

Open

Overview & Scrutiny Committee

Additional Papers

**Agenda Item No. 7 - Planning Consultation
Responses**

Agenda Item No. 8 - Planning s106 Obligations

To be held remotely
6pm
Tuesday, 8th September 2020





Overview & Scrutiny Committee

Briefing Paper

Report of: Mike Parker – Corporate Director Economic Prosperity
& Place
Date: 8th September 2020
Open

Response to Planning Consultations

1. SUMMARY

- 1.1 This report sets out the proposed responses to the Government's recently published consultations regarding changes to the planning system.

2. BACKGROUND

- 2.1 In August the Government announced to consultations on changes to the planning system; a 'root and branch' overhaul of the planning system in a White Paper Entitled 'Planning for the Future', the deadline for which responses have to be submitted is 29th October 2020; and a more detailed series of changes to the existing planning system entitled 'Changes to the current planning system' for which responses are required to be submitted by 1st October 2020. There is overlap between the two in some areas. The full consultation documents can be found here:

<https://www.gov.uk/government/consultations/planning-for-the-future>

And here: <https://www.gov.uk/government/consultations/changes-to-the-current-planning-system>.

- 2.2 The 'Planning for the Future' document is a fundamental review of the entire planning system which the Government considers "outdated and ineffective". The original planning legislation began in 1947 and the amendments to it over the intervening years the Government likens to extensions to a house such that the house is now "no longer fit for human habitation". The paper proposes "radical reform unlike anything we have seen since the Second World War".

3 KEY ISSUES

- 3.1 The 'new vision for England's planning system' is structured around five proposals:

- "First, we will streamline the planning process with more democracy taking place more effectively at the plan-making stage, and will replace the entire corpus of plan-making law in England to achieve this;

- Second, we will take a radical, digital-first approach to modernise the planning process. This means moving from a process based on documents to a process driven by data;
- Third, to bring a new focus on design and sustainability;
- Fourth, we will improve infrastructure delivery in all parts of the country and ensure developers play their part, through reform of developer contributions;
- Fifth, to ensure more land is available for the homes and development people and communities need, and to support renewal of our town and city centres.”

3.2 The consultation is then structured around three pillars:

- Planning for Development
- Planning for beautiful and sustainable places
- Planning for infrastructure and connected places

Appendix 1 to this report sets out the proposed responses to the consultation questions.

3.3 The ‘changes to the current planning system’ consultation makes proposals across four areas:

- The standard method for assessing housing numbers in strategic plans;
- Delivering First Homes;
- Small sites planning policy;
- Extension of the Permission in Principle consent regime.

Appendix 2 to this report sets out the proposed responses to the consultation questions.

3.4 In terms of the impact of these suggested changes on the Council, even when they are finalised, it will be minimal as the Council has already submitted its next Local Plan for Examination. The suggested changes to the new methodology for calculating housing need based on current data would see an increase in the number of new dwellings to be provided annually in the district increasing from the 276 in the submitted Local Plan to 353 under the proposed changes. Nationally, against the Government’s desire to construct 300,000 dwellings per annum, there would be a supply of 337,000 new units, which gives some headroom for reduced delivery. Importantly the consultation sets out the proposed transition arrangements and is specific for those authorities at the consultation stages of their new local plan (giving 3 or 6 months to transition), but for authorities like Wyre Forest with a submitted plan it will mean that the number of units proposed in the Submission version. Once it is adopted, will apply until a further new Local Plan is adopted in the future. Likewise, the First Homes policy will not apply to the Submitted Plan nor its adopted version, only to the next local plan.

In terms of the ‘Planning for the Future’ changes, again this will only impact the authority at its next local plan following the adoption of the Submitted

Plan. Here, the transition arrangements will be either 30 months after the new legislation comes into effect or for authorities such as we expect to apply to Wyre Forest, 42 months where a Plan has been adopted within the past three years before the legislation came into effect or where a Plan has been submitted for Examination.

4. CONCLUSION

- 4.1 Appendices 1 & 2 set out the Council's proposed responses to the consultations.

5. OPTIONS

- 5.1 The Overview and Scrutiny Committee has the following options:

- 5.1.1 To recommend to Cabinet that the responses set out in the appendices to this paper are agreed;
- 5.1.2 To recommend to Cabinet that alternative responses should be submitted; and in which case what they should be.

6. APPENDICES

Appendix 1 – Draft response to 'Planning for the Future'

Appendix 2 – Draft response to 'Changes to the current planning system'

7. BACKGROUND PAPERS

'Planning for the Future' – August 2020

'Changes to the current planning system' – August 2020

Officer Contact Details:

Name: Mike Parker

Title: Corporate Director: Economic Prosperity & Place

Contact Number: 2500

Planning for the Future

White Paper August 2020

1. What three words do you associate most with the planning system in England?

A. Inclusive/Fair/Comprehensive

2(a). Do you get involved with planning decisions in your local area?
[Yes / No]

A. Yes

2(b). If no, why not?
[Don't know how to / It takes too long / It's too complicated / I don't care / Other – please specify]

A.

3. Our proposals will make it much easier to access plans and contribute your views to planning decisions. How would you like to find out about plans and planning proposals in the future?
[Social media / Online news / Newspaper / By post / Other – please specify]

A. As Local Planning Authority this will be direct.

4. What are your top three priorities for planning in your local area?
[Building homes for young people / building homes for the homeless / Protection of green spaces / The environment, biodiversity and action on climate change / Increasing the affordability of housing / The design of new homes and places / Supporting the high street / Supporting the local economy / More or better local infrastructure / Protection of existing heritage buildings or areas / Other – please specify]

A. Supporting economic growth that improves social, environmental and economic wellbeing/providing more affordable homes/reducing impact on climate change.

5. Do you agree that Local Plans should be simplified in line with our proposals?
[Yes / No / Not sure. Please provide supporting statement.]

A. No. The case for change is well made inasmuch as successive Governments (including this one) have tried to manage and change the planning system to suit various ends and that to continue to amend the system further is not necessarily going to be the best way forward. The Prime Minister's comments in the foreword to the consultation are, though, rather unnecessarily dismissive of the existing planning system which has lasted the test of time because it is fundamentally still the most appropriate way in which to determine the future of land uses throughout the country. It is important in undertaking the 'root and branch' review of planning that the White Paper proposes to ensure that the 'baby is not lost with the bathwater'. The current

planning system which has a focus on ‘spatial planning’ embraces the understanding that planning is more than just designating land for a use on a plan; that is planning at its basest level. The proposals in the White Paper are an oversimplification of what a Local Plan should be about – integrating social, environmental and economic wellbeing into a multi-dimensional document which delivers a truly ‘spatial’ outcome. There is no mention of what the local authority’s vision and ambition for their area might be, all of which is part of the richness of a spatial strategy. If the Government adopts the simplified approach suggested it will revert the Local Plan to a series of land use allocations without ensuring the delivery of those wider societal needs. What is proposed in terms of ‘growth’, ‘renewal’ and ‘protected’ areas isn’t really radically different to the existing Local Plan process where larger scale land releases are proposed (i.e. Growth areas), brownfield redevelopment sites are allocated (i.e. Renewal areas) and areas such as Greenbelt, SSSI, AONBs etc are protected; so it is considered that whilst the Local Plan process would benefit from acceleration, the basis principles of enhancing social, environmental and economic wellbeing should not be lost at the expense of dumbing the document down to a land zoning plan.

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

[Yes / No / Not sure. Please provide supporting statement.]

A. No. Whilst a generic set of DM policies set at a national level is considered appropriate (as is the case currently), it is important that local authorities are able to provide additional DM guidance as they deem appropriate at the local level. The idea that the DM approach can be standardised runs contrary to the White Paper’s own proposals in terms of encouraging more community involvement as well as the ‘beautification’ agenda. The character and therefore the quality of local areas is because they are unique, and the preservation of that uniqueness is part of what makes parts of the country beautiful and distinct. A standardised approach to managing development with nationally set policies undermines that distinctiveness. Further, the Government will find it even more difficult than at present to get communities to engage in the planning process if they feel they have ‘no say’ in matters when they do engage because it’s all ‘set centrally’ at a national level. It is counterproductive to expect local engagement with no devolved authority to set a local mark on development.

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

[Yes / No / Not sure. Please provide supporting statement.]

A. Yes. The existing tests have become too process driven and less outcome driven and this had led to increasing challenge and delay to the adoption process; this should be streamlined.

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

A. Whilst the DtC is clearly not delivering the intended outcomes the Government does need to resolve the issue of matters which span administrative boundaries. The only sensible and clear manner to do this is via a modern replacement for the Structure Plan.

8(a). Do you agree that a standard method for establishing housing requirements (that takes into account constraints) should be introduced?
[Yes / No / Not sure. Please provide supporting statement.]

A. No. This is a difficult question to answer as it's already the case that the Government has adopted a standard method for housing requirements that takes into account constraints (such as Greenbelt or AONBs), it just doesn't arrive at the collective 300,000 number which Government has set. Setting the standardised methodology to achieve that number in the manner intended in the White Paper cannot be dressed up in any other way than the top down distribution of a housing requirement for each area, no longer based on local need, but on contributing to the national target. This again is counter intuitive to the White Paper's desire to increase local engagement; rather than engage, it is likely to pit communities against the planning system as they will feel that they have no say in the amount of new housing that their area has to provide. The notion of a centralised approach to determining local conditions which might justify an area providing fewer than the required number of dwellings is also rejected.

8(b). Do you agree that affordability and the extent of existing urban areas are appropriate indicators of the quantity of development to be accommodated?
[Yes / No / Not sure. Please provide supporting statement.]

A. Yes, as a method with which to calculate the standard methodology, using housing stock with an affordability adjustment is preferable to the current household projections basis.

9(a). Do you agree that there should be automatic permission for areas for substantial development (Growth areas) with faster routes for detailed consent?
[Yes / No / Not sure. Please provide supporting statement.]

A. No. There is a real danger that the combined 'dumbing down' of the Local Plan to a zoning map and the granting of automatic permissions will not create the quality of development that would otherwise be achieved through the DM process and will allow developers to 'cherry pick' those parts of the growth area development which are easier or more profitable to undertake and will result in other areas neglected or overlooked with a piecemeal approach to development that lacks cohesion. Further, this is once again inconsistent with the desire to see communities engage with the planning system. This automatic approval approach is a charter for developers to 'ask forgiveness, rather than permission' and create development which communities have no say in. If the Government does continue to progress this proposal it is imperative that a new fee regime accompanies it whereby developers, land promoters and landowners pay a fee to have a site designated as a Growth area as the effect is the same as granting an outline [planning consent and it is important that the local authority is able to properly resource its teams to enable full

and proper consideration of all of the implications for the development of areas designated as Growth areas.

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

[Yes / No / Not sure. Please provide supporting statement.]

A. No. again the concept of automatic approvals suggested here is not supported for the same reasons as stated above at 9(a).

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

[Yes / No / Not sure. Please provide supporting statement.]

A. No. Decisions on such matters no matter their scale should remain at the local level.

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

[Yes / No / Not sure. Please provide supporting statement.]

A. No. Some of the proposals covered by this question that are set out in the White Paper could be supported, such as, in part, the digitisation proposals, but even this cannot be supported in full. The idea that planning applications can be reduced to a binary series of numbers that can be read digitally is impossible to conceive as the planning process is a very visual one. Whilst it is clear that the Government sees the future of planning as a digitally automated approval process this completely undermines the very heart of planning which relies on the visualisation of development proposals. Some elements of the process could be speeded up by digital means such as templates for advertisements and shorter application forms but digitising the validation process will simply create applications with shortcomings that then need to be resolved when the application is live and that simply lengthens the determination process. The concept of refundable fees is also rejected, the application fee is designed to cover the cost of determining the application (although Government has always failed to address the fact that the full cost is not in fact covered by the fee), it is not the price of 'buying the permission' that should be refunded if targets are not met. The planning system should not be allowed to lapse into a target driven process at the expense of it being outcome driven.

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

[Yes / No / Not sure. Please provide supporting statement.]

A. Yes this agreed in principle to enable a standardised format and easy access which will also assist cross administrative boundary sites and matters, however care must be had in making assumptions that this will enable everyone to access the information and some regard needs to be had to broadband access capabilities for some parts of the country as well as for access by those with less digital knowledge and capabilities. The impact of this on some of the protected groups needs to be

taken account of in the equality impact assessment. Further explanation needs to be given about the expected role of the 'prop-tech' companies which are mentioned throughout the document.

12. Do you agree with our proposals for a 30 month statutory timescale for the production of Local Plans?

[Yes / No / Not sure. Please provide supporting statement.]

A. Yes, this is a suitable ideal to be aiming for, however in order for this timescale to be reached it has to be understood that it will take time for the full gamut of White Paper changes to be put in place and it could take some time before the 30 month timescale could be reasonably applied. It will also be necessary to ensure that local authorities are sufficiently resourced in advance of the adoption of this timescale for it to be realistically delivered. Government needs to take care with the degree of engagement proposed in the new timescale and process; based on the proposals the only meaningful consultation takes place at the end of 18 months when the Council submits the Plan to the Inspector. This could have one of two impediments; firstly it will be the first time that the authority will be aware of any sound reasons why the Plan might not be capable of implementation, what happens then? Is the Plan still submitted for the Inspector to deal with those issues that might arise? Secondly it will be the first meaningful engagement with the public, statutory consultees and stakeholders on the authority's plan and all of the response to that will be shunted to the inspector to consider and this has the potential to delay the adoption for the remaining 12 months of the 30 months.

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

[Yes / No / Not sure. Please provide supporting statement.]

A. Yes as they enable local community input into the planning system, but Government needs to be consistent; as stated above the idea of a 'top down' housing number requirement plus the streamlining of the consultation stages associated with the Local Plan, plus the grant of outline permission via the proposed growth areas in the plan will not garner local support such that communities will feel that they have a degree of control over what happens in their area and this may have a negative impact on the communities' view of the value of Neighbourhood Plans.

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

A. If neighbourhood planning is to truly be an integral part of the new planning system some other areas of the proposals set out in the White Paper will need to be re-thought otherwise the value of engagement will be diminished (see answer to Q13(a) above).

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

[Yes / No / Not sure. Please provide supporting statement.]

A. Yes. This is an area which the Government has overlooked in this overhaul of the planning system. It is not necessary to restate the numbers here of rates of planning permissions granted, nor the speed of decisions nor the number of new homes sat in unimplemented planning approvals, that is all well known, but an example can be found here <https://www.constructionenquirer.com/2020/02/20/one-million-homes-with-planning-permission-not-built/> where it suggests that in the past decade over a million homes have been granted consent but not implemented. The Government has mistaken the failure to deliver the national target for housing as all being the fault of the planning system and that fails to understand and respond to the failure of housebuilders to deliver those approvals at a faster rate. The Letwin report should have received far more coverage in this White Paper than it has and the Government should be doing more to address the impediments to build out that the report identifies, such as the shortage of skilled labour to deliver homes at the scale the Government expects. There is no mention in the White Paper of waste and minerals planning which cannot be overlooked if materials are going to be available to supply the construction industry to be able to build more units and faster. But the Government needs to go further; since the Fixing our Broken Housing Market paper the Government has failed to act in any meaningful way to put in place more penalties for developers and landowners who fail to implement residential permissions or to equip the local authorities with more powers to step in and take control of such sites. This White Paper once again fails to deal with this issue and until it is properly addressed no matter how much reform of the planning system takes place it continues to ignore the fact that delivery for the most part lies in hands of a few large scale housebuilders.

15. What do you think about the design of new development that has happened recently in your area?

[Not sure or indifferent / Beautiful and/or well-designed / Ugly and/or poorly-designed / There hasn't been any / Other – please specify]

A. Generally well designed due to the quality of the DM service which the Council operates, backed up by a Local Plan that reflects local support.

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

[Less reliance on cars / More green and open spaces / Energy efficiency of new buildings / More trees / Other – please specify]

A. Energy efficient new buildings; production of renewable energy sources; provision of electric vehicle charging points; planting more trees.

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

[Yes / No / Not sure. Please provide supporting statement.]

A. Yes, the wider use of design guides and codes with inclusive involvement in their production is welcomed.

18. Do you agree that we should establish a new body to support design coding and building better places, and that each authority

should have a chief officer for design and place-making?
[Yes / No / Not sure. Please provide supporting statement.]

A. Not sure. Good design and the professional specialist to support it are not new concepts and shouldn't require another 'new body' to support the production of codes and guides. It would be far preferable for local authorities to be properly resourced to be able to have the design specialisation 'in house' or as a locally shared resource between a number of partner authorities. Requiring a specifically designated post at chief officer level within the authority is overly prescriptive, unnecessary and is not supported.

19. Do you agree with our proposal to consider how design might be given greater emphasis in the strategic objectives for Homes England?
[Yes / No / Not sure. Please provide supporting statement.]

A. Yes, one could be forgiven for asking "isn't this the case anyway?", if it isn't then it should be. However, in order for this to be effective, Government also needs to consider how HE can achieve this whilst at the same time satisfying the Treasury requirement to get the best value for the sale of HE owned land as the two are often incompatible bedfellows and in the experience of this local authority the Treasury requirement will always prevail.

20. Do you agree with our proposals for implementing a fast-track for beauty?
[Yes / No / Not sure. Please provide supporting statement.]

A. No, this is too simplistic and most likely to create controversy and be counter productive possible causing more delay to the process. The concept of 'beauty' will mean different things to different parties and ultimately is a judgement of subjectivity and taste, even if there are design codes and guides available. The concept of 'beauty' cannot be reduced to a black and white 'tick box' exercise, ultimately someone has to exercise judgement over what is beautiful. The idea of fast tracking a proposal which looks good also belies the complexity of other elements of the development which are also required to ensure that the proposal is acceptable; for example a 'beautiful' proposal which creates complex highway matters may not render it capable of being fast tracked.

21. When new development happens in your area, what is your priority for what comes with it?
[More affordable housing / More or better infrastructure (such as transport, schools, health provision) / Design of new buildings / More shops and/or employment space / Green space / Don't know / Other – please specify]

A. Affordable housing/infrastructure/design quality.

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

[Yes / No / Not sure. Please provide supporting statement.]

A. Not sure. Whilst the opportunity to streamline and review the CIL and s106 arrangements is welcomed and a consolidation may be the most appropriate outcome there are some elements of what is being proposed which are of concern. In order to ensure that sites are built out successfully, viability has to be a consideration and this will be affected by local circumstances; the suggestion that there should be a minimum below which a levy would not apply is rejected as for smaller districts and where land values are lower, it may mean that vital infrastructure does not get provided. The proposal to 'back-end' the payment of levies and to levy at the point of occupation is also rejected. In many cases to enable to construction of larger development sites the infrastructure needs to go in first, not at the end. The Government's suggestion that local authorities could borrow against their levy implies that the initial cost of providing infrastructure should be borne by the taxpayer and then reclaimed from the developer, this idea is rejected, it should be for the developer to fully fund the infrastructure required to deliver their development. Further the idea of levying at point of occupation is also rejected as this will cause additional resource from the local authority to chase payment and at the same time most likely delay occupation with the real risk that the prospective new homeowner is the party that suffers most if developers are slow to pay.

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

[Nationally at a single rate / Nationally at an area-specific rate / Locally]

A. Locally. It is important that the levy reflects local costs and values and should remain the purview of the local authority, not central government.

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

[Same amount overall / More value / Less value / Not sure.

Please provide supporting statement.]

A. More value. It is important for local communities to see that new development provides all of the necessary infrastructure to ensure that it builds a community and not just endless housing estates. It is important for local government finance that costs of key infrastructure is not borne by the local population, but directly by the developer.

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

[Yes / No / Not sure. Please provide supporting statement.]

A. Yes, notwithstanding the comment above this added flexibility would be welcomed as long as it is not seen as the way to force local authorities to have to forward fund infrastructure that is otherwise the responsibility of the developer.

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

[Yes / No / Not sure. Please provide supporting statement.]

A. Yes, with increasing flexibilities allowed through permitted development which can put the same pressure on local infrastructure which development permitted by virtue of a permission does, it is fair that the levy should apply equally to PD developments.

24(a). Do you agree that we should aim to secure at least the same amount of affordable housing under the Infrastructure Levy, and as much on-site affordable provision, as at present?
[Yes / No / Not sure. Please provide supporting statement.]

A. Yes, there should be no relaxation on the amount of affordable housing which should be provided.

24(b). Should affordable housing be secured as in-kind payment towards the Infrastructure Levy, or as a 'right to purchase' at discounted rates for local authorities?
[Yes / No / Not sure. Please provide supporting statement.]

A. The new levy should aim to ensure that new affordable homes of a good quality are provided on site by the developer and if the quality of development falls below the required standard then the local authority should be able to reject it and revert to requiring a cash contribution.

24(c). If an in-kind delivery approach is taken, should we mitigate against local authority overpayment risk?
[Yes / No / Not sure. Please provide supporting statement.]

A. The developer should not have the opportunity to claim overpayments.

24(d). If an in-kind delivery approach is taken, are there additional steps that would need to be taken to support affordable housing quality?
[Yes / No / Not sure. Please provide supporting statement.]

A. Yes. This is a curious question given the White Paper's confidence expressed elsewhere that good, even 'beautiful', design will be achieved through the application of codes and guides; under those circumstances it should not be possible for developers to build lower quality affordable homes, unless Government is suggesting that developers will cut corners and produce poorer homes because they are affordable? The possibility of a distinction in design between market homes and affordable homes must be eliminated as it is now.

25. Should local authorities have fewer restrictions over how they spend the Infrastructure Levy?
[Yes / No / Not sure. Please provide supporting statement.]

A. Yes, the local authority and the community it represents should have maximum flexibility about how it spends its levy.

25(a). If yes, should an affordable housing 'ring-fence' be developed?
[Yes / No / Not sure. Please provide supporting statement.]

A. yes, it is considered sensible that a minimum amount of the levy is ringfenced to support the delivery of affordable housing to ensure that there is a good pipeline of delivery. Combined with the flexibility suggested by Q25 above it would then be possible for the authority, if it so wished, to add more of the levy to the affordable housing minimum amount.

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

A. Regarding digitising accessibility to the local planning process, Government needs to ensure that those with protected characteristics who may find they become excluded from the planning system, is given careful consideration.

Changes to the current planning system

Consultation on changes to planning policy and regulations

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

A. Yes. This is a much fairer way of apportioning the housing numbers as it looks at the wider picture of historical growth and not just projecting forward recent historic trends. Where projections are lower due to recent poor growth, it may help to boost the numbers required. In the case of Wyre Forest District, there is quite a disparity between the 2 figures with the dwelling stock figure being 75% of that derived from the latest household projections.

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

A. Yes. 0.5% is considered to be an appropriate baseline figure to use.

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

A. Yes. It takes into account any undersupply of housing which would increase the house price and also changes to local earnings. The data is also updated annually which makes it more robust.

Q4: 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.

A. Yes, it is important to look how affordability has changed over a reasonable time frame in order to gain true picture of the local situation. A single year of house sales could be skewed by a large new development. This method would be more accurate.

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

A. Yes, the revised method will give the issue greater weighting.

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

A. The Wyre Forest District Local Plan (2016 - 2036) was submitted to the Secretary of State for Examination on 30th April 2020 and therefore this question is not relevant to the Authority.

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?

A. The Wyre Forest District Local Plan (2016 - 2036) was submitted to the Secretary of State for Examination on 30th April 2020 and therefore this question is not relevant to the Authority.

Q8: The Government is proposing policy compliant planning applications will deliver a minimum of 25% of onsite affordable housing as First Homes, and a minimum of 25% of offsite contributions towards First Homes where appropriate. Which do you think is the most appropriate option for the remaining 75% of affordable housing secured through developer contributions? Please provide reasons and / or evidence for your views (if possible):

i i) Prioritising the replacement of affordable home ownership tenures, and delivering rental tenures in the ratio set out in the local plan policy.

ii ii) Negotiation between a local authority and developer.

iii iii) Other (please specify)

A. i) as this retains the primacy of the Local Plan; this Council is currently at 'submission' stage with the local plan and would prefer that once adopted the delivery of the remaining 75% is based on the local plan policy using the evidence supporting the local plan.

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

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

A. This would seem sensible and consistent with the NPPF.

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

A. None

Q11: Are any other exemptions needed? If so, please provide reasons and /or evidence for your views.

A. None

Q12: Do you agree with the proposed approach to transitional arrangements set out above?

A. Yes, this Council has submitted its Plan for Examination and is satisfied that the First homes policy will not apply.

Q13: Do you agree with the proposed approach to different levels of discount?

A. Agreed. Wyre Forest District has lower earnings, both by location of employment and by residence than the West Midlands or Great Britain. House prices are also lower but affordability is an issue for many residents either to buy or rent a property. Also there are differentials within the district where house prices within the urban areas are generally higher in the market towns and rural areas than in the main town centres.

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

A. Agreed, ensuring viability is important. In Wyre Forest District viability is an issue on many sites both brownfield and some green field sites and therefore allowing a small proportion of market housing may make the site viable. If this was not allowed sites may not be built due to lack of viability.

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

A. No, this is not agreed, removing the 1Ha or 5% of the settlement size has the potential to generate site development of disproportionate scale for some smaller settlements in rural areas and would undermine their overall character.

Q16: Do you agree that the First Homes exception sites policy should not apply in designated rural areas?

A. No. Disagree that the First Homes policy should not apply to designated rural areas. In Wyre Forest District some of the rural areas especially the rural east of the district tend to be some of the least affordable places to purchase property and many people are forced to move from rural areas that they have grown up in due to property values. The affordability issues in the rural areas are a combination of above average property prices and below average wages that are generally offered in the district. For first time buyers to be able to remain in these areas the First Homes exception sites policy should apply as this is where it is needed most. Paragraph 66 states that rural exception sites will be retained and planning guidance will be updated in due course, therefore more clarity is required.

For each of these questions, please provide reasons and / or evidence for your views (if possible):

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

(see question 18 for comments on level of threshold)

A. No, this is not agreed. Whilst the sentiment is understood in terms of supporting SMEs the reality for smaller predominantly rural districts the smaller sites make a considerable contribution to the development of housing in the district as a whole and therefore the predominance of affordable housing provision. Raising the threshold will simply reduce the overall affordable housing provision that the district is able to provide and will not be compensated for by other larger sites.

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

- i) Up to 40 homes**
- ii) Up to 50 homes**
- iii) Other (please specify)**

A. iii) as per answer to Q17 the threshold should not be amended. In Wyre Forest District if the threshold was raised to 40 homes, 20 allocated sites in the Submission Plan would be affected and if it was raised to 50 homes 22 allocated sites in the Submission Plan would be affected and the number of affordable dwellings in the district would therefore be reduced.

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

A. No, see answer to Q17 above.

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

A. If the Government proceeds with raising the threshold then it should only be for a maximum period of 18 months.

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

A. Agreed

Q22: Do you agree with the Government's proposed approach to setting thresholds in rural areas?

A. Agreed.

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

A. None

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

A. In principle the lifting of the limit is supported, but it is a considerable increase in scale to move from 10 units to 150 and it is felt that the Government should place a limit of 50 dwellings on the upper threshold to which PiP should be available.

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

A. Yes, limits should be set to avoid the possibility of residential schemes becoming a 'Trojan horse' for commercial developments which might not otherwise have received planning permission and which might undermine Local Plan policy or which need much tighter control than would be the case with PiP.

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

A. No, this is not agreed. To be consistent with the approach being proposed in the 'Planning for the Future' consultation the inclusion of a design code should be necessary to give confidence that quality will not be diminished; such a code should also specify the number of storeys of any new development.

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

A. Yes, see answer to Q26.

Q28: Do you agree that publicity arrangements for Permission in Principle by application should be extended for large developments? If so, should local planning authorities be:

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

If you disagree, please state your reasons.

A. ii) this would then enable the local authority to determine the best methodology appropriate to its local area.

Q29: Do you agree with our proposal for a banded fee structure based on a flat fee per hectare, with a maximum fee cap?

A. No, it is unrealistic to assume that determining PiP applications will be any less onerous than dealing with an outline planning application and the fee structure should reflect that.

Q30: What level of flat fee do you consider appropriate, and why?

A. To match an outline planning application.

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

A. Agreed

Q32: What guidance would help support applicants and local planning authorities to make decisions about Permission in Principle? Where possible, please set out any areas of guidance you consider are currently lacking and would assist stakeholders.

A. None

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

A. The main drawback is a reduced fee for the local authority which would be rectified by not proposing a reduced fee for PiP applications.

Q34: To what extent do you consider landowners and developers are likely to use the proposed measure? Please provide evidence where possible.

A. None

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

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

A. None



Overview & Scrutiny Committee

Section 106 Planning Viability Priorities

Report of: Kate Bailey
Date: Thursday 3 September 2020
Open

1. Summary

- 1.1 The purpose of this report is to agree the prioritisation of allocating funding achieved through planning obligations across the various elements (such as education, highways and affordable housing) on sites where there is a shortfall in meeting the costs of all obligations following a viability assessment.

2. Background

- 2.1 Planning obligations, under s106 of the Town and Country Planning Act 1990, are a mechanism which mitigate the impact of a development proposal to assist in making it acceptable in planning terms, that might not otherwise be acceptable. They are focused on site specific mitigation of the impact of development. S106 obligations are often referred to as 'developer contributions' along with highway contributions and the Community Infrastructure Levy (where these have been introduced). Planning obligations run with the land, are legally binding and enforceable.
- 2.2 The common uses of planning obligations are to ensure that necessary infrastructure is provided on and off site to enable the development to take place and to secure affordable housing; and to specify the type and timing of this housing. Other uses might include securing financial contributions for education provision or other matters which are reasonably required in order to make the development acceptable. However, these are not the only uses for a s106 obligation. A s106 obligation can:
- a) restrict the development or use of the land in any specified way
 - b) require specified operations or activities to be carried out in, on, under or over the land
 - c) require the land to be used in any specified way; or
 - d) require a sum or sums to be paid to the authority on a specified date or dates or periodically.
- 2.3 The legal tests for when a s106 obligation can be used are set out in regulation 122 and 123 of the Community Infrastructure Levy Regulations

2010 as amended and the National Planning Policy Framework (NPPF). The tests are that an obligation must be:

- necessary to make the development acceptable in planning terms
- directly related to the development; and fairly and reasonably related in scale and kind to the development

2.4 The amount of s106 contribution differs in each planning application as each site has different characteristics which dictate the need for s106 to be applied. Generally, the amount of s106 contribution which each site can make is a product of the financial viability of bringing a site forward for development; an unviable site is unlikely to be developed. Therefore, the amount of s106 contribution recommended by the planning officer when reporting to Planning Committee follows negotiation about where the line of viable and unviable lies and how much the development can afford to contribute before it becomes unviable.

2.5 The national Planning Practice Guidance (PPG) states the role for viability assessment is primarily at the plan making stage. Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan. Policy requirements, particularly for affordable housing, should be set at a level that takes account of affordable housing and infrastructure needs and allows for the planned types of sites and development to be deliverable, without the need for further viability assessment at the decision making stage.

2.6 The viability sections of the Planning Practice Guidance (PPG) (Chapter 10) were completely rewritten in 2018. The changes provide clarity and confirm best practice, rather than prescribe a new approach or methodology. Having said this the emphasis of viability testing changed significantly. The, now superseded, requirements for viability testing were set out in paragraphs 173 and 174 of the 2012 NPPF which said:

173 ... To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.

174 ... the cumulative impact of these standards and policies should not put implementation of the plan at serious risk, and should facilitate development throughout the economic cycle...

2.7 The PPG confirms it is appropriate for Local Plan makers to use site typologies to determine viability at the plan making stage. Average costs and values can then be used to make assumptions about how the viability of each type of site would be affected by all relevant policies. Plan makers can also undertake site specific viability assessment for sites that are critical to delivering the strategic priorities of the plan, in the case of the Council's Plan submitted for Examination earlier this year, this was case with the Eastern Kidderminster Expansion site. A viability assessment already existed for Lea

Castle, the other major growth site in the Submitted Plan, and accompanied the planning application.

- 2.8 The purpose of viability testing is now to ensure that '*maximum benefits in the public interest*' has been secured. If the maximum viable benefit is secured, but not all impacts are mitigated, it becomes a matter of planning judgment whether to allow a development proposal to proceed or not.
- 2.9 The Council's current policy is set out in the Planning Obligations Supplementary Planning Document (SPD) (2015) and covers developer contributions around physical, social and green infrastructure. Affordable Housing contributions are covered in the Council's Affordable Housing SPD (2014).
- 2.10 As part of the Local Plan Review the Council has developed an Infrastructure Delivery Plan (IDP). The purpose of the Wyre Forest Infrastructure Delivery Plan (WFIDP) is to set out the infrastructure requirements as part of the evidence base to support the proposals contained in the Wyre Forest Local Plan Review (WFLPR), which covers the period 2016 to 2036. Importantly the IDP seeks to;
- Review the existing capacity of physical, social and green infrastructure provision across the District.
 - Identify the infrastructure needs required to serve the proposed level of growth within the District.
 - Identify the delivery mechanisms required in order to implement the required infrastructure.
 - Where possible, identify the responsible delivery body and provide a broad indication of costs.
 - Identify what funding sources might be available to facilitate implementation
- 2.11 There are a number of other obligations on developers that have been included in the Viability Assessment work which was developed as part of the evidence base for the Submitted Local Plan as they are imposed on developers through the Local Plan policies, but that aren't shown as separate planning obligations for the purpose of s106. These obligations include;
- 2.11.1 All new developments over 100 square metres gross, or one or more dwellings, should incorporate the energy from renewable or low carbon sources equivalent to at least 10% of predicted energy requirements,
- 2.11.2 The provision of self-build units or serviced plots on sites of 50 dwellings or more
- 2.11.3 20% of properties on all major housing developments to meet the higher access standards (Part M Building Regulations (Access to and use of buildings), (Category 2 M4(2), accessible and adaptable dwelling); and a further 1% of the overall number of housing units to meet Category 3 M4(3), wheelchair user dwellings standards
- 2.12 When there are insufficient s106 contributions available through a development site to satisfy all of the matters which require a contribution

(because the site would otherwise be unviable), and the planning judgment reached is that the development should nonetheless be permitted to proceed in the public interest, the Council has to prioritise where it will allocate the monies which are available. Logically such prioritisation would reflect the Council's Corporate priorities which are;

- a safe, clean and green living environment
- supporting a successful local economy
- good quality and affordable homes for all

On that basis affordable housing and open spaces are likely to be top priorities, or where the development can directly contribute to economic growth. Accordingly, priorities around education and community facilities might be lesser priorities as they don't directly contribute to the Corporate Plan Priorities or other funding streams maybe available to deliver them. Clearly key infrastructure (generally such as highways or drainage) which is necessary to enable the development to take place at all also has to be a priority as they do contribute to the living environment and can negatively affect the local economy if not undertaken.

3. Key Issues

- 3.1 As part of the Local Plan making process various viability assessments were undertaken as part of the evidence base. The original study in 2017 undertaken by HDH Planning and Development Ltd was based on undertaking financial appraisals of sites, the output of which is the Residual Value. The Residual Value is the maximum that a developer could be expected to contribute from a site and still make an adequate return and retain the viability of the site for development purposes. For a site to be viable the Residual Value must exceed the Existing Use Value (EUV) by a sufficient margin for to induce the landowner to sell (so called EUV+).
- 3.2 In the study a range of typologies (i.e. types of developments) were modelled to reflect the expected future development (based on current use, size and geographic distribution, etc). In addition, 12 potential strategic sites were modelled, based on estimates of their strategic infrastructure and mitigation requirements provided by Worcestershire County Council (WCC). It is acknowledged that modelling is never totally representative, however the aim of the work was to broadly test development viability of sites likely to come forward over the plan period and to inform the selection of sites. The Council should only be proposing to allocate sites in the Local Plan which are viable and have a reasonable expectation of being capable of delivery. As the plan advanced, more detailed s106 expected costs came to light through feedback from statutory and non-statutory consultees (worst case scenarios were used) and some market changes occurred.
- 3.3 Overall the vast majority of sites represented by the typologies were shown as deliverable and the Council can be confident that they will be forthcoming. The exceptions were some of the brownfield sites, including Lea Castle, but with a degree of policy flexibility most sites were deliverable. The work sensitivity tested a number of different scenarios around affordable housing

percentages, the tenure split within affordable housing and social versus affordable rent and these, coupled with the Housing Needs Study 2018, helped to settle the policy position of 25% affordable housing with a 65:35 split between rented and intermediate types of home ownership which was part of the Submitted Plan.

- 3.4 The Pre-Submission Viability Note was published in June 2019 to assist with the finalisation of the Local Plan. It considered further changes to the NPPF (Feb 2019), PPG (May 2019), CIL regulations and the new RICS guidance (May 2019). It also updated information concerning the strategic sites and the Council's policy changes. At the time this work was undertaken, there was some more detailed estimates of the strategic infrastructure costs for both strategic sites that had been included in the updated Infrastructure Delivery Plan (based on the worst case scenario) and these were included in the Pre-Submission Viability Note.
- 3.5 The strategic infrastructure and mitigation costs did cause viability to worsen and so the Viability Note proposed policy changes to potentially improve viability. This included increasing the numbers on sites, pursuing other sources of infrastructure funding and reconsidering strategic infrastructure, affordable housing and density requirements. All these options were considered by the Local Plan Review Panel and officers will continue to look for alternative sources of funding for infrastructure or to reduce requirements where this still leaves the development acceptable.
- 3.6 Overall the viability assessment takes a cautious approach and uses averages and the best cost estimates available at the time but still identifies that the Local Plan sites are deliverable. However, as the Taylor Wimpey (east of Kidderminster) and Homes England (Lea Castle) viability assessments show, both have involved policy compromises in the form of a reduced contribution of affordable housing.
- 3.7 This reduction in supply of affordable housing delivered through s106 sites has an impact on both the residents of Wyre Forest, who have a reduced range of housing options if they are in receipt of a lower income, and on the finances of the council who are funding unprecedented numbers of households in emergency accommodation due to the lack of an affordable housing supply to move people into.
- 3.8 Where viability assessments show that the developer will be unable to meet all policy requirements on a site, it is proposed that a prioritisation of infrastructure requirements is agreed by the Council so that the provision of affordable housing isn't always reduced first from the developers obligations. This will be site specific as each site will bring forward its own individual and specific requirements, but the prioritisation model should broadly follow the corporate priorities outlined in 2.12 above.
- 3.9 Where sufficient funding is not available to cover all planning s106 obligations it will be necessary to prioritise the list of "asks" and may require the Council to decide that some obligations aren't met at all. It may be possible to still fund

these obligations through other funding streams or alternatively it may be these particular obligations aren't as essential as others to make the development acceptable. The Council could prioritise the elements in relation to the agreed corporate plan whilst also taking into consideration the essential infrastructure needed specific to any site, such as highways or drainage.

- 3.10 The amount of s106 contribution allocated to each prioritised element will differ from site to site and will be subject to the detailed negotiations undertaken by the planning officer on behalf of the Council. Where it is the case that not all policy requirements can be met it is proposed that the Officers will prioritise in the following order:
- On and/or off site infrastructure necessary to make the development acceptable
 - Affordable housing
 - Open space and recreation
 - Education
 - Other stakeholder contribution requests such as infrastructure costs associated with health provision or the police
- 3.11 The recently (August 2020) published White Paper "Planning for the Future" which is currently out for consultation proposes a number of changes to the current system of planning obligations including setting the a nationally set, value-based flat rate charge (the 'National Infrastructure Levy') that replaces both the Community Infrastructure Levy and the current system of planning s106 obligations. The government aim is that the new Levy will raise more revenue than under the current system of developer contributions and "deliver at least as much – if not more – on-site affordable housing as at present".
- 3.12 The White Paper proposes to give local authorities greater powers to determine how developer contributions are used, including by expanding the scope of the Levy to cover affordable housing provision to allow local planning authorities to drive up the provision of affordable homes. The Government plans to extend the scope of CIL and remove the exemptions from it to capture changes of use through permitted development rights, so that additional homes delivered through this route bring with them support for new infrastructure.
- 3.13 The White Paper acknowledges that a reformed Infrastructure Levy will also need to have considered the impact of this change on areas with lower land values. The Council's response to the White Paper is subject of a separate report.

4. Options

4.1 To recommend to cabinet that:

The priority list set out in paragraph 3.10 of this report is used to determine the allocation of s106 obligations where the viability of sites is deemed to be such that not all policy requirements can be met.

5. Consultation

- 5.1 Consultation has taken place with CLT, Development Manager and the Principal Solicitor.

6. Related Decisions

- 6.1 Not applicable

7. Relevant Council Policies/Strategies

- 7.1 Local Plan.

8. Implications

- 8.1 Resources: Not applicable
8.2 Equalities: Not applicable
8.3 Partnership working: Not applicable
8.4 Human Rights: Not applicable
8.5 E-Government: Not applicable
8.6 Transformation: Not applicable

9. Equality Impact Needs Assessment

- 9.1 An EIA screening has been undertaken and no adverse impacts were identified.

10. Wards affected

- 10.1 All wards.

11. Appendices

- 11.1 None

12. Background Papers

- 12.1 Viability Topic paper
12.2 Infrastructure Delivery Plan.

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