

# CIH response to MHCLG consultation on the White Paper: Planning for the Future



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## About CIH

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals and their organisations with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world.

Further information is available at: [www.cih.org](http://www.cih.org)

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## General comments

Thank you for the opportunity to comment on the White Paper: Planning for the Future (PftF). CIH agrees that planning is important and that the system is central to tackling critical national issues including the shortage of high-quality homes, the need for genuinely affordable homes, combating climate change, improving biodiversity and levelling up the nation.

We welcome the government's commitment to deliver more new homes and the recognition that this must be "the homes we need in the places we want to live at prices we can afford". Everyone deserves a safe, secure and comfortable place to call home but too many people are struggling to find a suitable home either to rent or buy. We need a planning system that delivers homes for everyone and offers quality, affordability, and choice.

CIH recognises many of the frustrations with the current planning system described in the White Paper, and we support the principle of improving it. Whilst we welcome

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many of the commitments and intentions in the proposals, there are also areas where we have significant concerns, particularly where supporting evidence is lacking and important questions are left unanswered. We have presented our comments on the proposed reforms under the headings of the three pillars and then answered the specific consultation questions in turn under these headings where we feel we can provide comment.

CIH would welcome the opportunity for further engagement and involvement as planning reform proposals progress.

## Pillar One - planning for development

CIH agrees that planning matters and that where we live has a measurable effect on our physical and mental health. Whilst we agree that we need a planning system which is fit for purpose and that the current system has many limitations, we also have concerns that the proposals put forward in the White Paper will not lead to the increase in housing delivery to which the government aspires. This is because barriers to housing delivery are not simply the result of weaknesses in the current planning system. The final report of [Sir Oliver Letwin's independent review of build out](#) concluded that the homogeneity of the types and tenures of homes on offer on large sites limits the rate at which the market will absorb them and that this is the fundamental driver of the slow build out rate. Analysis by the [Local Government Association](#) (LGA) in 2020 showed that 2,564,600 units have been granted planning permission by councils since 2009/10 while only 1,530,680 have been completed. The number of planning permissions granted for new homes has almost doubled since 2012/13 with councils approving 9 in 10 applications. More planning permissions might be welcome but will not solve the current housing shortage whilst the housebuilding model remains the same.

We urge the government to think more widely in reconsidering our current model, starting with the role social housing can play in driving up overall housing supply. The White Paper's focus is home ownership driven and, whilst CIH understands the government's ambition to support home ownership, we also know that the need for homes at the lowest social rents is a very pressing. The latest research shows that we should build [90,000 homes for social rent](#) each year in England over the next 15 years to address housing need, a need which is likely to increase as a result of the coronavirus. Unlike market housing, social housing is particularly suitable for rapid build-out. Research by [Lichfields](#) has shown that housing sites with a larger proportion of affordable homes deliver more quickly. For both large and small-scale sites, developments with 40 per cent or more affordable housing have a build rate that is around 50 per cent higher compared to developments with less than 10 per cent affordable housing. If the government were to commit to making social and affordable housing a national priority and place it at the centre of policy, an

opportunity exists here to shape a recovery that benefits every community and leaves no one behind.

In addition, we have serious concerns that the proposed new planning system described under Pillar One will not deliver the zero-carbon future we need to tackle the climate emergency. There is no mention of any requirement for Local Plans to pursue carbon emission reductions in line with the net zero target under the Climate Change Act, and the proposals are silent on how national and local climate targets will inform the new Local Plans and planning decisions under the new system.

## Response to relevant detailed questions

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

The principle of a simplified role for Local Plans seems desirable; however, we are concerned by the lack of detail presented in the White Paper on how this would work in practice. This makes it difficult to give a view on our agreement or otherwise with these proposals.

There are many potential issues which are not addressed in the White Paper and we would urge the government to grant these the consideration they deserve. For example, what will be the impact on rural areas? Whilst some rural communities in growth zones could find themselves potentially swamped by the scale of new development, most are likely to be in protected zones where they will be unable to grow at an appropriate scale to meet their needs for housing (including affordable housing), employment space and services. Rural communities are diverse in scale, form and function, and within them land uses sit cheek by jowl, sometimes overlapping. The proposal of assigning land into three categories potentially ignores these features.

*"It seems overly simplistic. Rural areas will be classed as protected in these proposals, but they still need sustainable growth. Housing and employment are still required in protected areas."*

(CIH Member Opinion Panel response)

Local Plans by their nature try to balance many competing priorities. If simplified too greatly there is a risk that they will not adequately manage to meet local priorities.

*"There is something alluring about the simplicity of three major land zones but I wonder what it will do to the subtle complexities of existing Plans"*

(CIH Member Opinion Panel response)

[Planning through zoning](#) was commissioned by the Royal Town Planning Institute (RTPI) in 2020 and provides an insight into the use of zonal planning in several

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different nations and how this relates to the UK's discretionary planning system. The briefing paper identifies that, in the White Paper's growth areas, granting direct outline permission might require frequent amendments to the new-style Local Plan. Such frequent changes might actually undermine the intention to provide certainty for developers and landowners.

There is a lack of detail in the proposals on how simplified Local Plans will deliver the radical reductions in carbon needed to tackle the climate emergency. For example, there is no detail on how the new zones will respond to the dramatic predicted impacts of climate change in terms of flooding and coastal realignment.

It is noted that the proposals set out the potential for sub-areas within categories. Whilst we welcome this opportunity for local determination, the question then arises that, with sub-areas for zones and layers of differentiation through design codes and pattern books, will not the resulting system end up being just as complicated as the current one? The move to new system, rather than more modest improvements to the current system could, at least in the short term, risk creating more uncertainty and delay. This seems particularly significant at a time of national emergency and uncertainty resulting from Covid-19 and Brexit.

The initial categorisation of all land for the simplified land use plans would be time consuming and complex and require a huge amount of work from planning teams. [The Raynsford Review](#) in 2019 highlighted the pressures faced by under-resourced planning services. We welcome the commitment to develop a comprehensive resource and skills strategy for the planning sector. Training and resources are vital if local authorities are to implement the planning reforms successfully. With reductions in central funding for local authorities over the last decade and increasing demands on statutory services (particularly in the wake of Covid-19) planning and housing teams are operating in difficult circumstances. This loss of capacity impacts on councils' abilities to achieve local housing and planning ambitions, and it also undermines the potential of achieving government's own ambitions for housing and successful planning reform.

Recent [research](#) by the Northern Housing Consortium (NHC) in partnership with UK Collaborative Centre for Housing Evidence (CaCHE) shows that councils in the North of England have been disproportionately impacted by reductions in spending since 2010, leading to significant loss of housing and planning capacity. In fact, the average net spend on planning in northern councils has fallen by 65 per cent since 2010/11. This is compared to a reduction of 50 per cent in the rest of England which in itself is a significant loss. As outlined in the RTPI's [Plan the World We Need](#) report, a well-resourced planning system should play a significant post-Covid role in reviving the economy, seizing the opportunity to tackle inequality and meeting net-zero targets. But adequate resourcing for this is fundamental. There is little in the White Paper to explain how the comprehensive resource and skills strategy will be funded

or how great the funding commitment will really be. The only reference to where additional funding could come from seems to be in relation to the new Infrastructure Levy to cover overall planning costs. However, this could be another call on the Levy which will already have to be split many ways (as discussed later) and could amount to a very small sum for the hardest stretched councils.

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

No, we do not agree with the proposals. We agree that Local Plans should not be simply duplicating national policies. However, local authorities are best placed to understand the needs of their local area and should be able to plan for the nuances of their locality. National planning policy should empower planning authorities to manage development in their area in line with local aspirations and needs. These proposals appear centralising and prescriptive. Local Plan policies must be able to be sufficiently detailed and tailored to local circumstances, challenges, and opportunities if we are to meet wider aspirations and objectives on issues such as climate change, the natural environment and affordable housing.

**Q7(a). Do you agree with our proposals to replace existing legal and policy tests for Local Plans with a consolidated test of “sustainable development”, which would include consideration of environmental impact?**

We do not disagree with the principle of a consolidated test, particularly given the large amount of supporting evidence that a Local Planning authority has to provide in support of its Local Plan and the time and cost of preparing that evidence base. However, a strategic environmental assessment is intended to support decision-making by identifying, characterising and evaluating the likely significant effect of the plan on the environment and determining how adverse effects may be mitigated or where beneficial effects may be enhanced. There is no detail in the proposals as to how the simplified process will continue to provide this same level of protection. This lack of detail is particularly concerning given that proposals for an area-based planning system would grant automatic outline planning permissions in some cases. With the potential for less scrutiny on impacts at the development stage it would seem logical that the strategic assessment of a Local Plan will be even more important. We need to see more detail on this.

**Q7(b). How could strategic, cross-boundary issues be best planned for in the absence of a formal Duty to Cooperate?**

Whilst the Duty to Cooperate is an imperfect tool, we do not support its proposed removal without a viable alternative to replace it. We welcome considering alternatives to the Duty to Cooperate but a workable solution for the whole country must be introduced before it is removed. Without any firm proposals to replace it,

this could mean that strategic issues are simply not planned for, leading to disjointed development and failure to support development with the right strategic infrastructure. This also increases the risk that the proposed new planning system will be sub-optimal owing to a lack of strategic planning at an inter-authority level. A means of democratic cross-boundary decision making needs to be retained and improved.

*“Without an enforceable Duty to Co-operate it is impossible to see how cross-boundary issues are resolved except either by central government intervention (e.g. setting housing numbers) or relying on mutual arrangements which are ineffective. In either case it is likely to fracture/weaken cross-boundary working.”*

(CIH Member Opinion Panel response)

Cross-boundary issues need to be planned for at a strategic, locally accountable democratic level. This is currently only available in parts of the country where an elected mayor and/ or combined authority has planning powers or where authorities choose to work together strategically. This provides patchy coverage. There may be opportunities to address this in the upcoming and long awaited Devolution White Paper where the potential for sub-national strategic planning can be explored.

## **Q8(a). Do you agree that a standard method for establishing housing requirements (that takes into account constraints) should be introduced?**

No, we do not agree that a standard method for establishing housing requirements should be introduced. As set out in CIH's [consultation response](#) to the proposals for 'Changes to the current planning system' we have concerns about the potential risks of a 'one-size fits all' centralised approach to calculating housing targets moving away from local authority discretion. We question if the proposals will achieve the government's own stated ambition of 'levelling up' and creating a 'fair share' approach. We also question whether a top-down formula-based approach can produce correct housing numbers at a local level which under the White Paper proposals will become binding targets.

We do not think that constraints can be considered successfully at a national level. We would suggest that this would be a hugely complex and imperfect exercise, especially as it would be almost impossible for central government to know the constraints and capacity for a local area. There are many practical issues which the proposals do not address. For example, will the balance of needs and constraints and other issues be an algorithmic exercise or one which involves exercising planning judgment? How would the housing trajectories of existing land supply commitments be taken into account? How often would the exercise be carried out to generate up-to-date requirement figures? We suggest that the government should work with local authorities and the development industry to find a consistent and

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quick method of establishing housing numbers at a local level, whilst avoiding a simplistic top-down formula that side-steps local people and could lead to years of dispute. Well-designed methodological guidance for local authorities, with active oversight by the Planning Inspectorate, might deliver the careful balance of qualitative and quantitative judgement required.

It is important to add that with the evolution of new-style Local Plans, housing numbers will need to be tied down quickly at the start of the process to avoid even more delay and uncertainty with the move to a new system. It is impossible for local authorities to begin designating land into three categories without knowing how many homes need to be accommodated.

We agree that “having enough land supply in the system does not guarantee that it will be delivered” (para 2.27). However, we disagree that this justifies the maintenance of the Housing Delivery Test. This test penalises local authorities who cannot force developers to build on land which has planning permission. This fundamentally fails to address the reason why housing is not being delivered.

## **Q8(b). Do you agree that affordability and the extent of existing urban areas are appropriate indicators of the quantity of development to be accommodated?**

Whilst affordability and the extent of existing urban areas are relevant as starting points, they must sit amongst a wider range of criteria. Releasing more land is only one element in enabling development, as already noted earlier there is a backlog of permissions which have never been built out. The main driving force for the size and mix of local development should be local needs and correspondingly there must be a mechanism for reflecting and ensuring it is then embedded in the planned numbers and mix.

Affordability as an indicator must be considered in terms of what people can genuinely afford rather than simply market prices. [The Affordable Housing Commission's](#) 2019 report presents measures which provide a more balanced way of considering affordability based on a threshold at the point when rents or purchase costs exceed a third of household income. From this starting point it seeks to capture other issues around housing quality, overcrowding, adequacy of housing benefit, household size and regional variations.

## **Q9(a). Do you agree that there should be automatic outline permission for areas for substantial development (areas) with faster routes for detailed consent?**

No, we do not agree. We have concerns about the process of automatic outline permissions in growth zones and a presumption in favour of development in renewal areas in terms of what this would mean for democratic accountability and people's scope to participate in the decision-making process. Whilst we support residents

being involved in the plan making process, commenting on a plan three years previously is very different to being able to have your voice heard on a specific planning application when it comes forward. The effective removal of the outline planning process will remove one of the most visible and engaging parts of the planning system, and so the ability of people to access and contribute to planning decisions will be reduced by these proposals.

It is also hard to see how such a process fits with the government's ambition to make Local Plan making faster (the proposed 30-month process set out at Proposal 8). The burden of sweeping up often very complex planning application matters into the Local Plan process will, we would suggest, inevitably lengthen the time taken to produce a Local Plan and shift these sizable responsibilities to the Local Planning authority.

**Q9(b). Do you agree with our proposals above for the consent arrangements for Renewal and Protected areas?**

No. Given our objections to the proposed consent arrangements set out in answer 9a we do not support the consent arrangements set out in the White Paper.

The reference to the use of Permitted Development rights for certain types of developments within renewal areas causes concern as we will address in our answer to questions under Pillar Two.

**Q9(c). Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime?**

Whilst the National Significant Infrastructure Project (NSIP) regime appears to work well for infrastructure projects, we are not sure it is appropriate for new settlements. New settlements are more complex and long term in their development. Also, new settlements brought forward through the NSIP could further disconnect the local population from development proposals in their area. If Local Plans are to be meaningful documents then delivery of new settlements, their design and response to local issues and distinctiveness should come forward from that process rather than any other.

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

We agree with the aspiration to make decision making faster and more certain. However, there is a lack of detail and supporting evidence in the White Paper to enable evaluation of the proposals as they stand. Providing speed and certainty for applicants must not come at the expense of delivering the right outcomes.

Financially penalising local authorities who fail to determine an application within statutory timeframes as suggested, only seems likely to further chip away at their already stretched resources. Adequate financial resourcing and staffing of planning teams would seem to be more likely to speed up the process.

## **Q11. Do you agree with our proposals for accessible, web-based Local Plans?**

We welcome that new-style Local Plans would comprise an interactive web-based map of administrative areas where data and policies are easily searchable. We support the desire for planning to be more accessible to everyone and, related to that, the need to modernise planning services.

It is important to note that technology on its own will not make the planning process more democratic. There needs to be reassurances that this will not exclude those who are less technologically able or who do not have access to the technology needed to engage. For example, in rural communities slow or inadequate broadband could make such techniques redundant and documentation inaccessible.

Also, whilst digitising information can potentially lead to a more openness and will hopefully make planning more accessible, it should be noted that the White Paper does not provide any new rights for community participation or any new opportunities for a democratic involvement. Rather it reduces opportunities to participate. Whilst we support the idea of real engagement in the plan-making process and agree that making Local Plans more accessible and visually engaging is important, it is hard to genuinely engage with communities about changes which may not happen for many years. The loss of the right to be heard in person at plan enquiries and the removal of democratic accountability of planning applications in growth zones seems at odds with the idea of improved public engagement.

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

Whilst we recognise that currently the production of Local Plans can take too long, a move to a 30-month timescale for the new streamlined Local Plans seems extremely ambitious, particularly given the intention that consultation will be wider and deeper in this process. This will be a huge task for local authority planning teams and must be adequately resourced.

There are many practical issues which the proposals do not address including how plans are tested and then modified if required. Technology on its own will not ensure involvement nor speed it up. A 30-month timetable is perhaps only achievable by reducing opportunities for the community to be involved. This is demonstrated by the proposed process which has two stages at which the community are involved. These are Stage 1 ("call" for suggestions for areas under

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the three categories) and Stage 3 (at the same time as the Plan has been submitted to the Secretary of State). This means that there is no stage at which the Local Planning authority publishes a draft plan and is then able to respond to the consultation.

## **Q13(a). Do you agree that Neighbourhood Plans should be retained in the reformed planning system?**

Yes, over 80 per cent of CIH members who responded to our Member Opinion Panel (MOP) survey agreed that Neighbourhood Plans should be retained in the reformed planning system. However, it is not clear from the proposals how Neighbourhood Plans will fit into the new system and their future scope and power needs to be clarified. A large amount of work has been done by communities on Neighbourhood Plans which should not be lost. However, it was also noted by several respondents to our member survey that many communities had found their preparation onerous and time consuming and slow to move through the process. This would seem a good time to review the relationship between the Local Plan and Neighbourhood Plan and the Neighbourhood Plan making process.

## **Q13(b). How can the Neighbourhood Planning process be developed to meet our objectives, such as in the use of digital tools and reflecting community preferences about design?**

The creation of free-to-use set toolkits and programmes could help. However, as per our answer to 13(a), the purpose of Neighbourhood Plan needs to be clarified in the new system.

## **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?**

Yes, we agree that there should be a much stronger emphasis on build out rates of development.

The White Paper implies that much of the responsibility for the lack of delivery can be laid at the door of systemic problems in the planning system. There is strong evidence to suggest that changes to the planning system alone will not improve build out rates - over a million homes granted planning permission in the last decade have not yet been built out ([Local Government Association](#)). There is nothing in the White Paper to explain how build out will be ensured.

There are many potential options which deserve proper consideration to incentivise build out. For example, meaningful penalties for developers who fail to build out, measures to ensure no local monopolies and to reduce the influence of the market by a small number of volume house builders, and schemes to support the community led sector which does not have a commercial imperative and is therefore

more likely to bring forward smaller sites and add to overall delivery. The more different end users on a site the faster it can be built as they appeal to different markets. Lessons from the government's own [Letwin review](#) should be considered and a fundamental rethink is needed.

## Pillar Two - Planning for beautiful and sustainable places

CIH welcomes the ambition for high quality development and the government's commitment to planning that generates net gains and not just 'no net harm'. It is important that this ambition is sufficiently wide to capture the multi-faceted elements of successful placemaking and not just 'beauty' which is entirely subjective. Well-designed places are the result of so much more than just 'beautiful' buildings. Access to community facilities and open space, adaptability, internal space (to name but a few) are so important to how we experience the places we call home. The [Home Comforts research](#) by Place Alliance published in October 2020, considered how the design of our homes and neighbourhoods affected our experience of the Covid-19 lockdown and what we can learn for the future. There is a strong desire to use the crisis of Covid-19 to deliver better environmental standards and there are clear long-term health and quality of life benefits to be made through the improvement of the design of our homes and neighbourhoods. This needs to be capitalised on in the government's proposals. The [RTPI exploratory research on enabling healthy place making](#) notes that unprecedented times call for unprecedented solutions and that there is a need for planning and planners to be 'visionaries' to address the convergence of challenges around public health, climate emergency, and economic recovery in the post-Covid-19 climate.

Whilst Pillar Two talks about ensuring the system will support efforts to combat climate change and bring greenhouse gas emissions to net-zero by 2050, we are not convinced the proposals make the climate emergency enough of a priority nor that proposals are sufficiently detailed or ambitious in this respect. The White Paper proposes to review the roadmap to the Future Homes Standard (FHS) to ensure that implementation takes place in the shortest possible timeline and sets out an ambition that homes built under the new system will not need retrofitting. Greater clarity around this standard will be critical when the government responds to the FHS consultation. Building standards are a central component to achieving zero carbon homes, therefore it is important that the government publishes its response to the FHS consultation and its intended revisions to building standards as soon as possible.

## Response to relevant detailed questions

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

Design guides and codes can be very positive tools in successful place making and the principle of wider use of them has merit. Almost 80 per cent of our members surveyed agreed local design guides and codes should be developed. However, the successful use of local design guides and codes is highly dependent on adequate resources in terms of time, money and skills being available. The devil is in the detail on design codes and pattern books. The degree to which the system may or may not produce better outcomes hinges on the ability of national and local codes and pattern books to reflect all the considerations necessary to create healthy and sustainable places. Without sufficient skills and resources in planning teams these will be another burden on over-stretched local authority teams and may not deliver what they are intended to.

More detail is needed on the scope of design guides and codes beyond a broad emphasis on aesthetic design and what is 'popular and characteristic to the local area'. Design guides (and Local Plans) should be underpinned by strong standards on all issues which determine the decency of our homes and their functional quality for those who live there including space standards, the accessibility for all potential residents and access to green areas. CIH will respond to the government's consultation on accessible homes but would like to see this topic clearly addressed in work flowing from the White Paper.

It is also important that design guides and codes are not so prescriptive that they become a 'one style fits all' solution. New homes must be able to address the priorities identified locally. Design guides and codes should also not deter innovative design by having an effective presumption against such proposals.

### **Q18. Do you agree that we should establish a new body to support design coding and building better places, and that each authority should have a chief officer for design and place-making?**

The proposals will require a step-change in the design skills and capacity currently available to many Local Planning authorities. A new national body and chief officers in local authorities for design and place making could be useful tools to support local planning teams. A new body should have the role of enabling local authorities and promoting high quality design (in its broadest sense) without attempting to roll out a single idea of good design across the country.

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

Yes, in principle measures to embed design quality and environmental standards for homes and places even further into Homes England's activities and programmes of work would be welcomed and over 85 per cent of our members surveyed supported this.

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

No, we do not agree with proposals for implementing a fast-track for beauty. 'Beauty' is subjective and overlooks so many important aspects which should be included in a broader definition of 'well designed'. Any potential to fast track development should require meeting criteria wider than beauty alone, to ensure the development contributes to healthy and sustainable places and communities. Research by RTPi looking at [planning and design quality](#) highlights the issues to consider in this approach.

Whilst fit with local vernacular style may be important in encouraging communities to accept development, often other factors are equally or more significant, such as affordability, space and accessibility standards, meeting specific needs (such as for older or disabled people). Any approach must ensure it delivers developments that support health and wellbeing. There are a number of useful tools that can support this which warrant further consideration. For example, the Town and Country Planning Association's [healthy place making tools](#) including its principles for the [Healthy Homes Act](#), and the World Health Organisation's age friendly communities [framework](#).

The proposals also suggest that permitted development rights should be rolled out to 'popular and replicable' forms of development using a pattern book approach. We are concerned that this would lead to the increased standardisation of development and a decline in local distinctiveness despite the proposal stating that these patterns could be tailored to local evidence of what is popular in a particular locality. Would large housing developers not be able to tailor their standard products to the national pattern book and roll them out at scale? If so, how is this going to address the homogeneity of the market? We are also concerned about proposals to further expand permitted development rights. If the new system is designed well there should be no need for further deregulation via permitted development.

## Pillar Three - Planning for infrastructure and connected places

CIH welcomes the government's commitment in the White Paper that securing the necessary infrastructure and affordable housing alongside new development is central to its vision for the new planning system. We support the intention to address common criticisms of the current system and ensure that developer contributions are responsive to local need and are transparent. However, we have concerns that this commitment may not be truly reflected in the specific proposals and, in particular, we are concerned about the potential implications for genuinely affordable homes.

Section 106 (s106) is currently a major mechanism for delivering new affordable homes, particularly homes for rent. In 2018 - 2019 nearly half (49 per cent) of all affordable homes delivered were funded through s106 (nil grant) agreements. Sixty-six per cent of new affordable homes in 2018 - 2019 were for rent, including social, affordable and intermediate rent ([National Statistics, Statistical Release, November 2019](#)). There is a lack of modelling, evidence, and detail in the White Paper to provide reassurance that the government's stated intentions for protection and enhancement of the numbers of affordable homes provided can be delivered in practice.

We are also concerned that what the government means by 'affordable housing' might not be genuinely affordable in practice. Discount market products such as First Homes, while they have their place, will not be affordable or appropriate for many. The terms 'affordable rent' and 'social rent' are not mentioned at all in the White Paper. The National Housing Federation's ['People in housing need' report](#) published in September 2020 shows that nearly 8 million people in England have some form of housing need. For more than 3.8 million of these people, social rented housing would be the most appropriate tenure to address that need. On top of this the number of people in need of social housing could rise rapidly as a result of the coronavirus crisis. Investing in new homes at social rents would not only meet those identified housing needs - it would also deliver a much-needed boost to the post-COVID-19 economy. Building 90,000 new social homes a year would add £4.8bn to the national economy and support 86,000 jobs.

### Response to relevant detailed questions

**Q21 (a). Should the Government replace the Community Infrastructure Levy and Section 106 planning obligations with a new consolidated Infrastructure Levy, which is charged as a fixed proportion of development value above a set threshold?**

No, having considered the proposals set out in the White Paper, CIH does not consider that a new consolidated Infrastructure Levy should replace Community

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Infrastructure Levy (CIL) and Section 106 (s106). Sufficient evidence is not presented that the new Infrastructure Levy will not result in the loss of delivery of much needed affordable homes. Greater modelling and clarity on how this could work in practice are needed.

Given all the needs the levy is expected to satisfy, it is hard to feel reassured that the affordable housing we so desperately need will be funded sufficiently through this one mechanism. It is extremely concerning that affordable housing will in essence be competing (unless ring-fenced) with other resource-hungry infrastructure needs such as transport. The members we surveyed were concerned about the implications that the Infrastructure Levy could have on the delivery of affordable homes.

*"The likely outcome of this is even fewer affordable homes than we are producing now - and that is woefully short of what's required."*

(CIH Member Opinion Panel response)

There is no modelling or evaluation presented in the proposals for the differential impacts of the new levy in different housing markets. For example, how many schemes in low value areas would fall below the levy threshold? We are concerned that the new levy includes a value-based minimum threshold below which the levy is not charged, but that it is unclear how local authorities should deliver infrastructure where values fall below this threshold. This is likely to disproportionately impact on local authorities in the North of England and we would question how this fits with the government's 'levelling-up' agenda.

The White Paper also fails to recognise that s106 agreements do more than just securing payment contributions and delivery of a specific affordable housing percentage. For example, they can secure affordable housing in perpetuity by legally binding the land and can give local people priority for new affordable homes, they can secure sustainable travel methods, encourage the employment of local people in development construction jobs and secure on-site facilities, they also secure mitigation which cannot be conditioned on a planning permission. There is nothing in the White Paper to explain how any of these on-site mitigation measures are to be secured in the new system.

The proposals fail to consider how the new levy would apply on sites which provide 100 per cent or a majority of the development as affordable housing, including rural exception sites and community led housing schemes.

Whilst the Prime Minister's forward to the White Paper says the proposals will make it harder for developers to dodge their obligations, there is nothing in the proposals to explain how the scope for evasion will be any less in the new system.

Given the complexity of the issues involved the proposed new system could potentially be as complex as the current s106 and CIL systems with as much potential for challenges on legal and valuation grounds. The new system will also take time to introduce and bed-in and there could be a significant gap between the old system ending and the new one having effect, particularly as it proposed that the new levy will not be charged until occupation. This will have serious consequences for the delivery of the new affordable homes we so desperately need.

## **Q22(b). Should the Infrastructure Levy rates be set nationally at a single rate, set nationally at an area-specific rate, or set locally?**

If an Infrastructure Levy rate is set it should be set locally to take account of local circumstances.

It is unclear in the proposals how nationally set levies would accommodate local variations. It could be that in some areas the rate is too high (detering development) and in others it is too low (foregoing affordable housing and infrastructure contributions). One size does not fit all locally let alone nationally. Setting a national rate will take no account of differences in housing markets that can even vary within local authority areas. Whilst there are undoubtedly problems with the current process of viability assessment, the extent of the uplift in land value is a function of three elements - value, cost and the existing value of the land. That relationship is complex and it varies not only from place to place but in relation many site specific factors. At present only 138 local authorities in England and Wales have adopted CIL schedules ([RIBA, 2020](#)) with many seeing CIL as too inflexible and preferring an individually negotiated approach to planning obligations. The need for flexibility led the expert panel on the [CIL review report to government in 2017](#) to conclude that simple flat levy rates were not appropriate at any significant level, and that s106 was an essential (although imperfect) mechanism which should have a stronger role. Therefore, setting the rate nationally or at an area-specific rate in an attempt to provide certainty could actually create inflexibility. We are also concerned that a nationally determined levy could mean the scale of the levy, or the threshold at which it is not charged, could be varied over time under pressure from developers on the grounds of viability.

## **Q22(c). Should the Infrastructure Levy aim to capture the same amount of value overall, or more value, to support greater investment in infrastructure, affordable housing, and local communities?**

Any new system must capture more. There seems little point in such a major upheaval if it is not intended to produce more than current systems. Investment in infrastructure is crucial for successful place making. There is a huge and growing backlog of need for affordable housing, including homes at social rents, and the country cannot afford a reduction in supply.

**Q22(d). Should we allow local authorities to borrow against the Infrastructure Levy, to support infrastructure delivery in their area?**

Yes, over 80 per cent of the members we surveyed agreed that local authorities should be allowed to borrow against the Infrastructure Levy to support infrastructure delivery in their area. Survey respondents did however express concerns about the risks for local authorities involved in borrowing against the Infrastructure Levy, particularly for small rural local authorities who could be left financially exposed. Greater detail is required from government on how this might work in practice and be coordinated. There are also political issues to consider. Major developments are often unpopular with local voters, therefore it is hard to see that local authorities will be as incentivised to borrow to bring forward infrastructure to enable these as eagerly as the developers would be who stand to gain most directly.

**Q23. Do you agree that the scope of the reformed Infrastructure Levy should capture changes of use through permitted development rights?**

Yes, we agree that the new Infrastructure Levy should capture changes of use through permitted development rights given that additional residential units create additional pressure on infrastructure. However, permitted development itself is of concern to us in terms of the appropriateness and quality of housing it often creates.

**Q24(a). Do you agree that we should aim to secure at least the same amount of affordable housing under the Infrastructure Levy, and as much on-site affordable provision, as at present?**

Yes, we agree that at least the same amount of affordable housing should be secured under the new Infrastructure Levy with at least as much on-site affordable provision as present. There is currently a pressing need for more affordable homes, particularly homes at lower 'social' rents. As we noted earlier the National Housing Federation's ['People in housing need' report](#) published in September 2020 reports that the true number of people in need of social housing in England has now hit 3.8 million. This equates to 1.6m households, 500,000 more than recorded on official waiting lists. Due to the severe shortage of social homes, some people have been on council waiting lists for almost two decades and may never be satisfactorily housed.

On-site provision is generally the most appropriate method for delivering new affordable homes and should be the default in the proposals. In addition to facilitating the creation of mixed communities, local authorities can ensure certain property types are provided to meet a specified local need. On-site provision also expedites the building process as developers often build the affordable homes first and fastest because of the guaranteed pre-sale to a housing association.

**Q24(b). Should affordable housing be secured as in-kind payment towards the Infrastructure Levy, or as a 'right to purchase' at discounted rates for local authorities?**

We would generally favour 'in-kind' provision, with the affordable housing provider being engaged as early as possible in the process with the developer and local authority.

**Q24(d). If an in-kind delivery approach is taken, are there additional steps that would need to be taken to support affordable housing quality?**

The principle of early involvement of the housing provider is important to support quality. In addition, issues around affordable housing requirements and standards should be addressed through local policy or design codes.

**Q25. Should local authorities have fewer restrictions over how they spend the Infrastructure Levy?**

Yes, local authorities should have discretion. Over 80 per cent of members responding to our survey agreed that local authorities should have fewer restrictions over how they spend the levy once core infrastructure obligations have been met.

*"It is more likely there won't be enough levy to pay for everything so LAs need to be able to prioritise based on local need as they do now"*  
(CIH Member Opinion Panel response)

However, there is perhaps a note of caution to add. This 'freedom' could mean that the Infrastructure Levy is used for things much less related to the development which generates it than would be the case for s106 (which must be necessary to make the development acceptable in planning terms and directly related to the development). There are likely to be as many competing demands on the levy. In all probability, levy proceeds will be insufficient to meet all needs and complementary government investment will be needed.

**Q25(a). If yes, should an affordable housing 'ring-fence' be developed?**

Yes, almost 95 per cent of members who responded to our MOP agreed that an affordable housing 'ring-fence' should be developed. Without this affordable housing will be being competing with other resource intensive needs. Local authorities should also have the discretion to ring fence different affordable housing products in accordance with their Local Plan and local needs.



## Public Sector Equity Duty

**Q26. Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?**

A planning system that does not enable local authorities to meet the needs of their local communities, including people experiencing poorer quality housing who have less ability to resolve this through the market, will inevitably have a negative impact on people with protected characteristics.

**Chartered Institute of Housing  
October 2020**