the adopted Local Plan was out of date, and the Core Strategy was emerging. There were no strategic policies that it could be in conformity with, and it could not be in conformity with the 2003 plan and the draft Core Strategy

It was noted by the Court of Appeal judges that in his 2015 High Court judgement, Justice Foskett referred to 'Gladman' and 'Woodcock', where in both cases, 'the court had accepted that the absence of strategic policies for housing in an up-to-date plan did not preclude the making of a neighbourhood development plan'.

Having referred to this background, Lord Justice Lindblom found:

'Paragraph 8(2)(e) does not require the making of a neighbourhood development plan to await the adoption of any other development plan document. It does not prevent a neighbourhood development plan from addressing housing needs unless or until there is an adopted development plan document in place setting a housing requirement for a period coinciding, wholly or partly, with the period of the neighbourhood development plan'.

He went on to say:

'The guidance in the PPG explicitly accepts that a neighbourhood development plan can be prepared "before or at the same time" as a local plan, and explains how a local planning authority should proceed if the neighbourhood development plan is brought forward first.'

Lord Justice Lindblom also concluded that the requirements of conformity with a local plan relate to an adopted plan, not an emerging plan.

**Comment:** According to 'Fixing our broken housing market', the Government proposes to amend planning policy so that neighbourhood planning groups can obtain a housing requirement figure from their LPA. The reason the Government has given for this measure, 'to help avoid delays in getting a neighbourhood plan in place', infers that such delays are now occurring. Whilst the ability to obtain a housing requirement figure will clearly assist the neighbourhood plan-making process, this case and others before it have found that there is no need for such delay.

With reference to another ground of appeal, the Lord Justices accepted the examiner should have articulated more fully why he was confident that 'Suitable Alternative Natural Greenspaces' ('SANGs') - required by most or all of the housing sites in the NNP - would be provided in a timescale appropriate for the delivery of NNP allocations, but concluded that fuller reasons would not change the examiner's decision, and therefore should not lead to a decision to proceed to referendum to be quashed. ■

## Alternative site assessment in an AONB

The Court of Appeal has upheld a High Court judgement regarding a housing proposal in Crowborough, within an East Sussex Area of Outstanding Natural Beauty (AONB), and close to Ashdown Forest Special Area of Conservation (SAC), despite disagreeing with the High Court judge's conclusions on the interpretation of para. 116 of the NPPF. The Council had challenged the Inspector's decision to grant planning permission - this succeeded and in an order dated 17 February 2016, the High Court judge had quashed the Inspector's decision.

Para. 116 requires that planning permission for major development in an AONB be refused other than in exceptional circumstances, in the public interest, and subject to an assessment that should include (inter alia) the need for the development, and the scope for developing elsewhere e.g. by meeting need in another way.

Referring to *Tesco Stores Ltd. v Dundee City Council*, Lord Justice Lindblom said that the policy must be read in its context, which in the case of para. 116 'includes the familiar and important policies of the NPPF directed to the identification and meeting of housing needs'.

The Inspector had concluded that the impact on the AONB would be neutral, and that the development would help meet identified housing and affordable housing need – which formed the basis of his consideration of alternatives. He had applied his planning judgement, as he was entitled to do, to conclude that there were few suitable housing sites outside of the AONB, there was a lack of housing in Crowborough and he was not satisfied that development would be made up elsewhere. Alternative sites would not collectively meet full objectively assessed need, and the withdrawal of the strategic sites local plan would make it less likely that affordable housing sites in particular would come forward.

In summary, Lord Justice Lindblom disagreed with the High Court judge and concluded that for the Inspector, these reasons:

1. '...informed his broader conclusion that there were, in this case, "exceptional circumstances" justifying approval of the development in the AONB, and that the appeal proposal was therefore in accordance with the policy [...] I do not think the policy in paragraph 116 of the NPPF obliged the inspector to deal in his decision letter with every potential site for housing in the district, one by one'.
2. Lord Justices Lindblom and McFarlane agreed with Justice Lang's conclusions on alternative assessment, stating that in this case:
3. 'There was no "appropriate assessment". The inspector's conclusions do not constitute an "appropriate assessment" in all but name [...] If – as she found and I would hold – the inspector's findings and conclusions on heathland management were defective in law, she was not then required to substitute findings and conclusions of her own. Indeed, she would have been wrong to do so.'
4. The Inspector's 'shortcomings' in the conclusions on heathland management were sufficient reason to invalidate the decision.

## Policy

### Policy and guidance

#### New guidance on land contamination and archaeology

Historic England has updated its Land Contamination and Archaeology Good Practice Guidance, in response to the increase in brownfield redevelopment in England, and to reflect current legislation, planning policy and guidance that is relevant to contaminated land and archaeology.

#### Tree preservation order appeals: procedure guide

The Planning Inspectorate has updated its 'Guide for Appellants: (Tree Preservation Orders – consent for works)'.

## Government announcements and new consultations

### Planning and affordable housing for Build to Rent: consultation

DCLG's Planning and affordable housing for Build to Rent consultation outlines what the Government considers to be the main benefits of Build to Rent, and the case for intervention. The Government also proposes to establish a joint committee, for it to work with industry and the wider public sector to overcome barriers to Build to Rent.

The key proposal - to support Build to Rent by amending the NPPF so as to incentivise authorities to 'plan proactively for Build to Rent where there is a need' and introduce 'affordable private rental homes' as the Build to Rent-related affordable housing contribution - is included in the White Paper, and discussed in the Lichfields' review.

The consultation document also seeks views on the proposed definition of Built to Rent by reference to tenure, typology, tenancy length, management and ownership, and on the proposed 'Affordable Private Rent'.

Responses to the 26-question consultation should be submitted by 1 May 2017.

### Outcome of the consultation on changes to the NPPF

Several elements of the Government response to the consultation on changes to the National Planning Policy Framework have been addressed by further consultation proposals in the Housing White Paper, with the background to the proposals explained further in the Response.

For example, following concerns that it is too vague, the term 'commuter hub' is not to be used, and the Government proposes to support higher densities in appropriate locations (i.e. no change) – there will no minimum level of density in national policy.

The Government also proposes to amend national policy to:

- State that the use of suitable brownfield land for housing within existing settlements should be afforded great weight; ►►

- State that residential development proposals on small sites should be treated positively;
- introduce a housing delivery test (and the consultation on its detail is underway);
- Allow the consideration of non-strategic employment sites not used (inter alia) for five years as suitable for starter homes;
- Extend the starter homes exception site policy (with no change to the grounds for refusal);
- clarify that starter homes, with appropriate local connection tests, can be acceptable on rural exception sites (the Government's response to the CLG Committee inquiry says that it will be for the LPA to decide whether or not to apply a local connection test); and
- allow development on brownfield land in the Green Belt, but only where it contributes to the delivery of starter homes and there is no substantial harm to the openness of the Green Belt.

The Government considers that a transitional period of 12 to 18 months from the publication of a revised NPPF will be sufficient for LPAs to revise their local plans, but in view of the further consultation on the definition of affordable housing, the length of the transitional period will be confirmed when the revised NPPF is published later this year.

## Summary of responses to the technical consultation on implementation of planning changes, consultation on upward extensions and Rural Planning Review call for evidence

### Technical consultation on implementation of planning changes

The February 2016 Implementation of planning changes: technical consultation covered numerous matters in 13 chapters, related to the then Housing and Planning Bill.

The consultation response addresses 8 of those chapters, and can be summarised as follows:

1. Changes to planning application fees: The proposed increases to planning fees are set out in the White Paper and alongside, the Government will engage with area wishing to reform their service in exchange for greater fee flexibility.
2. Small sites register: the White Paper explains that a requirement for LPAs to keep a small sites' register will not be introduced for the moment. The Government 'intends' to gather further evidence from LPAs and the commercial sector regarding transparency, before deciding on the future of this requirement
3. Local plans: the Response refers to measures proposed in the White Paper and the Neighbourhood Planning Bill. Most respondents (more than 60 per cent) agreed with the Government-proposed criteria for prioritising intervention in local plans, with more than 9 out of 10 respondents agreeing that collaborative and strategic plan-making, and exceptional circumstances, should be taken into account when considering intervention.
4. Competition in the processing of planning applications pilots: the Government says that the consultation has informed its understanding of the issues that the design of the pilots will need to address (the method and cost to an LPA of providing information to an approved provider for example), and that further consultation will follow. The response suggests that the pilots are not imminent and may not happen.
5. Information about financial benefits: the Government proposes to bring forward regulations 'at an appropriate opportunity' which will require LPAs to 'deliver the proposals in our consultation'. This is likely to mean reference to: community infrastructure levy (CIL); council tax revenue; government grant, business rate revenue; s106 payments; payments to the local community; and benefits to an LA other than the decision-maker. S155 of the Housing and Planning Act 2016 sets out what the regulations must or may include (not yet in force).
6. Section 106 agreement dispute

- resolution: the Government will consider dispute resolution further, as part of the review of developer contributions that will be completed prior to the Autumn Budget 2017.
7. Permitted development rights for state funded schools: new and extended permitted development rights, which reflect those consulted on, are to be introduced.
  8. Statutory consultation on planning applications: the Government consulted on setting a maximum period that a statutory consultee can request when seeking an extension of time, but has decided not to pursue this measure.

The consultation response regarding permission in principle and the brownfield register is to be published when the related regulations are laid in 'spring 2017' (although between spring and summer is now being mooted – see above).

Responses regarding neighbourhood planning and planning performance criteria were published in September 2016 and November 2016 respectively.

### Rural planning review

According to DCLG, more than 500 responses were received to the Rural Planning Review: Call for Evidence.

The evidence submitted covered a wide range of matters, including farm shops, polytunnels, reservoirs and equestrian uses. As a follow-up, the Government is currently consulting on how and whether to amend Part 6, Class A of the Town and Country (General Permitted Development) Order 2015 (as amended) (agricultural development in units of 5 hectares or more). There were a variety of differing responses regarding rural housing, housing for agricultural workers, and the permitted development right for change of use to residential. The Government is also consulting on a new agricultural to residential permitted development right for conversions of up to 750sqm, for a maximum of 5 dwellings, each of no more than 150sqm. There is a further consultation on changing the Schedule 2, Part 3, Class Q PDR threshold from 450sqm to 465sqm, to reflect Part 6 Class A and B thresholds. The consultation questions are within the response document (pp.40-41), and it appears that the consultation deadline is 2 May. ►►

According to the White Paper and alongside these measures, the Government also proposes to amend national planning policy so that it 'better supports rural housing'.

## Independent reports for Government

### Independent CIL review

The Government's aim of providing a holistic approach to future or potential changes to the planning system have meant that some documents, notably the report of the independent CIL Review Group ('the Group'), which was commissioned in November 2015, and submitted in October 2016.

The Government has not commented on the content of the Group's report, other than to infer that it is 'convincing' and that it will respond and make an announcement at Autumn Budget 2017.

Lichfields' blog provides a summary of, and comment on the report, which was informed by research by Three Dragons that was commissioned nearly two years ago (and hence it refers to 2015 data), and its own questionnaire.

The CIL review notes 'there is a patchwork of CIL and non-CIL authorities and, unless there is substantial change this is likely to remain'.

Other conclusions of note are:

1. There is 'no doubt' that the CIL regime is more complex than intended;
2. CIL is not raising as much as LAs were anticipating;
3. London Mayoral CIL, a more simple model for a specific type of infrastructure, is considered a success - and perhaps how CIL was meant to operate;
4. The many exemptions from CIL raise questions around fairness;
5. There have been numerous issues associated with the delivery of infrastructure since the inception of CIL; a particular issue being where related Grampian conditions are imposed, or where mitigation in a neighbouring authority area is most appropriate;
6. LPAs cannot borrow against future CIL receipts;

7. The PPG discourages tariff-style contributions for minor development, creating confusion and lack of certainty;
8. The community must engage at the plan-making stage, rather than with the developer as a proposal evolves;
9. Methodologies to calculate CIL vary widely, as do examiners' approaches at examination stage - setting CIL at a 'lowest common denominator level' may mean that developments able to contribute more have not done so; and
10. The pooling restriction (Regulation 123 (3)(b)) is unhelpful to the delivery of infrastructure, and can make environmental mitigation (for example in relation to protected sites) difficult.

In short, the Panel concludes:

'In the light of our findings and general observations... we do not believe that it is sensible to leave matters as they are. The failure to achieve the original aims of CIL, the complexities of the current system, including the inconsistent patchwork approach to developer contributions on a national basis, the creation of a costly bureaucracy and the potential to achieve significant improvements with some measure of change all point to a need for reform. The only question is how far such reform should go.'

The main recommendation of the report is essentially for a new, standardised local infrastructure tariff (LIT) set at a low rate, and applied 'almost without exception', with Combined Authorities able to collect a Strategic Infrastructure Tariff (SIT) for major pieces of infrastructure. Larger or strategic developments would provide additional contributions secured by s106 obligation. The pooling restriction would be completely removed, and LIT could be offset against other contributions or delivered 'in kind'. According to the Group, other than in exceptional circumstances, small developments of ten dwellings or less should pay only LIT and no s106 contributions of any type. The fact that small development is defined by reference only to dwellings emphasises the housing focus of the Government and its advisers. Given the overall sentiment, it appears likely that if the Government accepts the Group's recommendations in this regard, a combination of LIT/SIT and other contributions would apply predominantly to 'major development'

as defined by the Town and Country Planning (Development Management Procedure) (England) Order 2015.

LIT would then mostly be set following a written representations procedure, rather than 'complex examination'. There would be no Regulation 123 List, and spending would be reported via the LA's Annual Monitoring Report.

Particular points that require further consideration by the Government, before an announcement in the Autumn Budget, include:

1. The report notes that the Government may wish to exempt the soon-to-be-one-and-the-same 'affordable housing and starter homes' from LIT, and cautions 'the less funds that are raised from this tariff, then the more will have to be found from other sources to fund essential infrastructure'.
2. The CIL Review Group has strongly recommended that the Government considers how funds will be made available to LAs to support 'upfront infrastructure needs', if not by borrowing then by another mechanism such as a growth or infrastructure fund, linked to the local plan.
3. How environmental mitigation for smaller sites will be ensured, if these sites are not subject to other contributions.
4. The Group supports the Local Plans Expert Group (LPEG) recommendation that local plan-making and the setting of infrastructure charging should be closely linked. The Group also suggest that CIL is mandatory for all but the LAs where the cost of administration compared to receipts could not justify it, with 2020 as a proposed cut-off date. The Government will need to be decisive, if LIT is to evolve with a local plan; this may be difficult to achieve in the first instance, given the Government's desire for all LPAs to have a published plan now. Many authorities may not review their plan again prior to 2020, and those preparing local plans now may defer adoption of CIL until the Government's Autumn Budget announcement.
5. During a 20 February parliamentary debate on draft regulations (see below), Shadow Housing Minister Dr Roberta Blackman-Woods indicated that viability assessments should be more transparent. In response, the ►►

Housing and Planning Minister said the Government's Autumn Budget announcement 'may offer a solution to that problem in a way that I hope will command fairly wide support'.

6. The Housing White Paper also says that ensuring direct benefit for communities will form part of the Government's examination of the options for reforming the CIL system. The Group has 'highlighted the difficulties this [neighbourhood CIL] causes and the lack of evidence to suggest that the neighbourhood portion of CIL makes development any more acceptable at the local level'. The Group suggests 'rigorous integration at the plan-making stage, for both the local plan and the neighbourhood plan, over how the neighbourhood share should be spent' and that a return to increased use of s106 obligations would provide an opportunity for discussions regarding local infrastructure requirements resulting from a scheme.

### **'Cutting Red Tape' review of house building**

A new report summarises the findings of the 'Cutting Red Tape' review of the house building sector which took place during 2016.

The review was launched in order to examine whether legislation and its implementation can be simplified or improved, to aid compliance and to reduce unnecessary burdens on business. Planning was one of six thematic areas that the review evidence identified as a cause of burdens on the sector. The report finds:

- A lack of high quality, skilled staff in LPAs, and private consultancy also reports concerns;
- pre-application advice processes made available by councils vary widely in their quality, consistency and length;
- disproportionate planning application validation requirements, and lengthy delays to validation;
- too many planning conditions are imposed and take too long to discharge; and
- s106 obligations take too long to finalise, and there is a lack of transparency regarding the spending of CIL contributions.

### **Devolution and regional update**

#### **Northern Powerhouse update - strategy stakeholder engagement exercise launched**

The Government is undertaking a series of stakeholder engagements on the Northern Powerhouse, to help consider what more can be done to unleash the North's economic potential. It hopes to collect views from individuals and businesses based in the Northern Powerhouse on connectivity, education and skills, enterprise and innovation, and trade and investment in order to collect a comprehensive evidence base of priorities for the future of the Northern Powerhouse.

Responses should be submitted by 17 April.

#### **Annual Report on devolution**

The Secretary of State's Annual report on Devolution 2015-16, the first of its kind, has been published. It details devolution agreements and proposals to 31 March 2016, including functions and finances that have been devolved.

#### **New Leicestershire Enterprise Zone**

A new enterprise zone will be created in Leicestershire on 1 April, according to the Government.

The Loughborough and Leicester Science and Innovation Zone will cover 160 hectares across three sites at the Loughborough University Science and Enterprise Park, Charnwood Campus and Leicester Waterside. The Government has billed it as a key part of the Midlands Engine, and it is hoped that science, innovation and hi-tech manufacturing companies will be encouraged to invest.

#### **West Midlands Land Commission backs 'strategic review' of West Midlands Green Belt**

The final report of the West Midlands Land Commission (WMLC) has been published; it includes four 'overarching principles' that the Commission believes

are essential to the future success of the West Midlands Combined Authority (WMCA):

- A need for resource and policy prioritisation;
- it should add value to the existing development and delivery activities of the individual LAs;
- The WMCA should consider how it can make 'full and holistic use of both the new powers (including the enhanced borrowing powers announced in the Autumn Statement) and the funding provided by the devolution deal...'; and
- the alignment of development and infrastructure.

The report states the following evidence-based conclusion:

'The review of recent trends in the West Midlands and the evidence submitted to the WMLC (Appendix E), confirm the statistical basis for the establishment of the WMLC. The targets the WMCA have set for the Strategic Economic Plan are stretching and will not be met on current trends.'

As well as the development of Action Zones where significant employment and housing can be accommodated, the report then recommends a strategic review of the Green Belt to 'supersede the reviews which a number of local authorities have under-way, where the Commission shares the view of a number of respondents that individual local reviews risk a piecemeal and unsustainable 'chipping away' of the Green Belt'.

### **Secretary of State decision**

#### **Mixed use development including up to 750 homes in Curborough, Lichfield**

The SoS has disagreed with his Inspector and allowed an appeal for up to 750 new homes as part of a mixed use development on land off Watery Lane in Curborough, Lichfield. A challenge to the decision however seems possible; it has already been reported in the local press that Lichfield District Council is considering this next step.

The SoS disagreed with the Inspector with regard to housing land supply and concluded that the LPA could demonstrate a 5 year supply of deliverable housing sites. Para. 49 of the NPPF was not engaged and the relevant policies of the ►►



development plan were up to date. He then concluded that for a series of reasons, the appeal scheme was not in accordance with the adopted Local Plan Strategy, nor saved policies of the Lichfield District Local Plan 1998 - the proposal was not in accordance with the development plan overall. In going on to consider whether there were material considerations which indicated that the proposal should be determined other than in accordance with the development plan, the decision states that the SoS (para. 53):

'...attaches very substantial weight to the benefits of the provision of affordable and market housing. In doing so he considers that the appeal proposal advances the social and economic roles identified in paragraphs 7 and 8 of the Framework (IR302) which are not diminished owing to the Council now being able to demonstrate a five year supply.

54. He gives modest weight to the landscape and visual harm from development. However, he gives considerable weight to the harm to the setting of Curborough Grange and Lichfield Cathedral, albeit that this is less than substantial for the purpose of 134 of the Framework. He also gives considerable weight to the loss of veteran trees and ancient hedgerows.

55. However, the SoS concludes that the social and economic benefits of providing affordable and market housing are of such importance that they outweigh the environmental harm, and that the proposal would thus represent sustainable development. Overall, therefore, he concludes that the material considerations indicate that the appeal should be allowed.'

## Parliamentary inquiries and committee reports

### Government responses to CLG Committee's inquiries published

The Government has responded to two House of Commons Communities and Local Government (CLG) Committee inquiries; the responses to the National Planning Policy consultation and the Local Plans Expert Group (LPEG) have been used to inform the Housing White Paper.

The responses to both inquiries are broadly addressed by the White Paper, and therefore already covered above, with a few exceptions.

The response to the inquiry into the national planning policy consultation indicates that a standard format for brownfield registers has not yet been devised, and that guidance on the operation of the registers will be issued once this has happened. It states that it will be for an LA to decide whether or not to apply a 'local connection' test. And the response also notes that consulting on changes to the NPPF in two phases – principle and then wording – should not become standard practice.

The response to the inquiry into the report of LPEG remains the Government's sole response to LPEG's recommendations, and does not add to the proposal in the White Paper. The response does however make reference to the digital planning pilot that is intended to develop data standards to improve data consistency.

### Capacity of the housebuilding industry

The Communities and Local Government Select Committee's Capacity of the housebuilding industry inquiry has heard from the Housing and Planning Minister Gavin Barwell MP as part of its inquiry into the homebuilding industry; the session took place on 27 February. The Chair of the Homes and Communities Agency (HCA), Sir Edward Lister, was also amongst those who have given evidence to the inquiry.

The inquiry was launched in July 2016, and this session sought to examine the role of the HCA in increasing housing supply, and whether it provides sufficient support custom and self-builders. Other matters addressed include: quality assurance of new build homes and modern methods of construction; self-build and custom-build funding during the planning and building process; and whether it is easy for subsequent purchasers to get a mortgage.

Asked if there is sufficient brownfield land to build the amount and quantity of housing that is required in Britain, Sir Lister replied that this was a sweeping statement. He later noted:

'...there are large amounts of brownfield land, but not necessarily in the right places. The definition of brownfield as well one has to be careful with, because some of the sites that we are involved with are fairly green, to be blunt, but they are technically brownfield sites.'

### Future of public parks

The House of Commons CLG Committee's report into public parks calls on councils to publish strategic plans, which recognise the value of parks beyond leisure and recreation, and to set out how they will be managed to maximise their contribution to wider LA agendas.

### Housing - State of the Nation inquiry

The parliamentary Public Accounts Committee inquiry into 'Housing – State of the Nation' continues; written evidence had to be submitted by mid-February and an oral evidence session was held on 22 February. This focused on the Committee trying to gain an understanding of 'how the various housing policies of the Government interact, what is working and what is not, where the stresses are and whether the ambitions in the White Paper are deliverable'.

### New inquiry: housing for older people

In light of research suggesting that 'pensioners are stuck in oversized properties worth £820bn', the House of Commons CLG Committee has launched an inquiry to establish, inter alia, whether suitable alternative housing options for older people are available in England, and whether planning policy and initiatives reflect this area of housing need.

Written submissions should be submitted by 24 March 2017. ■

## **Disability and the built environment: Ministers questioned on Government strategy**

As part of its Disability and the built environment inquiry, the House of Commons Women and Equalities Committee has questioned Housing and Planning Minister Gavin Barwell, to establish what the Government is doing to lead the way on creating a more inclusive built environment (the transcripts are not yet available).

### **Other news**

## **PINS recruits 20 new inspectors following resources gap warning**

It has been reported that the Planning Inspectorate (PINS) has appointed 20 new inspectors.

Minutes of PINS' last Board meeting in December state:

'The Board discussed the modelling around workforce planning and difficulties encountered recruiting inspectors. SW (PINS' chair) said the Board has seen papers which have consistently said we need to recruit more inspectors, and this would resolve the shortage. Following numerous recruitment rounds, we still have not managed to recruit the number of inspectors required.'

## **UK Statistics Authority to discuss data presentation with DCLG**

The UK Statistics Authority has written to Shadow Housing and Planning Minister John Healey, to confirm that it will contact statisticians at DCLG regarding the need to improve the clarity and presentation of the statistics that are being used by the Government to measure its progress against its target to build 1 million new homes by 2020.

## **House of Commons Library papers**

The House of Commons Library has published the following briefing papers or debate packs:

- The care home market;
- Planning reform in the housing white paper - Lichfields' review of the White Paper features;
- Low cost housing; and
- Local Growth Deals.

The Housing and Planning Minister has deposited in the Lords' and Commons' libraries the Public Land for Housing programme 2015-20 Annual Report. ■