

Consultation Response

MHCLG consultation on changes to the current planning system

Introduction

The County Councils Network (CCN) represents 36 English local authorities that serve counties. The 25 county and 11 county unitary authorities that make up CCN are the largest part of the local government family. They represent all four corners of England, from Cumbria to Cornwall, Durham to Kent, North Yorkshire to Suffolk, Derbyshire to Essex.

The essential services our members provide touch on the everyday lives of residents and businesses across 86% of England's landmass and 47% of its population. The areas represented by our members constitute 38% of local government expenditure; 44% of total public expenditure (£201bn); and generate just under half of all tax revenues (£255bn). The economies of our areas contribute 38% of Gross Value Added (GVA) and 44% of employment.

The planning system plays a key role in supporting economic growth, and must consider all elements of places, and not just housing, if we are to deliver truly sustainable communities as we look to level-up the country. We will be responding to the Planning for the Future White Paper in full, as this proposes fundamental changes that will have an impact on the way places are planned, and will also have an impact on upper tier authorities as infrastructure providers.

CCN's key points of response for the 'Changes to the planning system' are:

- CCN members agree with the principle of a standard methodology for assessing housing need, but believe that the Ministry should work with authorities to agree these targets before they become binding.
- CCN members welcome the reduction in requirement of the percentage of affordable homes that should be delivered as First Homes, but still have concerns around the affordability of these homes and the impact that they may have on overall housing supply.
- CCN believes that the approach outlined to encourage SME builders may have the opposite effect and push up the price of land as developers compete to purchase small sites in order to waive the delivery of affordable housing.
- CCN members have concerns over the proposal to extend Permission in Principle to major developments and the limited information that would be required from applicants for such schemes.

Our full response is outlined below.

The proposed new standard method for assessing local housing need

- 1. Do you agree that planning practice guidance should be amended to specify that the appropriate baseline for the standard method is whichever is the higher of the level of 0.5% of housing stock in each local authority area OR the latest household projections averaged over a 10-year period?**
- 2. In the stock element of the baseline, do you agree that 0.5% of existing stock for the standard method is appropriate? If not, please explain why.**
- 3. Do you agree that using the workplace-based median house price to median earnings ratio from the most recent year for which data is available to adjust the standard method's baseline is appropriate? If not, please explain why.**
- 4. Do you agree that incorporating an adjustment for the change of affordability over 10 years is a positive way to look at whether affordability has improved? If not, please explain why.**
- 5. Do you agree that affordability is given an appropriate weighting within the standard method? If not, please explain why.**

CCN response to questions 1-5:

CCN agrees with the principle of a standard methodology to assessing local housing need – this reduces uncertainty, increases transparency and can help to provide significant savings to local authorities who would otherwise appoint independent consultants to prepare a housing need assessment. We also agree with the principle of a binding housing target, where there is a process of negotiation and agreement with the local planning authority before a binding target is set.

Housing markets are extremely complex and CCN has concerns that the new methodology, which is proposed to be binding through the White Paper, will not be sophisticated enough to reflect local circumstances or local ambition to increase housing delivery. The use of an algorithm, particularly to factor in local constraints, we believe will be a crude tool and has the potential to undermine the democratic plan-led system.

We believe that it is helpful to look back at how housing targets were agreed before 2010 that the system removed the national setting of mandatory housing targets. Before 2004, the statutory development plan comprised structure and local plans. Housing targets for Structure Plans were set in Government policy – through Regional Planning Guidance – but were based on advice and evidence developed by the structure plan authorities and were tested at examination. These were mandatory for each structure plan area but county councils then distributed this to each local planning authority.

Between 2004 and 2010, the statutory development plan comprised Regional Spatial Strategies (RSS) and Local Development Frameworks. Housing targets (at local planning authority level) again were set by Government and were still mandatory, this time through RSS, but were based on evidence and the advice from counties, UAs and National Parks who had a statutory advisory role (set out in Section 4.4. of the 2004 Act) and an examination. Each Section 4.4. authority developed the sub-regional strategy for their area within the region and advised on local plan distribution.

Previous regime's of setting housing targets have clearly been subject to collaboration with the relevant authorities, and we believe that this approach should be taken forward if the standard method is changed and becomes binding. This is increasingly important in the context of the Housing Delivery Test, where authorities can be penalised for not delivering against their target, and will allow for realistic targets to be set – which may be higher or lower – depending on local constraints and ambitions.

CCN's own analysis of the work by Lichfields, which estimates how housing targets might change as a result of the new method, shows that across the majority of CCN member areas the housing target using the newly proposed method would increase. However, across a few county areas, the numbers would set to decrease. In addition, analysis by the LGA, which includes metropolitan areas as well, shows that rural areas could be disproportionately affected by the new method with higher housing growth in these areas. Whilst CCN members welcome the ambition of more housing growth within their areas, this must be matched with the right infrastructure. County areas in particular face huge infrastructure funding gaps, and an increase in the number of homes in these areas will put pressure on existing infrastructure, from roads and public transport to doctors' surgeries and schools.

Although proposed in the Planning for the Future White Paper, the suggestion to scrap the duty to co-operate should also be taken into consideration when analysing the changes to the standard methodology. The duty-to-cooperate is currently the only mechanism that facilitates discussions around cross-boundary strategic issues. Although it has largely failed as an effective mechanism for strategic planning, CCN believes that the Government should consider it's replacement prior to implementing any changes to the system.

A more effective approach to strategic planning is necessary for a multitude of reasons. In high growth areas, particularly those in the South East with a high proportion of Green Belt land, authorities may struggle to accommodate all of their housing requirement within their authority boundary. A more effective strategic planning mechanism that looks at places over a wider geography would help to distribute development more effectively, particular in areas that will struggle to meet their need. It would also assist in agreeing infrastructure priorities and a plan for investment which the system currently lacks. CCN will be submitting more information on this alongside our submission to the Planning for the Future White Paper.

Finally, we would raise the key issue of local authorities not having any control over build out rates. As set out in the final report of the Letwin Review, large sites can often be slow due to housebuilders not wishing to affect market absorbency rates. This must be taken into consideration in future housing delivery tests, when a local planning authority is doing all it can to allocate land and planning to meet housing need.

Transition period

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

- 6. Authorities which are already at the second stage of the strategic plan consultation process (Regulation 19), which should be given 6 months to submit their plan to the Planning Inspectorate for examination?**
- 7. Q7: Authorities close to publishing their second stage consultation (Regulation 19), which should be given 3 months from the publication date of the revised**

guidance to publish their Regulation 19 plan, and a further 6 months to submit their plan to the Planning Inspectorate? If not, please explain why. Are there particular circumstances which need to be catered for?

CCN response to questions 6-7:

CCN agrees that transitional arrangements will be essential if the revised method of calculation is introduced. Appropriate arrangements will need to be in place that take into account every local planning authorities' individual circumstances, given that councils are at different stages of plan preparation or plan review. It is imperative that all Local Authorities who have an up-to-date Local Plan now are not penalised by unforeseen increases in housing targets.

There is a clear risk that these new targets will become the starting point for decision making in the short term (when plans are five years old). This will mean that Local Authorities will fail either the five-year land supply or housing delivery test before it is possible to take account of these changes through the preparation of a new Local Plan (through either the existing or new system). It is imperative that those Local Authorities with adopted local plans and who are delivering against the targets in those adopted plans are not penalised.

First Homes

8. The Government is proposing policy compliant planning applications will deliver a minimum of 25% of onsite affordable housing as First Homes, and a minimum of 25% of offsite contributions towards First Homes where appropriate. Which do you think is the most appropriate option for the remaining 75% of affordable housing secured through developer contributions? Please provide reasons and/or evidence for your views (if possible):

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

CCN supports the principle of supporting more people into home ownership, but this must not be at the expense of delivering other affordable tenures. In our response to the previous consultation on First Homes earlier this year, CCN argued that a blanket approach to setting a percentage at which First Homes should be delivered would not be appropriate. Instead, we advocated that local areas plan to meet their objectively assessed needs, and set policies that would deliver First Homes accordingly – in some areas we envisage this would be lower than 25%, and in others it may be higher.

CCN remains of this view. As we set out in our response earlier this year, First Homes won't be affordable to the majority of residents on average incomes. We therefore welcome the new approach outlined in the consultation to reduce the percentage of First Homes at 25%. However, we still have concerns that this arbitrary requirement still has the potential to crowd out other types of affordable housing, and believe that local authorities must have the power to set local plan policies according to their need, and to take into account other considerations such as viability.

If Government is committed to taking the level forward at 25%, local planning authorities must maintain the levers to deliver First Homes alongside other housing tenures in a way that addresses need identified locally as part of the planning process. Ensuring the right mix of tenures across the country create balanced and mixed communities, as well as supporting first time buyers and those who prefer or need to rent, and the needs of different groups.

One of CCN's members, Cornwall Council, has 11 years' experience of delivering a form of discounted market sale housing that is very similar to First Homes. It is enshrined in Local Plan policy and in their Housing Supplementary Planning Document (SPD) and these products are secured as such in perpetuity through a s106 legal agreement. Cornwall serves as a useful example of the how this would work on the ground and the critical need to set a variable level of discount for discounted market sale homes reflecting the different market values across the Council area. They have been able to do this in a proportionate way through their Housing SPD which sets out the method for setting the differing levels of discount according to the area.

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

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

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

11. Are any other exemptions needed? If so, please provide reasons and/or evidence of your views.

CCN responses to questions 9 – 11:

Exemptions from delivery of affordable home ownership products (as well as affordable homes for rent) should be determined by local planning authorities. For example, it may not be appropriate to deliver First Homes in specialist developments such as ExtraCare or other developments including supported housing projects, or rural exception sites, unless there is a specific identified need for First Homes, or where they could viably be delivered through an off-site contribution.

Local plans and transitional arrangements

12. Do you agree with the proposed approach to transitional arrangements set out above?

CCN broadly supports the proposed transitional arrangements, including giving local authorities the flexibility to review the tenure mix for the remainder of the affordable housing that they are seeking to secure through a local plan review. We also welcome the flexibilities proposed for plans that are in the advanced stages of plan-making, or that have been recently submitted for examination.

CCN has concerns over the impact that First Homes would have on the development industry more generally, as well as the appetite from mortgage providers to lend on these properties. If developers respond to the product with uncertainty, then this could have

implications on wider housing delivery. At a time when we could be due to enter a recession, further slowing of the housing market should be avoided at all costs. CCN would therefore recommend that pilots are undertaken first in areas where First Homes are needed most. This will allow for a period of reflection on the product, as well as its uptake. If successful, this is likely to bring developer confidence and could be rolled out more widely, where there is an identified need.

Level of discount

13. Do you agree with the proposed approach to different levels of discount?

CCN agrees that a minimum discount should be set at 30%, with local authorities able to set a higher discount to reflect the local market. This is essential if First Homes are to be affordable to residents that are on average incomes. As we set out in our response earlier this year, First Homes will not be affordable to many at a lower discount, particularly those in higher value areas such as the South East.

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

We also believe that exception sites should not be limited to First Homes, but should deliver the types of affordable homes that are most needed. We understand that there may be a need in certain circumstances for a small proportion of market homes to be delivered to ensure viability, but this must only be allowed if a developer submits a viability assessment as part of its justification.

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

CCN does not support the removal of the site size threshold. Whilst we understand the rationale behind an entry-level exception site policy, and supports the delivery of more housing through them, the nature of exception sites often means that they are less preferable to other sites that are allocated in a plan. This could be due to their location in relation to the settlement, the presence of local amenities relative to the site, or a lack of public transport options. Building homes in these locations, without requiring contributions to local infrastructure, could lead to isolated communities. Therefore, in order to ensure that these sites do not come forward first, or at the expense of sites that are in more sustainable locations, local planning authorities should require applicants to justify why the proposals could not come forward in an alternative location allocated within the plan.

CCN members would also like to see the number of exception sites limited to individual settlements to ensure that these do not become the focus of delivery over other allocated sites.

There is no question in the consultation giving respondents the opportunity to feedback on the proposals to exempt First Homes from CIL. Whilst these contributions are not a silver bullet, they play a vital and valuable role in allowing authorities to provide and add capacity to local infrastructure. Many, if not all, of CCN's member councils face large infrastructure funding gaps already and this situation would only be exacerbated with First Homes. Whilst initiatives like the government's Housing Infrastructure Fund do assist in bridging this funding gap, longer term solutions are required to ensure that infrastructure investment matches housing growth. As mentioned previously, exception sites often come forward

because they are less preference in sustainability terms to other sites. Failure to deliver infrastructure, particularly on exception sites, will put pressure on existing infrastructure and services, and risks creating unsustainable communities.

16. Do you agree that the First Homes exception sites policy should not apply in designated rural areas?

We agree with this proposal. Rural exception sites have proved extremely valuable to villages and small towns to provide much needed affordable housing to communities who may have had to leave the immediate area, had those homes not been provided.

Supporting small and medium-sized developers

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

18. What is the appropriate level of small sites threshold?

19. Do you agree with the proposed approach to the site size threshold?

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

21. Do you agree with the proposed approach to minimising threshold effects?

CCN response to questions 17 – 21:

CCN does not agree with the proposed approach to raise the threshold of small sites – even for a time limited period. Having consulted with members, there is a concern that raising the threshold, even temporarily, would make such sites more desirable to volume builders, thus pushing up the price of land and reducing the opportunity for SME builders to develop sites.

Many members who work with smaller developers have cited that the provision of affordable housing on-site is a central part of their business model – with the affordable housing providing a welcome cash boost once it's sold to a housing association, that then allows the developer to proceed with market housing. We therefore believe that the proposed changes would hamper the abilities for SME's to deliver on small sites, and believe that the threshold should not change.

In addition, the cumulative impact of introducing mandatory exemptions to section 106 affordable housing contributions will significantly undermine the ability of councils to plan for and deliver affordable housing, as required by the National Planning Policy Framework (para 61). It will also prevent councils from delivering a well-integrated variety of homes of different types and tenures to support mixed and balanced communities. As an example, the continued expansion of permitted development rights is making it substantially more difficult to secure affordable housing through the planning system. LGA research earlier this year showed that potentially 13,500 affordable homes have been lost in the last 4 years through permitted development rights allowing offices to be converted to houses without the need for a full planning application.

Introducing a 40 or 50 unit threshold will also create an incentive for developers to game the system by putting forward proposals of 39 or 49 or less units respectively, on sites that are capable of accommodating more to circumvent any affordable housing requirement. This will not only reduce the amount of affordable housing coming forward but also risks reducing the total number of homes delivered overall, frustrating the government's ambitions to deliver 300,000 homes per year.

Despite our concerns, if the Government was to raise the threshold, we believe this should be time-limited to no longer than a year.

Affordable housing in rural areas

22. Do you agree with the Government's proposed approach to setting thresholds in rural areas?

We agree with this approach.

Supporting SME's

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

SME builders are the companies likely to be carrying out the refurbishment, conservation and extension work to existing buildings. Equalising the VAT regime on repairs and refurbishment to standing buildings with the rate for new builds would help them greatly, and deliver more opportunities to preserve and enhance heritage assets. This tax equalisation would also help support and maintain rare specialist and endangered technical building skills SMEs such as thatching, plasterwork conservation and masonry by supporting the conservation building framework where their expertise is essential.

Extension of the Permission in Principle consent regime

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

CCN members – both as unitary authorities but also county councils as highways and flood authorities – have raised concerns around proposals to extend Permission in Principle applications to major development, in relation to the PiP route not providing adequate technical information up front that would mean necessary mitigation for certain matters would not be planned for.

It is frequently the case, and will be even more so in the case of larger scale developments up to 150 units, that technical transport work should be done at the Permission in Principle stage. Unless this requires a Transport Assessment to be undertaken by the applicant to demonstrate the site's deliverability in terms of all transport needs and acceptability in terms of location and sustainable transport considerations, it is difficult to see how the proper transport assessment necessary will be completed as part of the overall PiP process. Leaving this until the "Technical Details Consent" stage, is too late.

In addition, if PiP is expanded, flood risk from all sources should be included within the in-principle issues to ensure development is appropriately located. If sites are granted PiP without assessing flood risk, the appropriateness of the development type and use of the sequential test for all sources of flooding, then future development may be at increased risk

itself and also may increase the risk for surrounding residents and businesses. Technical issues around the drainage design and detailed mitigation of residual flood risk can be done at the proposed secondary technical stage. However, the sequential and appropriateness tests must be carried out in the PiP stage as if flood risk is found to be an issue after this point there may be significant costs to developers to assess, design and mitigate drainage and flood risk and this may make the development unviable. Good sustainable drainage design needs to be done in conjunction with land use, layout and scale of development decisions; it is easier and more cost effective to avoid/work with existing flood risk and hydrology than to try and engineer it out retrospectively at a later stage.

A further concern relates to legal planning obligations. If through a PiP a development is deemed acceptable, this undermines the ability of authorities to secure contributions to infrastructure necessary to make a development acceptable at a subsequent stage in the process.

In addition to the above, the proposed determination period and associated 14 day period for consultation with statutory bodies is extremely short, given the potential scale of the development coming forward through the regime.

25. Should the new Permission in Principle for major development set any limit on the amount of commercial development (providing housing still occupies the majority of the floorspace of the overall scheme)? Please provide any comments in support of your views.

No comment.

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

No, CCN members believe that a full Transport Assessment should be submitted as part of the PiP application so that the transport elements are assessed at this stage. If left until the Technical Details Consent, issues such as land availability, viability, locational challenges and other major constraints would not come to the fore and would remain unresolved on a site that had PiP granted. The brevity of information set out in paragraph 105 of the consultation document would be insufficient to determine whether an appropriate transport solution could be found.

In addition, the sequential and compatibility tests for all sources of flooding should be included in the bullet point test with paragraph 103 of the consultation document. Similarly archaeological assessment and evaluation for any site currently classed as "major development" should also be included.

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

No comment.

28. Do you agree that publicity arrangements for Permission in Principle by application should be extended for large developments? If so, should local planning authorities be:

- i) required to publish a notice in a local newspaper?**
- ii) subject to a general requirement to publicise the application or**
- iii) both?**
- iv) disagree**

If you disagree, please state your reasons.

Councils should have the flexibility to determine the most appropriate publicity arrangements that provide easier and more cost-effective ways for local communities to find out about planning applications. This could include the use of social media and other electronic communications.

29. Do you agree with our proposal for a banded fee structure based on a flat fee per hectare, with a maximum fee cap?

30. What level of flat fee do you consider appropriate, and why?

We believe that the fee should be set at a level which allows authorities to cover the costs of processing applications, and this would be best done locally. If PiP is taken forward for major developments, it may be that a tiered structure would work well to reflect different scales of development.

31. Do you agree that any brownfield site that is granted Permission in Principle through the application process should be included in Part 2 of the Brownfield Land Register? If you disagree, please state why.

We agree with this approach.

32. What guidance would help support applicants and local planning authorities to make decisions about Permission in Principle? Where possible, please set out any areas of guidance you consider are currently lacking and would assist stakeholders.

No comments.

33. What costs and benefits do you envisage the proposed scheme would cause? Where you have identified drawbacks, how might these be overcome?

No comments.

34. To what extent do you consider landowners and developers are likely to use the proposed measure? Please provide evidence where possible.

Given the take-up of Permission in Principle in the current regime which has been very limited, complete with the proposals in the White Paper to zone land, we believe that take up will continue to be limited.

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

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

No comments.