

# Planning for the future: consultation

## NHF response – briefing for members

### Summary

The government launched its white paper [Planning for the future](#) on 6 August, a consultation on its proposals for long-term planning reforms. This was announced alongside proposals for [short-term changes to the planning system](#), which we [responded to in September](#).

We endorse the ambition in the paper to create more planning certainty and a simpler, clearer system, and think that many of the proposals for improving plan-making and design standards could be developed into worthwhile improvements. We have already met with the Secretary of State and government officials to discuss how some of the proposals can be developed.

However, after consultation with our members, we identified some concerns about the proposed replacement of Section 106 with the infrastructure levy. These include:

- The proposal to apply national levy rates based on Gross Development Value, which risks promoting the most profitable schemes over the best developments.
- The suggested borrowing by local authorities to provide infrastructure does not seem an adequate alternative to the legal certainty of Section 106

- Uncertainty about whether, how and when housing associations would be able to secure affordable homes on private developments, and how their own developments of affordable housing would be treated for the purposes of the levy.

Should the government proceed with its plans, then to have the best chance of achieving as much or more affordable housing in the new planning system as there is currently, we would like to see:

- Detailed affordable housing requirements included in new-style local plans as requirements which, along with important infrastructure, must be met as fully as possible before developer contributions can be used for other purposes.
- A clear expectation that housing associations or other registered providers of affordable housing should be involved early in the planning process for schemes which will provide affordable homes through developer contributions.
- An exemption from the proposed new infrastructure levy for affordable housing (as currently applies through Community Infrastructure Levy relief).

We also feel that the under-resourcing of local authorities under the current system needs to be effectively addressed, and that even the best-designed system will not achieve its potential if it lacks adequate resources.

We set these concerns out in our response to the consultation, submitted on 30 October. This briefing provides a summary of the issues we raised as well as our detailed responses in full.

## Introduction

The National Housing Federation (NHF) welcomes the opportunity to respond to the government's consultation on reform of the planning system proposed in its white paper, Planning for the future.

The NHF is the voice of almost 800 housing associations in England, providing more than two and a half million homes for around six million people. Our vision is for a country where everyone can live in a good quality home they can afford.

Our members were responsible for building around 60,000 new affordable homes last year and are ambitious to deliver more, both through their own development and via developer contributions.

## Detailed summary of our response

We agree with much of the analysis of present difficulties identified in the white paper and welcome the government's efforts to improve the operation of the planning system. We also endorse the paper's ambitions around creating a system that is simpler, clearer and more certain.

While there are some directions and proposals can endorse subject to further work, following consultation with our members and other organisations we also identified some areas and issues that raise fundamental concerns – most notably around the infrastructure levy.

### **Pillar One – Planning for development**

We support the broad direction of the proposals in seeking to improve local planning, making plans more meaningful, easier to understand and more effective as a means of shaping sustainable development in every part of the country.

In particular, complete coverage of clearer map-based plans, produced in a shorter timeframe and with added emphasis on effective public engagement, is desirable. We support the use of clear zones in these plans, so that the type of permissible development in each place is understood. However, the work involved in establishing sufficient detail on each zone will be considerable, and may not lend itself to the

proposed 30-month statutory timetable for plan-making.

The three zones may need further conceptual work, particularly the ‘renewal’ zone. To be useful, zoning policies need to be relevant to each of the places to which they apply – and the ‘renewal’ zone seems likely to encompass a huge and diverse range of places and purposes. We also have some concern that ‘protected’ zones may be misunderstood, or misapplied, to create an unhelpful expectation of a presumption against development.

While a considerable level of detail is likely to be required to make the most of zoning, care must be taken not to introduce excessive rigidity into the system – the balance between certainty and flexibility will need to be carefully struck.

The idea of establishing robust housing requirement figures in advance of preparing local plans is a good one. It is very difficult to do sensibly from a top-down national perspective, however, and we are concerned that the combination of a reformed ‘standard method’ for assessing housing need coupled with a further top-down method to apply local constraints may lead neither to good planning outcomes, nor be politically sustainable. The Homes for the North group, an alliance of the largest developing housing associations in the north of England, have been working on ways to address the inevitable challenges in trying to calculate the right numbers and we would encourage the government to engage with them.

The challenge of calculating the right numbers in the right places is compounded by the white paper’s lack of ideas on ‘larger than local’ planning. Many local authority geographies bear little resemblance to functional housing market or economic areas, and that broader perspective does need to be an integral part of how we plan.

## **Pillar Two – Planning for beautiful and sustainable places**

The NHF engaged constructively with the Building Better, Building Beautiful Commission, and endorses its and the white paper’s ambitions to create a legacy of which we can be proud.

We recognise that the current planning system too often fails to secure optimal design and sustainability outcomes. Therefore, we support measures such as the increased use of design guidance and codes made effective by placing greater weight on, and responsibility for, design in plan-making and decisions.

As with plan-making and zoning, there will be a need to ensure that codes and guidance are comprehensive and compelling, without becoming stifling, defaulting to box-ticking exercises or undermining the viability of development through excessive costs or conditions.

We think that the lack of reference to interior standards within homes is a missed opportunity. We welcome the separate consultation being undertaken on accessibility in new homes – but this and space standards (indoors and out) are of equal importance to the appearance and location of new homes. The ongoing pandemic has reinforced the need for good homes to live in, as well as to look at.

Finally, the white paper outlines many positive aspirations in respect of stewardship of our natural and built environments and the role of planning in combatting climate change. However, the lack of detail (or any specific consultation question to respond to) does not inspire as much confidence as we would like that the reformed planning system will have environmental sustainability at its heart.

### **Pillar Three – Planning for infrastructure and connected places**

This is the area of the white paper which gives us greatest cause for concern. Whereas our comments on Pillars One and Two relate in large part to the need for subsequent development and detail, our concerns on the proposed infrastructure levy are more fundamental. For this reason, we cannot support the replacement of Section 106 with the proposed infrastructure levy at this time. We would be pleased to work with the government on ways in which the current system could be improved.

A rethink of the white paper's proposals is required to address fundamental questions, particularly around:

- The proposal to calculate levy rates based on Gross Development Value, which does not seem to account for the widely varying viability and profitability of different areas, sites and schemes – and risks promoting the most profitable schemes over the best developments in planning terms, particularly in areas of marginal viability.
- The loss of a link between contributing developments and the uses to which the levy might be put. Section 106 agreements provide legal certainty about the provision of necessary site-specific infrastructure, affordable housing and

other measures - the suggested borrowing by local authorities to provide infrastructure does not seem an adequate alternative.

Our concerns are amplified in light of experience of previous attempts to implement development levies, including the current Community Infrastructure Levy (CIL), which have not been notably successful and have proven less effective and durable than Section 106. We would like the government to look again at the 2016/17 [CIL review](#), which had useful ideas on improving developer contribution systems.

In contrast to CIL and previous levies, Section 106 has been relatively successful and has scope for further improvement. We recognise that it can be a bureaucratic burden and is sometimes too flexible, but it does have a number of important strengths:

- It can, and should, be sensitive to local circumstances and not undermine viability.
- It ensures that necessary site-specific mitigations are delivered, allowing development to proceed.
- It is ring-fenced for use on the purposes for which it was raised (e.g. affordable housing, infrastructure).
- It enables efficient on-site provision of affordable homes, creating mixed communities.

Any new system should retain these characteristics, and demonstrate them more effectively than at present. We appreciate the Secretary of State's clarity that it is the government's intention is to secure as much, or more, affordable housing in the new planning system as we currently achieve. In order to have the best chance of achieving this, we would like to see:

- Detailed affordable housing requirements – including numbers, types and tenures – included in new-style local plans as requirements which, along with important infrastructure, must be met as fully as possible before developer contributions can be used for other purposes.
- A clear expectation that housing associations or other registered providers of affordable housing should be involved early in the planning process for schemes which will provide affordable homes through developer contributions. Our experience is that this one of the best ways to assure the right types of homes are delivered efficiently and to a good standard.

Agreeing these through an early contract provides all parties with helpful certainty, and helps developer cashflow – which may be increasingly helpful in tougher economic times.

- An exemption from the levy, if it is introduced, for affordable housing (as currently applies through CIL relief). It does not seem sensible to subject developments of affordable homes to a process of subsequent contributions to affordable housing. A clear exemption would improve efficiency and certainty.

We would also welcome clarity on whether “as much, or more” affordable housing under the new system refers to the current amount of around 28,000 affordable homes completed through Section 106 in 2018/19, or the number of homes in existing affordable tenures anticipated after proposed changes to introduce First Homes and raising the Section 106 threshold. These changes would mean a major reduction in the current supply of these affordable tenures ahead of the white paper’s reforms.

## **General observations**

We welcome the white paper’s acknowledgement that the resources available to local authority planning departments are insufficient. This is certainly our members’ experience, and one of the greatest difficulties they encounter with the system (although it is not only just in planning departments – highways, legal and other functions are often also inadequately resourced for their planning roles).

The best-designed system will not achieve its potential if it lacks sufficient skilled operators to deliver that potential. We think this is a major threat to achieving the white paper’s worthy objectives.

The white paper suggests a “resources and skills strategy”, which could be helpful, but the change to a new system – implementing a new, frontloaded approach while continuing to operate the current system with its emphasis on development management – needs a major commitment of additional resources.

Implementation of the new system also needs to be done with a clearer picture of any structural changes in English local government. The promised devolution white paper could be an opportunity to link new structures and geographies with a new

planning system, but changes announced midway through the implementation of a new planning system could seriously undermine progress.

Finally, we caution against rushing to legislation and implementation without fully considering, and consulting widely on, more detailed proposals. Many important questions remain about the white paper's proposals, often more than just development of detail. There is potential to create problems by rushing to subsequent stages before the foundations are properly laid.

## Our response in full

### Pillar One – Planning for development

Key points:

- The National Housing Federation supports efforts to improve local planning, making plans more meaningful, easier to understand and more effective as a means of shaping sustainable development in every part of the country.
- We particularly support efforts to enhance the extent and quality of community engagement in the plan-making process, and to make those plans more certain and meaningful through clearer zoning of land (particularly for growth).
- We have concerns, however, that local resources will not be available to deliver the demanding changes suggested by the white paper. In particular, a 30-month timescale for local plans including full zoning details and design codes, allowing only a six-week period for community input seems over-ambitious.
- In view of the challenges in delivering detailed prescriptions for development in a short timescale, and the likely difficulty in securing sufficient community input at the plan-making stage, we think the reduction in democratic input from communities and councillors at later stages in the process may present problems.
- We are concerned by the lack of any strategic planning mechanism in the white paper and think such a mechanism will be integral to an effective new



planning system.

- Experience of the ‘standard method’ of calculating local housing need, including the recent reform proposals, suggests the even more nationally-directed approach suggested in the white paper is not appropriate. Settling housing numbers at the outset of plan-making would be helpful, but good planning needs to consider more factors and broader areas than the standard method allows for.
- The white paper is very focused on delivering planning permissions for housing. While this is important, there are many other issues to consider in good planning. We’d like to see a broader view of planning, particularly its role in delivering sustainable places to live.

**Proposal 1: The role of land use plans should be simplified. We propose that Local Plans should identify three types of land – Growth areas suitable for substantial development, Renewal areas suitable for development, and areas that are Protected.**

Q5. Do you agree that Local Plans should be simplified in line with our proposals?

We recognise the issues described with the current plan-making process, and support efforts to make local plans simpler and quicker to complete. Clearer, map-based zones could be part of this. We also support better methods of public engagement and resulting plans that are more meaningful and easier to understand by all users. In addition, we would like to see affordable housing requirements incorporated in the policies for different zones.

The white paper offers little suggestion as to the amount of work required to ensure that growth zones provide the intended certainty. At present, much detailed work is done through the planning application process: having it in place prior to applications seems appealing - but would surely require a large amount of work in anticipating a wider range of developments and locations to ensure that whatever proposals come forward will accord with the range of permissible uses in a zone. Moreover, work may be done for developments which do not come forward.

We think the government needs to develop more specific propositions for its zone ideas so that stakeholders are more clearly able to understand what is proposed both in the next stages of this reform process, and ‘on the ground’ when the system is implemented.

This extra work is particularly relevant in the case of the proposed ‘renewal’ zone, which seems likely to be applied to a wide variety of locations. It is unclear how granular zones

are intended to be – could a single street or town centre be divided into several parts for different zoning, for example?

Our rural members, in particular, have concerns that the proposed ‘Protection’ zone may be applied wholesale to swathes of countryside. It may then be interpreted as a presumption against even sensitive, organic development of rural communities which can maintain the viability of local services and provide housing for – often acute – local needs.

Given the range of existing, relatively well-understood protective designations (e.g. National Parks, conservation areas, green belt, etc.), each of which has its own distinct focus, we wonder whether a new ‘catch all’ protection zone is required at all?

Across all zones, and in view of the uncertainties introduced by the proposed infrastructure levy, we would like to see clear and robust affordable housing policies (addressing numbers, types, tenures and other details) required at the plan-making stage.

Finally, we are unclear whether the resources are in place to deliver the work required within the envisaged timescale. The white paper makes reference to the limited resources available to local planning departments but does not provide meaningful commitment to resolving the problem. The scale of resources required when trying to establish the ‘front-loaded’ new system while operating the current, development management dominated, system seems far removed from those available to many local authorities at present.

Given that many local authorities may not be able to establish a complete new system in the prescribed timescales, we would be interested to know more about the consequences in that scenario. Outcomes which encourage either speculation and unplanned development or – conversely – discouragement of development would be very unwelcome.

## **Proposal 2: Development management policies established at national scale and an altered role for Local Plans**

Q6. Do you agree with our proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally?

We support the principle of streamlining and standardising development policies. But places are unique and some variation is necessary. It is difficult to tell from the white paper whether and how an appropriate balance would be struck.

Likewise, greater digitisation and the ability to interrogate data across areas and topics on a consistent and quantitative basis is appealing. But it seems unlikely that all the important details can be usefully captured in this way. It will be important to develop more propositions in collaboration and for consultation.

**Proposal 3: Local Plans should be subject to a single statutory “sustainable development” test, replacing the existing tests of soundness**

Q7b. How could strategic, cross-boundary issues be best planned for in the absence of a formal Duty to Cooperate?

The current lack of proposals for cross-boundary planning will need to be addressed in order to achieve good planning outcomes. Local authority areas are often inappropriate as a basis for sensible strategic planning – as the experience of the revised standard method for calculating housing need has recently shown.

The devolution white paper should offer important solutions to the framework for more comprehensive ‘larger than local’ planning. As it stands, the white paper creates doubt about the future status of existing cross-boundary plans, such as in London and Greater Manchester.

There may be a greater role for the Planning Inspectorate in ensuring solutions where local authorities cannot achieve these themselves within an adequate timescale. Experience suggests that an entirely voluntary approach requiring unanimity among partner authorities may not always succeed (e.g. Greater Manchester, West of England, Greater Exeter). This is particularly the case where green belt release is involved: the government needs to provide a clearer route to local authorities who have a good case for limited revision to their green belts.

**Proposal 4: A standard method for establishing housing requirement figures which ensures enough land is released in the areas where affordability is worst, to stop land supply being a barrier to enough homes being built. The housing requirement would factor in land constraints and opportunities to more effectively use land, including through densification where appropriate, to ensure that the land is identified in the most appropriate areas and housing targets are met.**

Q8a. Do you agree that a standard method for establishing housing requirements (that takes into account constraints) should be introduced?

We support the aspiration behind this idea, and would like to see housing numbers decided at the outset of plan-making but – in view of the shortcomings of the current standard method and proposals for its revision – we cannot support the extension of this approach.

Simple formula-based approaches cannot embrace the range of variables which need to be accommodated by good planning. Adding further weight to the flawed standard

method by making it binding seems likely to compound its shortcomings. The white paper is unclear on how 'constraints' would be considered in an extended top-down system.

Others have made suggestions as to how the latest standard method could be adjusted to reduce some of its negative effects – but we believe that it is fundamentally flawed and should be replaced. Its replacement needs to include greater professional and democratic input. With reference to question 7b, it also needs to consider more meaningful housing market areas as these often do not correspond with district and borough boundaries.

We suggest that well-designed methodological guidance, with active oversight by the Planning Inspectorate might be a better way to deliver the careful balance of qualitative and quantitative judgement required in good planning.

Q8b. Do you agree that affordability and the extent of existing urban areas are appropriate indicators of the quantity of development to be accommodated?

These are relevant as starting points, but only amongst a full range of planning criteria. It is not difficult to envisage situations where it is more appropriate to allocate more development to a smaller area (e.g. if infrastructure capacity, the opportunity for brownfield development and regeneration, and fewer protective designations made this a logical choice).

House prices – while easily available – may not be the best measure of affordability: market rents are a better indicator of the cost of housing and we would like to see the government collect and use better data on these.

Furthermore, without effective cross-boundary planning and clearer government direction, we are unclear what opportunity there might be for major new settlements to be a solution.

Releasing more land (which seems the intent behind this question, and the white paper in general) is an important element in enabling more development. However, as widely observed, there are huge numbers of planning permissions which have not been built out. Issuing more permissions on more land without means to compel development will not necessarily lead to more building. And more building is unlikely not make much difference to affordability if developers focus on the most profitable types of developments.

It seems unlikely that enough land can be released in many parts of the country (particularly the least affordable areas) to achieve a properly competitive market where intense competition compels developers to build more and faster. Something close to this situation might have existed in the 1930s when huge levels of modestly-priced new private homes were built on cheap land, but the ensuing sprawl\* also gave rise to the 1938 Green Belt Act and 1955's circular 42/55.

\* London's built-up area doubled between 1919-39, its area growing six times faster than its population ([www.tandfonline.com/doi/abs/10.1080/20507828.2017.1399760](http://www.tandfonline.com/doi/abs/10.1080/20507828.2017.1399760)).

**Proposal 5: Areas identified as Growth areas (suitable for substantial development) would automatically be granted outline planning permission for the principle of development, while automatic approvals would also be available for pre-established development types in other areas suitable for building.**

Q9a. Do you agree that there should be automatic outline permission for areas for substantial development (Growth areas) with faster routes for detailed consent?

Zoning designations would require considerable detail on what is permitted within each zone to be a basis for awarding outline permission. Current outline planning permissions can involve a significant amount of work for developers applying for one specific scheme on one site. For a local authority to undertake a sufficient level of work in advance to provide adequate assurance to a range of potential schemes across a zone seems an onerous task, and not one we believe many would have the resources to achieve while also operating the current system as well as putting other elements of the new one in place. It could also place requirements on statutory consultees, such as infrastructure providers who would also be required to allocate additional resources to work tasks which are already often a source of delay in the system.

Our understanding of detailed zoning systems in other countries suggests that building up the detail required for different zones takes considerable time, so grant of outline planning permission may be more appropriate as a longer-term aspiration.

The amount of work required would also depend on the extent and variety of the growth zones designated. The conditions for outline planning permission to be achieved in different growth zones, or even different parts of individual zones could vary considerably – so a relatively granular (and thus resource intensive) process may be required.

A less detailed level of work may still be useful in providing greater certainty about development principles. It may fall short, however, of providing the level of assurance a developer might seek (e.g. sufficient to secure funding), while still leaving more to be decided than the ‘reserved matters’ process could reasonably accommodate without councillor or community input (as is suggested in the white paper).

Q9b. Do you agree with our proposals above for the consent arrangements for Renewal and Protected areas?

As with the ‘growth’ zones, we are unclear on the sufficient detail of what these two zones might entail, or what the terms ‘renewal’ and ‘protected’ mean in this context.

‘Renewal’ suggests redevelopment, presumably of brownfield sites – but this would leave a considerable blank space where many greenfield developments might be planned. In either case, we are unclear what level of granularity is envisaged. It seems that renewal

zones could cover a wide range of areas with very different characteristics. Further thinking seems to be required on this proposed zone.

As noted, 'Protected' status might be interpreted as meaning a presumption against development. While it may mean a default to something like the current system – at least for the processing of planning applications – it is important that the status is widely understood by the public. This is important for trust in the planning system and its operators to be maintained. We are not certain that a single, ambiguously-titled zone is necessarily preferable to the range of more specific and relatively well-understood designations which already apply.

Continued focus on existing protective designations would also allow those areas to have renewal, and perhaps occasionally growth, designations within them. For example, a National Park may well wish to designate a number of small areas for sensitive growth or renewal in order to meet the needs of local people for affordable housing. Local planning system should protect the wellbeing of local people too.

Q9c. Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime?

The idea of using the NSIP regime as a route for new settlements is not a new one. The current approach appears to work for specific items of infrastructure, and has features which could be adapted for use in the mainstream planning system (such as the rolling up of multiple consents into one process and the front-loading of community consultation). However, in its current form, it does not seem well suited to the much more complex, long-term and more 'land consuming' task of building a new settlement.

Successful towns, even new ones, are relatively organic developments by multiple developers, the scale and nature of which cannot be tightly predetermined. While it makes little sense to build half a piece of infrastructure (e.g. a reservoir or power station), towns can be fully functional with any number of homes, and the number and nature of these homes should not be rigidly prescribed at a single point in time.

There is a role in enabling infrastructure for new settlements via the NSIP process – but the details of homes and many other features required to create a functioning place seem more appropriate through other mechanisms.

A further element of the NSIP regime may be useful in deciding the location of substantial new settlements: a National Policy Statement (the legal instrument underpinning the elements of the NSIP process) for major new settlements could be a useful aid to strategic planning. A National Policy Statement, approved in Parliament, could be a useful guide to the location of regionally-significant new settlements. An obvious example would be in the Oxford-Cambridge Arc or as a means to accommodating growth requirements which cannot sensibly be contained within London's boundaries.

**Proposal 6: Decision-making should be faster and more certain, with firm deadlines, and make greater use of digital technology**

Q10. Do you agree with our proposals to make decision-making faster and more certain?

We support the intentions behind these proposals, with some reservations about the extent to which quality and qualitative considerations can be speeded up and digitised.

We certainly support a more proportionate approach for smaller developments, and for those where the principle of development has been clearly established through a local plan. Greater standardisation of the application processes, data requirements and planning conditions are all to be welcomed.

We advise that major changes should be introduced carefully and collaboratively. We remain to be convinced that deemed permission for applications delayed in processing is a good idea. Developments such as hospitals (to use a white paper example) are complex and have many important impacts to be considered. In such cases, more time may be justified in order to achieve the best long-term outcomes.

Finally, the role of statutory consultees and other actors does not appear to be considered in these proposals. Transport, environmental, utility and other bodies have an important role in dealing with planning applications, and are often a source of delay in the system. We are unclear whether the proposals will extent to them.

**Proposal 8: Local authorities and the Planning Inspectorate will be required through legislation to meet a statutory timetable for key stages of the process, and we will consider what sanctions there would be for those who fail to do so.**

Q12. Do you agree with our proposals for a 30 month statutory timescale for the production of Local Plans?

Not at this stage, and without greater clarity on how the process is likely to work in practice.

A 30-month (or other) statutory timescale should only be imposed on the full plan preparation process when there are adequate resources in place, and once the new system has been proven and 'bedded in'.

While comprehensive local plans, with full details of zoning and design codes – based on meaningful community input – are desirable, we are not convinced these can be achieved in the timescale envisaged with the current level of resources available to local government. These plans would have to be produced while continuing to operate the current system – for which many councils are already under-resourced.

There may be potential for a phased transition to the new system, adding layers of details over time and once earlier stages have been satisfactorily delivered. At this stage, statutory timescales might become more appropriate – although we are unclear what sanctions might be applied for failure to adhere. Intervention has been threatened in current plan-making processes but has not amounted to a great deal.

### **Proposal 10: A stronger emphasis on build out through planning**

Q14. Do you agree there should be a stronger emphasis on the build out of developments? And if so, what further measures would you support?

We endorse the suggestion that a greater variety of developers, sites and development types would help, particularly where this involves a greater variety of tenures. As the government's own [independent review of build out rates](#) found, affordable rented tenures are largely unaffected by the absorption rate which dictates the pace of building for market sale.

A greater number and variety of sites available to a wider variety of builders would also enable smaller builders to increase their contribution. Clarity on land control (e.g. purchase options) would be important to make this effective. We will respond to the concurrent consultation on this topic.

## **Pillar Two – Planning for beautiful and sustainable places**

Key points:

- As with Pillar One, we support the ambition behind the proposals for change but need more detail before we can offer definitive views.
- We think more resources will be required to deliver the public engagement and effective design guidance required as part of the overall approach to local planning, and to ensure its proportionate application alongside the many other criteria needed for good planning.
- The design of homes is about more than their location and external appearance. People spend more time inside than outside their homes – yet we know that many new homes are not built to good interior specifications. We would like to see accessibility and space standards embraced in the white



paper's approach to design and quality.

- The lack of detail (or consultation questions) on the proposed approach to environmental sustainability raises concerns that this may not be at the heart of a reformed planning system. We think it should be.

**Proposal 11: To make design expectations more visual and predictable, we will expect design guidance and codes to be prepared locally with community involvement, and ensure that codes are more binding on decisions about development.**

Q17. Do you agree with our proposals for improving the production and use of design guides and codes?

Broadly yes, although there remain many details and consequences of implementation to be worked through.

Design codes should not be so prescriptive – both in content and application – that they become a one-style-fits-all solution. More detailed prescriptions may be developed through site-specific codes but many developments, particularly infill, should respond to (if not necessarily follow) the form of surrounding development as well as local views on design. Conversely, it is important that codes are detailed enough to be interpreted consistently and as objectively as possible. Striking the right balance will require care.

It will also be important that design codes do not deter innovation or unusual-but-good design by creating an effective presumption against such ideas. This is a particular concern around the requirement to harness more, and have greater regard to, local community input – it is unclear how representative this might be.

Likewise, it will be important that design requirements cannot become so onerous that development – particularly of desirable but less profitable development, such as affordable housing – is rendered unviable.

Finally, we would like to see design guidance pay more attention to the functional quality of homes. Good internal and external space standards and the accessibility of new homes for all potential residents should be included in national and local requirements. We will respond to the government's consultation on accessible homes but would like to see this topic clearly addressed in work following the white paper.

**Proposal 13: To further embed national leadership on delivering better places, we will consider how Homes England's strategic objectives can give greater emphasis to delivering beautiful places.**

Q19. Do you agree with our proposal to consider how design might be given greater emphasis in the strategic objectives for Homes England?

We agree that greater emphasis on design quality (and other) criteria which drive a holistic approach to decisions would be welcome. These should apply to other aspects of public sector activity, such as land sales where a narrow interpretation of “best value” sometimes seems to mean only maximum price.

We would be wary of any change to Homes England’s approach which meant higher standards and costs that only applied to affordable housing providers, placing them at a disadvantage relative to private market developers.

**Proposal 14: We intend to introduce a fast-track for beauty through changes to national policy and legislation, to incentivise and accelerate high quality development which reflects local character and preferences.**

Q20. Do you agree with our proposals for implementing a fast-track for beauty?

We support the idea of greater certainty for schemes which demonstrate good design and would welcome this being clarified in the National Planning Policy Framework. We know that design grounds have been difficult to enforce as reasons for refusing development, so clearer, more objective tests could be useful.

We are also in favour of site-specific master-planning. Under the current system, these could be resourced via a Section 106 agreement: we are less clear how they would be resourced without that option, especially as local authority design skills are already in very short supply.

We have no objection to the principle of pattern books but are unclear how feasible or relevant they would be for infill purposes, or whether they really would foster innovation and industrialisation. They seem more suited to large-scale new development, although even then experience suggests it is not the design of new homes which has prevented the rapid uptake of modern methods of construction.

We are also concerned that extending permitted development rights via pattern books would limit planning authorities’ ability to consider the full range of criteria which contribute towards making a good development. Concerns over recent extensions of permitted development have not been about the appearance of the developments.

It is also unclear how many pattern books would be required for infill, given the range of different existing styles which might need to be responded to. With local authority resources already stretched, and the additional burdens faced in preparing for the proposed new system, it is unclear how a large series of potentially controversial pattern books would be developed and approved – and how many developments they would bring forward.

## Pillar Three – Planning for infrastructure and connected places

### Key points:

- The National Housing Federation has major concerns about the white paper's proposals for a new infrastructure levy and critical questions that we are not confident can be adequately resolved. This means we cannot support replacing Section 106 as a means of delivering affordable housing contributions at this time. We know our concerns about the proposed levy are widely shared by many beyond our own sector.
- We welcome the government's commitment to securing "as much, or more" affordable housing under the new system. However, we are concerned that this commitment is not deliverable under these proposals. Furthermore, we are unclear if the commitment refers to the present situation, or following the reductions proposed in the recent 'Current changes to the planning system' consultation. Those proposals, if implemented, would forego many homes secured in current affordable tenures.
- Current mechanisms are imperfect but Section 106, in particular, is an established, relatively effective and improvable process which delivers tens of thousands of new affordable homes each year. It has valuable elements that its proposed replacement appears to lack (including flexibility for local circumstances, hypothecation of contributions for affordable housing, and assurance that necessary site-specific measures such as infrastructure are delivered effectively). We would be happy to work with the government and other stakeholders to suggest improvements to the current system that would meet the stated ambitions of the white paper.
- The proposed nationally set levy rates based on Gross Development Value seem too inflexible an approach to the complex nature of land and development and could undermine desirable developments. Research or detail on what these rates might be or how they would apply in different scenarios is notably absent in the white paper.
- Affordable homes – currently eligible for relief from CIL – should be exempt from the levy, should it be introduced. This would avoid bureaucratic valuation processes, the use of public money for affordable housing to pay a levy intended for affordable housing, or potential conflicts where local authorities

prefer contributions in cash.

- We are concerned that weakening the connection between developments and their contributions could hinder future development and endanger the provision of on-site affordable housing which enables mixed communities to be delivered efficiently.

**Proposal 19: The Community Infrastructure Levy should be reformed to be charged as a fixed proportion of the development value above a threshold, with a mandatory nationally-set rate or rates and the current system of planning obligations abolished.**

Q23a. 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?

No.

We have serious concerns about the proposals as presented in the white paper. We believe more work must be done to test the idea to make sure it can deliver the ambitions set out. Housing associations are ready to work with the government on this.

Using Gross Development Value as the basis for calculation seems to take no account of the uplift or profitability of a scheme. Applying any significant level of levy could render desirable development unviable, while providing a windfall to more profitable but less desirable schemes. The planning system should aim to enable good development, not simply profitable development.

More generally, it seems difficult to fix a single levy rate, or even a small number of rates, which will be appropriate to the wide variety of local markets, different schemes and development types. Fixed rates do offer the benefit of certainty, which could be factored into land prices, but the effect of this is uncertain. Some places and developments simply do not have sufficient uplift potential to support a levy contribution (and no details of the proposed threshold(s) are provided to assess the relief this might offer).

Elsewhere, landowners may simply choose not to sell their land if the price is depressed such that selling is not attractive. This has been the experience from previous national levies.

The market in land supply is not like most others – there are often few alternative suppliers of equivalent land (which is often producing a useful return in its existing use) and many owners are content to hold land as an investment until the terms offered are more attractive.

It seems unlikely a fixed levy could bring forward more land while also capturing anything like the most potential value from its development. We cannot see how it could be sufficiently low to avoid making too many developments unviable, while also high enough to capture the most from profitable schemes.

There are also difficulties in concluding levy contributions at the end of a development. While it is at this point that the actual value of development is most easily measured, the duration of developments varies considerable and indeed some may never be complete. There may be ways to mitigate these effects but these are absent from the white paper.

Finally, Section 106, which captures by far the larger part of current developer contributions, does much more than simply capture financial or in-kind contributions. It provides an effective means to agree necessary infrastructure and other contributions to make a development 'acceptable in planning terms' and provides the developer and planning authority with certainty that these will be delivered. The proposed infrastructure would remove this important certainty (see further details under Q.22(d)).

Q23b. 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]

Locally (if the introduction of a levy goes ahead).

We understand the government's ambition to reduce the inconsistency in current developer contributions, particularly the Section 106 process. We know at times this can be time-consuming and inconsistently applied and poses particular challenges for smaller developers

However, the development process is not a mass-production industry where standardisation is logical and relatively straightforward. As noted above, each market, each site, and each development scheme has different needs and opportunities – sometimes significantly so, even within close proximity of each other. Flexibility is needed to account for different land values (including existing use values and land with effectively no, or negative, value), different development costs and variations in final value.

It is these variables and the need for flexibility which led the 2016/17 [CIL review](#) expert panel to conclude that simple flat levy rates were not appropriate at any significant level, and that Section 106 was an essential, if imperfect, mechanism which should have a stronger role. The chair of that process [recently wrote of her concerns](#) that that “the current proposals, though they sound attractively simple, may cause as many problems as they solve”. We agree.

It is our perception that many in the development sector know Section 106 could be applied better – but that most support its general principles and consider it a more sensible approach to developer contributions than the proposed infrastructure levy.

Q23c. 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.]

More. There seems little point in such a major upheaval if it is intended to produce the same as, or even less than current systems.

It is widely accepted that there is potential to capture more value from many developments, although it is difficult to be clear exactly how much from which developments.

The white paper does not consider questions around where value is captured. A difficulty with the current system is that value capture is heavily skewed towards higher value areas, particularly London and the South East. This is partly a reflection of the level of demand for infrastructure and affordable housing, but development in lower priced areas also generates needs for schools, roads, etc. The government should take this opportunity to consider how any new system might contribute towards 'levelling up' and a more equitable distribution of planning gain.

Q23d. Should we allow local authorities to borrow against the Infrastructure Levy, to support infrastructure delivery in their area?

Yes (if the introduction of a levy goes ahead).

Local authorities should be allowed to borrow against anticipated levy income. But they should generally not be expected to accept the financial and delivery risks and responsibilities that currently lie with developers in Section 106 agreements. The borrowing proposal is in no way an adequate replacement for the current approach and it risks undermining the delivery of new development.

We can see that occasional investments, perhaps opening up strategic sites to a range of developers and with a high degree of certainty over subsequent development could be prudent. But the range of items paid for (and sometimes delivered directly) by developers – including our members – through Section 106 agreements is much wider and more extensive than a local authority could sensibly adopt. The allocation of risk also seems inappropriate in most cases: the public purse would be required to repay borrowing for developments which might not actually occur (this is particularly so if the revamped planning system brings more sites forward, providing developers with more opportunity to pick and choose).

Developers are generally better placed to manage the risk and responsibility for infrastructure required for their specific sites. Our discussions with developers suggest that they would rather retain this through Section 106 agreements than be exposed to the uncertainty associated with the white paper's proposals. These appear to owe more to a CIL-type approach – one which has not been particularly successful at delivering infrastructure, and was deemed unsuitable for delivering affordable housing.

There are also important political issues to consider. Major developments are often unpopular with local constituents, and local authorities are likely to be less incentivised to borrow to bring forward infrastructure to enable these as the developers who stand to make financial gains.

**Proposal 20: The scope of the Infrastructure Levy could be extended to capture changes of use through permitted development rights.**

Q24. Do you agree that the scope of the reformed Infrastructure Levy should capture changes of use through permitted development rights?

Yes. These schemes should be included within the scope of any developer contribution system, including the current ones.

The current exemption of significantly sized permitted developments from the full range of developer contributions discriminates against (often better) schemes promoted through the mainstream planning process. It also inflates land values for some landowners and developers who take advantage of the current permitted development rules.

Homes created through permitted development should contribute to the same things considered necessary for 'mainstream' development, including internal space standards and external open space. The importance of adequate spaces, indoors and out has never been clearer than through the current pandemic period.

Whether changes of use (permitted development or otherwise) that create little extra floorspace or additional burden on local infrastructure or services should pay the levy on the same basis as new developments on greenfield sites is an open question. Our concerns over the focus on final development value apply here too.

Likewise, the white paper is unclear on the treatment of development which is not seeking to maximise profit – such as our members' own 'land-led' developments of affordable homes. This raises questions around valuation techniques, and also the logic of using what is often public money for affordable housing to pay a levy for affordable housing. It is also unclear what would happen if a local authority preferred to receive contributions in cash: would we be required to build homes for market sale, or divert rental income to repay money borrowed to pay a levy liability?

It seems a more sensible approach to exempt affordable homes from the proposed levy, reflecting the current arrangements under CIL. It may still be necessary to make payments for development-specific mitigations, which leads us back to a Section 106-type approach.

### **Proposal 21: The reformed Infrastructure Levy should deliver affordable housing provision**

Q25a. 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 (if the introduction of a levy goes ahead). There is a great need for more affordable homes, particularly genuinely affordable rent.

On-site provision is generally the most appropriate method for delivering new affordable homes. It facilitates the creation of mixed communities, most successfully where there are good policies and practices in pursuit of 'tenure blindness' (our members worked with MHCLG to inform the approach to mixed tenure development we hope to see in the forthcoming social housing white paper). Involving housing associations and other registered providers at the early planning stages helps to ensure good outcomes.

On-site delivery also expedites the delivery of affordable housing by having developers build the affordable homes as part of their wider scheme. Because of the potential for guaranteed pre-sale to housing associations, and the additional markets served (i.e. not relying solely on market sale absorption rates), affordable housing can accelerate overall build out rates.

Our recent research, as outlined in the People in Housing Need report, found that [the true number of people in need of social housing in England is now 3.8 million](#). This equates to 1.6 million households – 500,000 more than recorded on official waiting lists.

Due to the severe shortage of social homes, some people have been on their council waiting list for almost two decades and may never be satisfactorily housed. Previous research with Crisis\*\* found that [England needs to build 90,000 homes for social rent each year](#). Last year only 6,338 new social rented homes were built – a fall of 84% since 2010.

Q25b. 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?

We generally favour 'in-kind' provision, preferably with housing associations involved from the pre-application stage, to negotiate the types and specifications of the homes (which should be agreed between the developer and the local authority as a fixed



percentage of the total). This can unlock early payments to the developer, so building can happen more quickly, and housing associations can be more assured about the number, quality and types of homes they will receive.

A 'right to purchase' suggests there would be less early engagement with the housing associations ultimately acquiring developer-contributed homes. This creates a risk that the homes are less likely to be of the appropriate type or standard, and that they might be delivered more slowly, or not at all if a development stalls. The latter risk must surely be an increasing one as the economy and housing market approach an increasingly uncertain period. Investment in affordable housing can have a helpful counter-cyclical effect –providing that investment can be secured early.

The idea of 'flipping' affordable homes back to the developer is not one we are certain would be helpful. Our experience is that during market downturns developers often want to sell more of their stock as affordable homes, rather than fewer. This maintain sales volumes and vital cashflow, albeit perhaps at lower margins. Increasing the proportion of market homes for sale in a slow or slowing market runs the risk of a growing stock of unsold homes. We reiterate, however, that agreeing a contract on the affordable element in a scheme's early stages reduces uncertainty for all parties.

Q25c. If an in-kind delivery approach is taken, should we mitigate against local authority overpayment risk?

There is a case for some form of overage mechanism where development turns out to be more profitable than expected. In the interests of certainty and efficient delivery, however, we would prefer to see this dealt with separately to the early engagement in, and conclusion of, negotiations on a fixed share of affordable homes on a development.

Q25d. If an in-kind delivery approach is taken, are there additional steps that would need to be taken to support affordable housing quality?

In addition to the default assumption of early engagement of housing associations, there should be strategic clarity on affordable housing requirements and standards in local authority policy (whether through specific affordable housing policy or local design codes).

## **Proposal 22: More freedom could be given to local authorities over how they spend the Infrastructure Levy**

Q26. Should local authorities have fewer restrictions over how they spend the Infrastructure Levy?

The mooted additional freedoms suggested in the white paper are a cause for concern. There is a suggestion that "core infrastructure obligations" and an affordable housing 'ring-fence' might be required to protect these primary purposes for levy contributions.

We would support such protections but compelling guidance would need to define how infrastructure and affordable housing requirements were identified and met in each area.

We would like to see both infrastructure and affordable housing requirements clearly established in local plan policy, and required to be met as fully as possible before other uses can be considered.

We think a clear link between the payment of the levy and what that payment is used for would also make for a more sustainable, more clearly understood levy. It would be more acceptable to developers, more helpful in persuading communities to accept development, and less likely to be seen as ‘just another tax’ to be claimed or amended by other parts of local or national government. Section 106’s durability compared to other means of capturing developer contributions seems in large part due to demonstrating these characteristics.

Finally, the government should clarify what is meant in paragraph 4.26 where it proposes to maintain the current approach to the ‘neighbourhood share’ – presumably it is not intended that the 25% share currently applied to CIL would be applied to the many times larger total of the infrastructure levy?

Q26a. If yes, should an affordable housing ‘ring-fence’ be developed?

Yes – for the reasons outlined in the previous answer.

## Delivering change

**Proposal 23: As we develop our final proposals for this new planning system, we will develop a comprehensive resources and skills strategy for the planning sector to support the implementation of our reforms.**

Virtually everyone among the wide range of members and stakeholders we have engaged has highlighted the problem of under-resourced local authorities. This is not confined to planning departments but also affects other functions with a critical role in the system, such as highways and legal.

We are pleased that the white paper recognises the pressures facing local authorities in delivering the current system, and that the standardisation and streamlining envisaged in a reformed system could reduce the burden on local authorities.

The comprehensive resources and skills strategy mooted is very necessary. The outcomes it seeks need to be substantially in place in time to introduce the reformed system, particularly as it requires a major investment of additional time and skills while

continuing to operate the current system with its emphasis on 'downstream' development management.

Local government has borne the brunt of austerity over the past decade, with [employment falling to record lows](#). We know, too, that forward planning – which the white paper prioritises – has been particularly hard-hit. If the proposed reforms are to have a realistic prospect of success, the promised strategy needs to be backed by very substantial funding.

For more information on our response, or related issues, please contact [Catherine.Ryder@housing.org.uk](mailto:Catherine.Ryder@housing.org.uk).