

# Proposed changes to the current planning system

## NHF consultation response – briefing for members

### Summary

The government launched a consultation on [short-term changes to the planning system](#) on 6 August alongside proposals for longer-term reforms set out its planning white paper, [Planning for the Future](#).

We welcome initiatives to make planning a simpler and more efficient process. Following consultation with our members, however, we identified a number of concerns with the proposed short-term changes.

- The proposal to increase the threshold above which developers must make affordable housing contributions under Section 106:
  - Would mean a reduced supply of new affordable homes, particularly in areas that rely on Section 106 contributions.
  - May also mean that fewer new homes would be built due to landowners reassessing ongoing developments.
  - May present a greater risk to smaller developers due to increased land prices and a reliance on the open market.
- While we support the principle of First Homes, the proposal that First Homes make up 25% of affordable housing delivered under Section 106:
  - May threaten the provision of more affordable homes.
  - Would prevent local authorities having the freedom to plan for the particular needs of their areas.

- The proposal to revise the standard method for calculating local housing need:
  - Would further reduce the amount of affordable housing built in areas such as the north of England by not capturing true housing need.
  - May create an inappropriate balance between urban areas and suburban and rural areas.

We set these concerns out in our response to the consultation, submitted on 1 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 changes to the current planning system.

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 around 60,000 new affordable homes last year and are ambitious to deliver more, both through their own development and via Section 106 acquisitions.

## Detailed summary of our response

We welcome the government's efforts to improve the operation of the planning system and agree with much of the analysis of present difficulties identified in the recent 'Planning for the Future' white paper. We also endorse many of the ambitions in that paper and will soon be meeting the Secretary of State and officials to discuss how some the proposals can be developed.

We understand the government's desire to make more immediate changes to the current planning system to pave the way for longer-term reforms, and to support the economy through the current period of pandemic-related uncertainty. Some of the specific proposals in the current consultations give rise to considerable concerns, however. Many of our members consider that the proposed changes would significantly increase the challenges to the continued provision of truly affordable

housing across the country. In particular:

## **Changes to the threshold for affordable housing via developer contributions**

We strongly oppose the suggested increase in the threshold to either 40 or 50 home developments. Our objections are based on three grounds:

**i. Firstly, that the change would cause a significant reduction in the supply of new affordable homes.**

This is true overall but will be particularly concentrated in places which rely heavily on Section 106 contributions in small batches, such as many rural areas. In 2018/19, almost a quarter of local authority areas securing Section 106 completions received them entirely in batches of 15 or fewer, with northern regions being 3.6 times as reliant on such contributions as the South East.

The increase in land prices likely to result from the proposed change will also undermine housing associations' efforts to buy land at prices which support high levels of affordable tenures.

**ii. Secondly, the change may lead to fewer homes being built overall in the short-medium term.**

We are aware of multiple cases of landowners pausing the submission of planning applications in anticipation of this change being introduced, and already-approved schemes will be resubmitted without affordable housing if the change is confirmed.

There will also be incentives to reduce the numbers of homes on sites to come in below the threshold, and for larger sites to be split into smaller plots able to avoid affordable housing contributions.

All these responses to the policy change will serve to slow building rates.

**iii. Third, it is unclear that the proposed change is the best way to support smaller builders.**

Member experience, validated by new research, suggests that it is the bureaucracy associated with affordable housing contributions on small sites, rather than the principle or viability of such contributions, which is the greater problem.

Indeed, affordable housing obligations can support small builders by lowering land prices and boosting cashflow with early-stage payments and the ability to

serve to multiple markets. This seems especially the case for the smallest builders who tend to work on only one or two sites at any time.

The aforementioned inflated land prices associated with applications submitted during the proposed 18 month 'window' will be significant in the available land supply for some years to come, exposing smaller builders to greater risk through increased cost and greater reliance on a single, open market sale tenure – during a period when customer demand and lender appetite are both increasingly uncertain.

## **First Homes**

We welcome the lower level of First Homes now expected to be delivered through developer contributions compared with those suggested in the consultation earlier this year. Nevertheless, we foresee detrimental effects on the provision of genuinely affordable homes for those in greatest need.

We support the principle of First Homes but oppose the displacement of more affordable homes through inappropriate implementation of the policy. This is particularly the case for developments by housing associations seeking to maximise the affordable content of their schemes through social and affordable rent and existing affordable home ownership tenures (notably shared ownership).

A universal requirement for First Homes across all sites is not appropriate – local authorities should have more flexibility to plan for the particular needs of their local areas. Deeper levels of discount must not further threaten the viability of more affordable tenures, and a broader definition of 'designated rural areas' must be adopted to protect the existing Rural Exception Site policy from the threat posed by the First Homes Exception Sites.

## **Revisions to the 'standard method'**

We are very concerned that the revisions to the flawed 'standard method' for calculating local housing need requirements would continue to undermine efforts to use housebuilding to regenerate England's northern regions, and also strike an inappropriate balance between urban and suburban and rural locations in many places.

We understand the difficult challenge the government has in trying to ensure adequate provision for housebuilding across the country but believe the standard method is simply unfit for purpose.

For more information about any aspect of our response, or our efforts to increase the supply of affordable housing in general, please contact us at [policy@housing.org.uk](mailto:policy@housing.org.uk).

## Our full consultation response

### The standard method for assessing housing numbers in strategic plans

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?

We think that the standard method – whether in current or revised form – is unfit for purpose. The new proposed approach would not resolve all the issues arising from the existing standard method and risks worsening others, such as the role of additional homes in the regeneration of the north of England.

The principal purpose of this revision appears to be to generate housing numbers that add up to 300,000, regardless of whether these are realistic, or contribute towards good planning or other important objectives.

Good planning should take into account a wide range of national and local objectives, including supporting ‘levelling up’ in communities that feel left behind, deliverability, brownfield regeneration and sustainability. The revised standard method produces [unrealistically inflated targets for London](#) while suggesting that Manchester and Salford (for example) have [delivered far more homes](#) per year (averaging almost 5,000) than needed (under 3,000). Liverpool has delivered 2,800 homes per annum but would have a future ‘need’ of little more than 1,000.

The shifting of housing need from urban centres such as [Newcastle](#), [Birmingham](#), Liverpool, Manchester and [Leeds-Bradford](#) to suburban and rural areas (with the most rural areas seeing a 59% increase in their requirements, much ahead of urban locations) is not only questionable planning but has exacerbated some of the kinds of [political opposition](#) to housing targets that the standard method was meant to alleviate.

Homes for the North, a group of leading housing associations in the north of England, has been exploring the implications of the current and revised standard methods for regeneration of the northern economy. While it has been the intention of current and previous governments to address regional imbalances, the current [standard method is undermining efforts](#) to boost the northern economy through housing investment which could create tens of thousands of jobs and add billions of pounds to the economy.

The proposed revisions risk undermining these efforts further. In recent years, almost 25% of new homes in England have been delivered in northern regions.

The revised method would reduce their share of the national requirement to just 15%. Local authorities can plan for more – but in practice this often does not happen. The standard method was introduced in significant part because local authorities were considered unlikely to plan more homes. It has in fact led to [some local authorities planning for fewer](#), undermining efforts to regenerate local places and economies.

We urge the Ministry to engage with Homes for the North's work in order to develop solutions which support the kind of future we want for England as a whole.

Planning should pay more heed to more local cross-boundary issues too. It is unclear whether the revised standard method can take adequate account of the desirable balance of development between urban, suburban and rural areas. To say that the headline numbers are not 'set in stone' seems an inadequate response, especially with the proposal to move away from a duty for local authorities to cooperate..

The standard method, whether current or revised, does not evaluate the actual need for new housing, or the opportunities it can bring to support wider objectives. Basing targets on household formation projections is known to ingrain suppressed need, and basing them on existing stock does not relate to need in any meaningful way.

We therefore feel that the standard method is not a sustainable basis for good planning. It is not even – as the need for these revisions has shown so soon after the original standard method was introduced – a sustainable basis from which to meet a single national target (the 300,000 homes). A fresh start is needed.

## Delivering First Homes

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

iii) With uncertainty remaining around the details of the Affordable Homes Programme, the take-up of First Homes, the economic climate and the financial demands of building safety obligations – as well as the differing needs of each local authority area – we think that a national prescription on tenure mixes would be inappropriate.

In places where the potential for developer contributions through Section 106 is greatest, affordability pressures will often be severe. This suggests that the most affordable and accessible tenures should be prioritised, and a nationally-prescribed level of First Homes could undermine efforts to build truly affordable homes for the [millions in need of social housing](#).

Given the importance of helping those most in need, and the widely varying viability of First Homes across different parts of the country, we think decisions about which tenures to prioritise should sit with local authorities. They have flexibility to set First Homes targets, especially at the level of individual schemes.

The displacement of most shared ownership homes from Section 106 contributions will make the provision of much needed social housing more difficult. Shared ownership generally requires less discount than First Homes but can still support cross-subsidy for more accessible wholly-rented tenures, including social rent. Prioritising First Homes over shared ownership is likely to reduce the numbers of affordable rent and social rent homes housing associations can support.

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?

We support the retention of the exemptions provided in paragraph 64 of the National Planning Policy Framework (NPPF).

As per NPPF paragraph 64d, developments comprising entirely of affordable homes should be exempt from providing First Homes. Converting more widely accessible tenures (e.g. affordable rent) into less accessible ones (i.e. First Homes) would undermine efforts to meet housing need where it is most acute.

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

Where developments are proposed with levels of affordable homes that are higher than local policy requires (e.g. where a housing association scheme includes the minimum market homes necessary to make a development viable), then national First Homes requirements should only be imposed on a policy compliant level of affordable homes.

For example, if a housing association proposes a 100-home scheme, comprising 80% affordable homes in an area where policy seeks only 20% affordable homes, the requirement for 25% First Homes should only be applied to the number of affordable homes required to make the development policy compliant.

In this example, a 100-home scheme would require only 20 affordable homes (rather than the 80 offered by the housing association). The First Homes requirement should therefore only apply to 25% of the policy-compliant 20 homes. Thus five First Homes would be required – again reducing the consequence of replacing more affordable tenures with less accessible ones.

A case for further local flexibility at scheme level has been made by Riverside Homes, using the example of their regeneration of a south London estate. This is creating 306 much-needed additional market homes while protecting the current stock of 135 social and affordable rented homes for existing residents and making other Section 106 and CIL contributions. The viability of such complex regeneration schemes can be marginal, even in high value property markets – so expecting First Homes to be added to the mix without displacing existing residents and their tenures could well make such schemes unviable.

Many believe that we are already reaching the limits of this type of cross-subsidy model, even in high-value markets such as London where increasing the density of sites can also be achieved. Inappropriate application of First Homes requirements could hinder this type of regeneration further.

Additionally, designated rural areas should be exempt from the First Homes policy. The consultation paper recognises that 24% of housing need is in rural areas, and the need for affordable rented accommodation is particularly important for community sustainability. We also propose a more extensive definition of designated rural areas in our answer to Q16.

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

We do not believe that discounts as high as 50% should be available. First Homes will be provided at the expense of homes for people in even greater need, and where such deep discounts are needed to make First Homes accessible, there are almost certain to be even greater needs for more affordable tenures.

Any deeper discounts (e.g. up to 40%) on First Homes must be justified by evidence that they will not have an adverse effect on the supply of more accessible affordable tenures.

Deep discounts may not even be to the long-term benefit of many First Home buyers – if they can only afford a half-price house, their prospects of moving to a bigger/better property in future must be uncertain. They may be better served by a shared ownership or rent-to-buy home at this stage.

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?

We think that national policy should discourage market housing on exception sites. Individual cases should be left to local authorities to decide. There may be cases where abnormal circumstances make more lucrative homes important to viability – but they should not be encouraged otherwise.

Clarity on what is meant by a ‘small proportion’ would be useful: we suggest that the actual level should be for local authorities to decide but that it would be the minimum necessary and perhaps subject to a national ceiling.

If national policy does not discourage market housing on exception sites, the expectation that such homes can be built on these sites could encourage landowners to seek higher land values. This fosters the circularity which planning policy has been trying to reduce in recent years. This sort of uplift is already beginning to be seen in some rural areas where the possibility of entry level exception sites is undermining the work housing associations have done with communities and landowners in building the case for more affordable rural exception site schemes.

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

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

Yes – but we believe a more inclusive definition of “designated rural areas” should be applied.

The NPPF uses designations based on section 157 of the Housing Act 1985 – these only cover around 30% of rural areas. Other policies use the Housing Act 1996 or Housing and Regeneration Act 2008 as bases for rural designation, and cover much larger areas.

We think a more appropriate rural designation would include parishes with populations of up to 3,000, as well as all parishes in National Parks and Areas of Outstanding Natural Beauty.

This wider coverage is important to protect the more affordable rural exception site policy. This is beginning to be undermined in places by entry level exception sites, which offer landowners a more lucrative alternative at the expense of more affordable tenures. One member housing association (English Rural) already identifies that around 20% of its rural exception site opportunities are threatened by the current exception site route. First Home exception sites are likely to have a similar effect, which would increase over time as familiarity with the new policy grows.

## Supporting small and medium-sized developers

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)

We strongly disagree with the proposal – for three broad reasons:

### **i. The proposal would reduce the supply of much-needed affordable homes - severely in places**

While MHCLG estimates that up to 20% of affordable dwellings through Section 106 agreements could be foregone, the loss will be much greater in some areas.

This proposal has caused particular concern among rural affordable housing providers. We know that rural areas are:

- Disproportionately dependent on Section 106 homes. The NHF's supply survey found that over the three years 2016/17-2018/19, 70% of new affordable homes in rural locations were secured via Section 106 agreements (compared with 48% in urban areas).
- Often reliant on small 'batches' of affordable homes from developments of up to 50 homes. In a survey conducted by the Rural Services Network, 42% of responding local authorities said they would have lost more than 50% of the affordable housing in their rural communities of 3,000 people or fewer if these thresholds had applied over the last two years.
- Short of affordable housing, which represents [around 8% of the stock](#) in rural areas – compared with around 20% in urban locations.
- Already less affordable than (non-London) urban areas. [MHCLG reports](#) that in 2018, average lower quartile house prices in predominantly rural areas

were 8.8 times the average lower quartile earnings. This compares with 7.5 times in predominantly urban areas (excluding London).

Section 106 is often the principal source of new affordable homes in areas where land is expensive and development difficult. The change to the threshold is likely to make land purchase even more expensive for housing associations, meaning the viability of their own 'land-led' development schemes is also undermined.

It is not only rural areas that should be concerned with the loss of small batches of affordable homes typically associated with more modest developments.

[MHCLG's own data](#) shows that in 2018/19, almost a quarter of local authority areas recording Section 106 completions secured ALL of these in batches of 15 or fewer. Such contributions accounted for under 5% of Section 106 supply in the South East but 17% across the North.

Housing associations across the country have modelled the impact of this proposed change on their development plans:

- Thirteen Group, a Middlesbrough-based housing association has identified an average of 275 Section 106 additions per annum on sites of under 50 homes over the next three years. The proposed changes would endanger many of these.
- Milton Keynes-based Grand Union Housing Group told us this change would immediately mean at least 77 fewer affordable homes per year in Milton Keynes, at least 35 fewer homes per year in Central Bedfordshire and at least 34 fewer homes per year in South Northamptonshire.
- Origin Housing in London has 1,200 units in their pipeline, of which 80% are Section 106 schemes, and all of the sites are 50 homes or fewer. Another London-based housing association, Hexagon, also contacted us with similar concerns, and the G15 group of large housing associations in London estimate the change would remove between 40%-50% of Westminster's affordable housing supply.

The Ministry may consider that the potential loss is a relatively modest percentage of total supply – but it will deprive tens of thousands of people of decent, affordable new homes.

Limiting the higher threshold to an 18-month period is unlikely to be effective: land that secures permission through applications submitted during this period will be traded (at a premium) and built out without affordable tenures over a much longer period.

## **ii. The proposed changes may decrease the supply of new homes overall**

The changes may increase the flow of planning applications for the duration of the higher threshold. This does not mean that more homes will follow at the same rate, and may even delay delivery. This would be particularly frustrating as smaller sites are typically built out more quickly. Nevertheless:

- It is widely accepted – not least in the government’s own [independent review of buildout rates](#) – that a critical factor limiting delivery is the ‘absorption rate’ for market sale homes. Builders will not build such homes at such a rate that would depress prices, and relying on that single tenure is likely to result in slower delivery overall.

Conversely, multiple tenures appeal to different markets and enable upfront sales to housing associations, which can also help with smaller developers’ cashflow and hence building of other tenures (more on this below).

- Applicants may be encouraged to plan for fewer homes to take advantage of higher thresholds. For example, the gross development value of a development of 50 purely market sale homes is the same as that of 38 of such dwellings plus 18 affordable homes sold at a one-third discount (i.e. 56 homes).

The consultation notes the prospect of large sites being split but offers no meaningful suggestions as to how this might be prevented. In reality, it is difficult to see how it could be prevented in many cases – there are many plausible reasons which could be given to justify site splitting motivated by the thresholds.

- Thirdly, landowners will now be encouraged to delay submitting planning applications (we are aware of multiple cases) and – if the consultation proposal is implemented – to submit revised applications without affordable homes on sites already permitted. All this delays development for many months, at best.

### **iii. It is unclear that the proposed changes are the best way to help smaller builders**

We know the planning system, including affordable housing requirements, can be burdensome for landowners and developers – not least because our members *are* landowners and developers. We also know, however, that the process, rather than the principle, of securing affordable housing tends to be the bigger issue.

This is well explained in a [new Lichfields report](#), which explains that “the problem is not that small sites cannot deliver housing or indeed affordable housing, they are just inhibited from doing so by the current system”.

We also know that there are benefits to builders from clear affordable housing requirements. These include:

- Lower land prices. At the prospect of this change to the threshold, landowners will be incentivised to pursue planning permissions, perhaps even bringing new sites forward for the purpose. Their land will become more valuable with the loosening of affordable home requirements. Such applications may only be possible for an 18-month period but the land can be sold with permissions for a much longer period, and the buying builder will be expected to pay the premium. The smallest builders are less likely to have the luxury of an extensive land bank, so are most exposed to increased prices.
- Upfront cashflow. Builders can secure substantial sums from housing associations buying affordable homes at an early stage in the development. This can help them get building all tenures more quickly. Our members' experience with private builders suggests that it is the smaller ones who benefit most from these relationships. In areas where development viability is marginal, a housing association partnership can mean the difference between development and no development.

In addition to overlooking these benefits, it is unclear whether the Ministry has considered alternative measures to help smaller builders. The consultation makes reference to the deferment of Community Infrastructure Levy payments, which will help developer cashflow – but does not forego the important contribution to local infrastructure requirements. Could this be extended and a similar approach be considered for affordable housing requirements, for example?

The consultation also correctly notes the difficulties in inconsistency and delays in making Section 106 agreements – our members also report this. However, there are ways in which the process could be expedited for smaller sites without jettisoning important affordable housing contributions. For example, the government could support a template agreement for affordable housing contributions on smaller sites. It could make clear that smaller developments can have more flexibility about how they meet their obligations (e.g. deferred cash contributions, off-site delivery, and land swaps could all be given greater weight in the case of smaller developments). Many local authorities prioritise on-site contributions as a way to expedite delivery and to foster mixed communities – but tenure mixing may be less critical on smaller developments.

The proposal to raise the threshold runs counter to the thinking in the 'Planning for the Future' white paper, which envisages capturing contributions from a wider range of developments using a simplified mechanism. Smaller schemes could be a useful testbed for development of the infrastructure levy. As the [new](#)

[Lichfields research](#) notes, “The need is for a simpler approach to small sites which offers both developers and planning authorities a clear route to gaining a permission”.

There may also be options outside the planning system to support smaller builders: it is not clear that these have been considered.

In conclusion, the principal beneficiaries of this proposal are likely to be landowners, who will gain an unexpected windfall. The losers are those already most disadvantaged in the housing market and those who seek to help them. In rural areas, the problem of securing decent housing for local families and workers in the relatively low paid work which is common in the countryside will be exacerbated.

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

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

iii). Given the extent of the need for affordable housing tenures, and the current importance of contributions from smaller developments in many places, it would be better to have no national thresholds (perhaps other than for self-builders).

Capturing contributions from modestly-sized developments need not mean burdensome bureaucracy. Measures to make agreement of contributions simpler, more transparent and more consistent (even while allowing greater flexibility for applicants, as discussed above) are possible and would be welcome.

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

No. For the reasons outlined above, it seems likely that the raised threshold will inflate land prices for much longer than the 18 month period since applications submitted during that period can (if approved) be traded and built out over a much longer period.

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

The consultation includes no meaningful proposal on how this would be done, other than “in planning guidance”. Changes to guidance seem unlikely to be effective in such a short timescale, other than in the most extreme cases of ‘site splitting’ and may well generate more appeals and delay while developers and local authorities work out what are acceptable reasons.

As noted, it would be easier to reduce threshold effects by having fewer thresholds and exemptions.

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

We agree – but believe a more inclusive definition of “designated rural areas” should be applied.

The NPPF uses designations based on Section 157 of the Housing Act 1985 - this only covers around 30% of rural areas. Other policies use the Housing Act 1996 or Housing and Regeneration Act 2008 as bases for rural designation, and cover much larger areas.

We think a more appropriate coverage rural designation would include parishes with populations of up to 3,000, as well as all parishes in National Parks and Areas of Outstanding Natural Beauty.

Additionally, the current threshold should be retained for settlements of 3,000-10,000 population, which includes many rural market towns.

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

Yes. As set out in our answer to Q17, the government could consider simplifying the Section 106 process for smaller developments or allowing more flexible options for smaller developments (including deferred cash contributions).

## Public Sector Equality Duty

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?

Some of the protected groups have lower than average incomes and are more reliant on more affordable tenures as a means to securing decent housing. There is a pressing need for more genuinely affordable homes, particularly at ‘social rent’

levels, but the proposals in this consultation for First Homes and supporting smaller builders are likely to reduce the supply of new affordable homes.

The negative effects of proposals here could be mitigated by considering alternative ways of introducing those policies (such as those we have suggested above) or by increasing the support for affordable tenures through the Affordable Homes Programme.