

Cornwall Council's DRAFT Response to the Government Consultation on Planning for the Future

Pillar One – Planning for Development

Summary of key proposals:

- shorter plan making and decision-making timetables
- transition to a land classification system for areas of growth, renewal and protection
- automatic outline permissions for new sites in growth areas and extended permitted development rights in renewal areas
- retention of planning permission requirements in the countryside and protected areas

Consultation questions:

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

Cornwall Council would describe planning as complex, participatory and necessary

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

Cornwall Council is the Local Planning Authority

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

N/A

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

Cornwall Council is the Local Planning Authority and provides access to policy development and determination of planning applications in a manner of different ways including online, email, letter and until recently, in person.

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

Cornwall Council considers that all these are a priority for planning, and many are inter-related. In January 2019 the Council declared a climate emergency and this remains a key priority for the Council and influences all aspects of the services we provide. Addressing climate change and creating a system that helps address, mitigate and reduce the impacts of climate change and the ecological emergency must be a priority for any new planning system if the Government's commitment to zero carbon is to be reached by 2050 or earlier.

DRAFT for Comment

We request that Government considers the impact of wholesale change to the planning system on other commitments and priorities to ensure that these are not undermined.

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.

Alternative options: Rather than dividing land into three categories, we are also interested in views on more binary models. One option is to combine Growth and Renewal areas (as defined above) into one category and to extend permission in principle to all land within this area, based on the uses and forms of development specified for each sub-area within it.

An alternative approach would be to limit automatic permission in principle to land identified for substantial development in Local Plans (Growth areas); other areas of land would, as now, be identified for different forms of development in ways determined by the local planning authority (and taking into account policy in the National Planning Policy Framework), and subject to the existing development management process.

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

No. The Council agrees that the local plan process is complex and takes time and therefore should be simplified. However, we do not agree that Local Plans should purely designate land for growth, renewal or protection. The proposal that land be classified into only three categories ('growth', 'renewal' and 'protection') is extremely restrictive and does not in any way reflect the complexity of the areas that these local plans will cover or indeed the degree of overlap between the three types of land classification. Cornwall Council welcomes the opportunity to allocate large and small sites in a proportionate manner but we are not clear how we would be able to do this within these proposals.

It is not clear as to the method for identifying the three types of land; the parameters need consideration and could include factors such as geography and settlement distribution but also constraints. Cornwall, and other places, will inevitably need to develop a strong spatial strategy to inform the allocation of the different areas. The White Paper does not contain any detail on how local authorities can develop that strategy, this is a concern given that strategic spatial planning will be important in 'telling the story' of how the Local Plan should work.

Protected areas are specifically defined in an open list which includes AONB, conservation areas, Local Wildlife Sites, areas of significant flood risk, important areas of green space and land with particular environmental and/or cultural characteristics. We would suggest that consideration needs to be given to whether areas of land for nature recovery could be identified. It is not clear whether there is a hierarchy of importance within protected areas and suggests that local authorities are given the flexibility to consider this in their local plans. There is likely to be considerable overlap between areas identified for growth or renewal and those, such as flood risk, conservation areas or World Heritage Site, which

DRAFT for Comment

would fall into the protect category. It is, for example, very normal for small parts of wider sites to include small elements of constraints. The White Paper fails to consider how decisions would be made within areas of overlap. The Council therefore requests clear guidance on how development proposals in these areas are determined. The Council also requests that areas of land identified for protection could include a buffer. For certain protected areas, if the land adjoining it is identified as growth or renewal it may result in development which impacts upon the protected area. The identification of areas of mineral resource which require safeguarding

The proposals are clear that plan-making is the focus and much of the work to identify suitable land for growth and renewal is the responsibility of the local planning authority; it has been indicated that a fee could be sought from those promoting a growth site through the plan process. The Council does not consider this to be appropriate and would undermine the transparent nature of the local plan process potentially resulting in mistrust of local communities.

It is important that the different routes to planning permission which exist for growth, renewal and protection areas fit with other existing permitting regimes such as Permitted Development Rights, Use Class Changes and Permission in Principle and how these contribute to the local plan strategy. For example, in a rural area like Cornwall there is concern about Class Q development where agricultural buildings can be converted to residential use without planning permission; these may well fall within areas identified for protection and the Council wishes to understand how these developments would contribute to the objectives of a local plan.

Further detail will be required around sites that are allocated, but do not get delivered within the plan period. These will potentially impact the ability to deliver the local plan and potentially skew the strategy for the area if other sites are then brought forward as a replacement, but the allocation remains. At present there are no proposals to sanction non-development. The Council considers that the local plan process should be flexible to adapt and reflect changes, ensure delivery and assist SME developers, the plan-making system therefore needs to include the ability to easily update and amend plans, without undertaking a fundamental review and examination of that plan.

Furthermore, it is considered that there are key aspects of planning which are currently addressed through a Local Plan that are simply not covered in these proposals. For example, there is limited mention of climate change and renewable energy and how policy could be developed to support climate change mitigation. The challenge of ensuring adequate infrastructure, such as schools, GP surgeries etc, is delivered alongside any development is also omitted from the White Paper and the Council considers that this is imperative to the delivery of new homes and employment space. Far greater powers need to be created to engage infrastructure providers in the plan making process and ensure that essential utilities such as power, water etc are developed to a timetable to enable the build out of new development.

DRAFT for Comment

DRAFT for Comment

It is also not clear how minerals will be dealt with through any new local plan system. Minerals are particularly important for development and low carbon technologies and some thought needs to be given to how this integrates into a new local plan. In particular, it is suggested that growth areas identified in a local plan would be conferred with outline planning permission upon adoption of the local plan. It is not clear how this would apply to mineral developments for which it is not currently possible to apply for outline planning permission.

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

Alternative options: Rather than removing the ability for local authorities to include general development management policies in Local Plans, we could limit the scope of such policies to specific matters and standardise the way they are written, where exceptional circumstances necessitate a locally-defined approach. Another alternative would be to allow local authorities a similar level of flexibility to set development management policies as under the current Local Plans system, with the exception that policies which duplicate the National Planning Policy Framework would not be allowed.

6. Do you agree with our proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally? [Yes / No / Not sure. Please provide supporting statement.]

No. There is rationale for clear and consistent national development management policies rather than local plans across the country repeating the same policy. However, as the consultation paper lacks further detail on the issues that these national development management policies will cover and the degree to which local policies will still be allowed to set development management standards, the Council disagrees with the approach. Whilst it may speed up and streamline the local plan process it will reduce local discretion. Cornwall Council is concerned that it will no longer have the ability to set policies which respond to local priorities. Local authorities will have reduced control over the form of development, with the only considerations being location and design.

If development management policies are to be set nationally, the process for developing, consulting and testing those policies needs to be rigorous and transparent and the White Paper lacks any detail on this process. The policies need to be aspirational and not reduce standards and controls to the detriment of communities.

The priority for national policies relates to the setting of standards for new development and replacing the current system of 'optional technical standards' that impose considerable resource demands on authorities to bring into force nationally created standards on fundamental issues such as dwelling floorspace, water efficiency and accessibility. Compulsory imposition of these positive standards across England would create better developments and increase good practice and is welcomed by Cornwall Council.

DRAFT for Comment

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

Alternative option: Rather than removing the existing tests of soundness, an alternative option could be to reform them in order to make it easier for a suitable strategy to be found sound. For example, the tests could become less prescriptive about the need to demonstrate deliverability. Rather than demonstrating deliverability, local authorities could be required to identify a stock of reserve sites which could come forward for development if needed.

7(a). Do you agree with our proposals to replace existing legal and policy tests for Local Plans with a consolidated test of “sustainable development”, which would include consideration of environmental impact? [Yes / No / Not sure. Please provide supporting statement.]

Not sure. Cornwall Council is unsure as the paper lacks specific detail on the consolidated ‘sustainable development’ test, for example, it is unclear how social and economic aspects of sustainability will be tested. This needs careful consideration and clear definitions. It is assumed that a local plan would be subject to two assessment processes, one for the environmental impact of the plan and another concerning whether the plan achieves sustainable development including deliverability. The proposals for the assessment of deliverability will no longer include the requirement for a five-year housing land supply. However, it is not clear how realistic estimates of housing yield will be determined and how this impacts on the allocation of sufficient Growth land to meet any housing requirement. With this level of uncertainty, the Council cannot form a judgement on whether this proposal is suitable or not.

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

Cornwall Council suggests that an alternative to duty to co-operate could be some form of sub-regional planning, with local authorities with strong relationships and interconnections working together on specific issues to develop meaningful outcomes. However, the value of such will be different in different places, for example single tier unitary authorities such as Cornwall have the scale to do this already which is not the same for two tier locations. We would ask you to consider the role of statutory agencies and infrastructure providers within the plan-making process. For example, bodies such as the Environment Agency and Natural England often levy a fee for their involvement in the plan-making process. The Council considers that these organisations provide valuable expertise and should be adequately resourced so that their involvement in the local plan process is effective and timely, it is unacceptable for the cost to be shifted further to Local Authorities. Utility providers such as water or electricity providers do not have any requirement to engage which is extremely unhelpful.

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

DRAFT for Comment

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.

Alternative option: It would be possible to leave the calculation of how much land to include in each category to local decision, but with a clear stipulation in policy that this should be sufficient to address the development needs of each area (so far as possible subject to recognised constraints), taking into account market signals indicating the degree to which existing needs are not being met. As now, a standard method could be retained to underpin this approach in relation to housing; and it would be possible to make changes to the current approach that ensure that meeting minimum need is given greater weight to make sure sufficient land comes forward. However, we do not think that this approach would carry the same benefits of clarity and simplicity as our preferred option, and would also require additional safeguards to ensure that adequate land remains available, especially once the assessment of housing need has been translated into housing requirements. We would, therefore, propose to retain a five-year housing land supply requirement with this approach.

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

No. Recognising that a system for setting the housing need requirement has been in place for a number of years, it would seem appropriate for this to continue as this ensures that the calculation of housing need is undertaken consistently across the country, makes the process simpler and transparent whilst reducing potential delays in the local plan process and enables focus on local priorities. However, the methodology needs to be robust, clear and transparent. The methodology proposed in the simultaneous consultation on proposed changes to the current system appears flawed and the Council is strongly opposed to that methodology. The increase in housing numbers currently proposed for Cornwall of some 44% is undeliverable and there is a risk that these proposals risk unregulated sprawl and unsustainable development, to which many settlements in Cornwall are highly vulnerable.

There is a need for clarity and transparency regarding the constraints used to refine the figure using local constraints and conditions and how this will be undertaken. It is unclear whether the balance of housing need against constraints will be an algorithmic exercise or one that involves planning judgement and wider spatial strategy and how this might be applied at a national scale.

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

No. Cornwall Council is committed to delivering the housing our communities need and we agree that affordability should be part of the consideration of any spatial distribution of growth.

However, we do not agree with the overriding focus on affordability in the proposed standard method (as set out in the simultaneous consultation on changes to the current

planning system), which in our view results in an unsustainable pattern of growth across England. The methodology, as a whole, perpetuates higher housing targets in the south (south east and south west) and reductions in the north and furthermore, results in lower targets in sustainable urban areas but higher figures in rural hinterlands. The elements of the proposed standard method that are driving the increase in Cornwall's housing need figure are the affordability multiplier (adding in the region of 400 more homes to the housing need figure) and the use of the new household projections which also add an additional 700+ homes to the requirement. We do not believe this delivers homes in the right places and we would urge the government to review the method and the reliance on affordability to address these fundamental issues.

There is limited information on how often the housing requirement figures will be refreshed and it is considered that this should be detailed as there will be implications for the preparation of local plans.

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.

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

No. The Council does not agree that there should be automatic outline permission for growth areas as there is concern about the ambitious level of detail required and how this would fit with the proposed streamlined local plan process and the resources required to deliver the local plan. There would be the possibility that local planning authorities would need to commit significant resources to commissioning external organisations to prepare the survey data, master plans or design codes as the skills have generally been lost within the authority. Without the certainty created by detail about the make up and quantum of development, site conditions (including surveys and permits/licences) sites may require significant additional work at technical approval stage to realise a workable scheme and therefore may be slower to deliver than in the current system. Automatic permission granted without details may serve to increase hope value for landowners and reduce delivery.

A genuinely plan-led system with local authorities given time to plan effectively could enable development but as currently proposed it feels as though this new streamlined local plan system will result in poorly planned development, which lacks local distinctiveness and does not reflect the needs of our communities.

9(b). Do you agree with our proposals above for the consent arrangements for Renewal and Protected areas? [Yes / No / Not sure. Please provide supporting statement.]

DRAFT for Comment

Not sure. The proposals in the White Paper relating to the differing routes to permission are contradictory and confused; ranging from automatic permission to permitted development. This is particularly the case for those areas defined as renewal with potentially four routes to consent. It appears that development proposals which do not accord with a local plan, design code of land classification can still be determined on a case-by-case basis in the context of an updated NPPF. In addition, it would appear that a route for applying for planning permission would still exist for growth areas, potentially negating the benefits of certainty for communities and stakeholders involved in creating them.

In protected areas, a planning application would be determined by the local authority, but with the focus of new local plans on site-specific details and design these applications would be determined in the context of an updated NPPF. The Council is concerned that applications in protection areas are determined against a national set of policies. It is noticeable that the certainty afforded to 'growth' areas is not reflected in 'protection' areas, i.e. there is no automatic refusal of permission within these areas.

Therefore, the Council considers that there is insufficient information upon which to either agree or disagree with the proposals.

9(c). Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime? [Yes / No / Not sure. Please provide supporting statement.]

No. Cornwall Council does not agree that new settlements could be brought forward under the Nationally Significant Infrastructure Projects regime for the reason that the NSIP process is not democratic. New settlements do not provide vital national infrastructure, rather they provide homes for local communities and those communities should be involved in the determination of proposals which impact upon them.

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

10. Do you agree with our proposals to make decision-making faster and more certain? [Yes / No / Not sure. Please provide supporting statement.]

Not sure. The Council recognises that more certainty is required to enable delivery, but that certainty also needs to be flexible and able to respond to local circumstances and conditions. The proposals in the consultation paper are likely to focus planning decisions on the design of schemes, as the principle of development would already have been resolved through the local plan process. This places far greater importance on plan-making and earlier processes rather than planning applications. Whilst this may mean a lesser role for traditional planning committees it could enable those committees to scrutinise the detailed elements of a scheme in accordance with any design codes. This process has yet to be established.

DRAFT for Comment

Cornwall Council welcomes greater digitisation and opportunities to reduce the time spent on administrative tasks, however, there needs to be a consistent approach to the use of technology to ensure availability of information and data. Presumably a national standard will be set to ensure that plans are comparable across authority areas.

This will also require more digital know-how and analytical skills amongst the planning sector and may require further investment by the Council to provide the right software and skills. A commitment to further funding and resources to assist local authorities in the shift towards greater digitisation would be welcomed.

The Council does not agree with the automatic refund of a planning fee if the authority fails to determine an application within the permitted time limits. We also fundamentally disagree with the proposal that local authorities should refund the application fee if the development is permitted at appeal. This may well lead to situations where a local authority does not refuse planning applications for fear of appeals being dismissed and fees refunded. This also impact on the authority's ability to undertake robust financial and budgetary planning.

Proposal 7: Local Plans should be visual and map-based, standardised, based on the latest digital technology, and supported by a new template.

11. Do you agree with our proposals for accessible, web-based Local Plans? [Yes / No / Not sure. Please provide supporting statement.]

Yes. Cornwall Council agrees and welcomes greater digitisation. There needs to be further information behind the proposals to allow an understanding of what is likely to be required and the resources needed. A consistent approach will also be necessary to the use of technology to ensure that availability of information and data.

Whilst it is acknowledged that making local plans visual, map-based and digital could improve opportunities for effective engagement it is important to consider how that engagement is inclusive and fair and how evidence is provided to allow consistent and clear understanding of how decisions have been reached.

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.

Alternative options: The existing examination process could be reformed in order to speed up the process. For instance, the automatic 'right to be heard' could be removed so that participants are invited to appear at hearings at the discretion of the inspector. Certain Local Plans, that are less complex or controversial, could also be examined through written representations only, as is usually the case with Neighbourhood Plans at present.

A further alternative could be to remove the Examination stage entirely, instead requiring Local Planning Authorities to undertake a process of self-assessment against set criteria and guidance. To supplement this, the Planning Inspectorate could be utilised to audit a certain number of completed

DRAFT for Comment

DRAFT for Comment

plans each year in order to assess whether the requirements of the statutory sustainability test had been met. However, there is a risk that this option wouldn't provide sufficient scrutiny around whether plans meet the necessary legal and policy tests.

12. Do you agree with our proposals for a 30 month statutory timescale for the production of Local Plans? [Yes / No / Not sure. Please provide supporting statement.]

No. The Council does not agree with the proposed 30-month statutory timescale for the production of Local Plans. The prescriptive timetable for the production of a local plan provides limited opportunity for meaningful engagement with stakeholders. The proposals would reduce the ability of residents to make meaningful representations on proposals for housing and other developments in their area. It would appear that the expectation is that the vast majority of (if not all) proactive community involvement takes place in the first six months, after that no further involvement is required until after the plan is submitted, with no formal opportunity to amend the plan as a result of community consultation. This is not conducive to a transparent and robust plan-led system.

With so much emphasis on the plan making stage and the expectation of sites being permitted on adoption of the plan there will be intensive resource needs for the creation of the plan. This will require intensive bursts of multi-disciplinary work to select and assess sites and to defend choices made in terms of boundaries, land classifications etc. This will have resource implications at a time when the current system of development management is still in place, reducing the ability to move people between plan making and planning determinations. There is concern that the proposed timetable does not leave sufficient time to consider complex site-specific issues, especially in a large Unitary Authority area such as Cornwall where substantial work will be required to classify land into the types proposed.

There is also concentration on the examination stage but there is a lack of detail on the rules of the examination, in particular how promoters of areas for Growth and Renewal are represented. This process has the potential to create adversarial examination hearings based on the merits of any classification, the parameters and discussion around individual sites. Given the large area that a local plan for Cornwall will cover, the examination could easily take longer than the prescribed time due to the significant number of sites likely to be considered. If the Planning Inspectorate is to conduct local plan examinations, it will also be imperative for the Planning Inspectorate to be adequately resourced in order to meet the prescribed timetable.

As the process is likely to garner more sites than are required, there could be considerable work involved in assessing in detail and defending a large number of sites which has time and financial resource implications for an area as large and complex as Cornwall.

Cornwall Council suggests that the alternative proposed, which would remove the examination stage and allow local authorities to undertake a self-assessment against criteria and guidance, would enable greater local decision-making and appears to fit with localism

DRAFT for Comment

DRAFT for Comment

and devolution objectives. There would need to be clear guidance on the legal and policy tests to be applied. However, the resource benefits for a local authority would enable a greater focus on ensuring delivery as a result of savings on local plan examination resources and fees paid to the Planning Inspectorate.

The planning system is and must be more holistic in terms of planning balanced communities and delivering the services, facilities and sustainable transport that communities need. The period proposed for the preparation of a local plan should be extended to recognise the need for the creation of a coherent spatial strategy in plan areas rather than a rush to identify and allocate sites to meet centrally set housing numbers. The Council believes that the right decisions should be taken at the right time by the local authority, whether this is through a local plan process to identify suitable land or development management consideration of a proposal. Sometimes these decisions take time, while the necessary evidence and site-specific information is gathered and analysed, therefore the Council does not agree with the potential for Government intervention for failure to adhere to the prescribed timeframes.

The Council would also urge the Government to carefully consider any transitional arrangements for local authorities with an adopted local plan to ensure they are not unfairly penalised by the imposition of a new planning system. It is imperative that those Local Authorities with adopted local plans and who are delivering against the targets in those adopted plans are not penalised.

We will illustrate our point by setting out our circumstances. Cornwall Council's Local Plan was adopted in November 2016, and is five years old in November 2021, and therefore at risk of being out of date after that time. We have been monitoring our delivery and new requirements such as the existing standard methodology and were content that our Local Plan remained up to date. Now, with just over 12 months before our local plan is five years old, the proposed revised housing method significantly increases our housing figure. The Council considers that it is impossible to prepare an update to the local plan within this timescale and given the proposals in the White Paper, it would also not appear to be a suitable use of resources to commence the preparation of a local plan (based on the existing NPPF). Cornwall Council should not be penalised for a change of circumstance that we could not foresee.

Without any transitional arrangements for authorities like Cornwall, we will be faced with using our limited resources on determining speculative development. A lack of transition arrangements will lead to speculative growth that will not only create a longer-term pattern of unsustainable growth but will also impact upon the confidence of communities in any future process to plan for growth. It will impact local and national ambitions to have a plan led system that enables local residents to have a meaningful input on the locations for growth. It would create continued uncertainty for the preparation and delivery of local

DRAFT for Comment

plans, during which the risk of unplanned growth would impact on communities and future strategy being developed by local and neighbourhood plans.

The Council also considers that transitional arrangements for 'made' Neighbourhood Development Plans should be clearly set out.

Proposal 9: Neighbourhood Plans should be retained as an important means of community input, and we will support communities to make better use of digital tools

13(a). Do you agree that Neighbourhood Plans should be retained in the reformed planning system? [Yes / No / Not sure. Please provide supporting statement.]

Yes. Cornwall Council agrees that Neighbourhood Plans (NDPs) should be retained. It is essential that their role is clarified so that it fits coherently in the reformed planning system. If this is not clarified, the new system will not work properly across the different levels of plans. This will create false expectations for communities about the scope and powers of NDPs and the potential conflict between plans. When NDPs were introduced Cornwall Council worked hard provide support and guidance. Neighbourhood Planning is embedded within Cornwall Council and well supported across officers and members. We used frontrunner funding to set up our processes and develop our toolkit and collaborated with the Localism team to embed neighbourhood planning as a key tool for communities to voice and implement their ambitions. We have honed our support offer over the years, using feedback from communities to shape it to their needs and our basic support includes a dedicated NDP team, an online toolkit with guide notes and templates, interactive mapping tool, workshops and training, quarterly surgeries, SEA screening, continual written and telephone support, project management and funding advice, 'Interpretation' meeting between NDP groups, Parish Council and the relevant development management team when an NDP is made and post-adoption monitoring and review discussions.

This investment has paid off in terms of the numbers of successful NDPs in our area, with 125 area designations (representing 137 parishes), 38 made plans with another 7 at post examination publication stage, awaiting referendums that are delayed due to Covid-19 and carrying significant weight, and approximately 15 further emerging plans that are currently at SEA screening or pre-submission consultation stage. We've shared our expertise with other local authorities in the south west and participated in several research projects for PAS and MHCLG and would be keen to continue this positive working relationship.

We therefore have significant experience of neighbourhood planning and have reviewed progress and outputs over the last 9 years, identifying the following lessons learned.

The key strength of NDPs are community engagement, trust and positive working relationships between the local planning authority and local communities and the best opportunities they offer are policies which add value to local character and distinctiveness.

The first question to ask is always 'Is an NDP the right tool?', being realistic about the scope of NDPs and evaluating the ambitions and capacity of local communities, balancing this against the resource

DRAFT for Comment

and time needed to complete an NDP and the level of development likely to come forward in the area. In some rural areas there can often be a mismatch between the effort required from the community to produce an NDP and the actual benefits this will produce in terms of influencing planning decisions, especially if the NDP is planning for very limited levels of development. The resource implications do not fall only on the community: the local authority has a duty to support NDP production and all NDPs must go through all the statutory stages, regardless of size. The creation of complex and lengthy NDPs, often repeating but not adding to strategic policy, places a demand on the local authority in production and in implementation stages, but may add little value for communities if the plan is not focused on the right elements. Clarity is needed on whether NDPs can still contain policies; the implication, if development management policies are to be set nationally, is that they cannot or that they would be site specific. It is not clear how NDPs could set policies and allocate sites if this is to be done through new style Local Plans. The potential use of templates and the consideration of different scales and methods for creating design codes also opens the door to smaller places and parishes who quite correctly felt that an NDP was too onerous a process for their area.

Inconsistencies at NDP examination remain an issue for the implementation of plans. As NDPs are tested against the basic conditions, the final version can still include policies that cannot be implemented, or which fail at appeal. This leads to false expectations within the community and has implications for local authority resources and delays in decision making. This is a situation that needs to be considered and resolved.

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

NDP forums are required to be constituted with 21 members, reflecting the demographics of the area. There is no such requirement where the Parish Council is the qualifying body. The examination process includes an assessment of whether the consultation process has been adequate, through the Consultation Statement, but to ensure that the engagement process is representative of the community, there could be more prescriptive guidance on demonstrating engagement which is democratically representative.

Applying the usual methods of consultation (using community hubs, libraries and shops) to advertise and promote the Plan whilst adding the additional tools offered through social media and online consultation will improve transparency and enable communities to monitor engagement. the digital format will enable communities to do this more easily. However, it must be remembered that not everyone has access to the internet and digital tools need to be employed alongside more traditional consultation methods. Community engagement has been successful in NDPs in Cornwall where a range of consultation techniques have been applied, for example, Penzance NPD used drop-in sessions in community hubs, social media, websites and more formal place-shaping meeting with a range of stakeholders to guide the aims and outcomes sought in the criteria based policies.

DRAFT for Comment

With reference to the increased use of digital tools, Cornwall Council's NDP team is working with a team from Falmouth University who are creating an online map-based web platform designed to enable NDP groups to connect with their communities and develop plans.

Additional guidance on the creation of design codes at community level and the expectations for the amount of detail and potentially a standardised survey method would help communities and local authorities understand the scope of work that is justified and helpful. Some standardisation of the information collected and presented would be helpful to developers and others using the information to inform designs.

Proposal 10: A stronger emphasis on build out through planning

14. Do you agree there should be a stronger emphasis on the build out of developments? And if so, what further measures would you support? [Yes / No / Not sure. Please provide supporting statement.]

Yes. The Council believes that delivery should be a focus, but it is our view that the government is failing to address the issue of land banking and delivery of sites with planning consent. The White Paper sets an ambition to enable build out, but this ambition is not matched by any measures to stimulate market delivery. The granting of permissions and reductions of 'burdens' for developers has not been matched by penalties for non-delivery. It is not considered that the planning system is the sole barrier to delivery.

There should be stronger emphasis on delivery and build out of development and reducing the issue of land banking. In Cornwall there remains nearly 28,000 homes with extant planning permission, but which are not currently completed. The Government has stated that for every one house built, three need to be under construction and four need to be in the planning system. Locally, in Cornwall in 2017/18 for every one house built there were 0.8 homes under construction and 7.3 homes with planning permission but not yet started (of these 7.3 homes over half are on sites of 200 or more dwellings). For every one home built in 2019/20 there were 0.8 under construction and 8.4 had permission but not yet started.

We recognise that housing is not delivered for a number of reasons. It is estimate, that of our 28,000 uncompleted homes there are around 6,000 homes where construction could be unlocked by further funding or greater powers for the Council, improving the skills in the construction sector and supply chains. There are wide reaching reasons for non-delivery which the government needs to address, these include addressing land value expectation from landowners and slow rates of build-out from developers. Build out rates also reflect local market demand. There need to be detailed measures to 'incentivise' developers to build out their sites in a timely manner rather than a reliance on increasing the stock of permissions granted, which is clearly and demonstrably not addressing the issue in Cornwall. Fiscal measures could be employed to incentivise development schemes moving forward once permission is granted, such as the ability for the Council to levy council tax after a certain period based on the number of proposed dwellings on the site.

DRAFT for Comment

DRAFT for Comment

Recommendations from Government's own reviews, such as the Letwin Review, remain unimplemented and should be explored before placing additional demands on Councils.

Pillar Two – Planning for beautiful and sustainable places

Summary of key proposals:

- Introduction of national design codes and process for creating binding local codes
- Permitted development rights to create popular development types
- Mandating of street trees, biodiversity net gain and nature recovery networks
- Speeding up of future homes standard implementation

Consultation questions:

15. What do you think about the design of new development that has happened recently in your area? [Not sure or indifferent / Beautiful and/or well-designed / Ugly and/or poorly-designed / There hasn't been any / Other – please specify]

Other, in Cornwall there have been some really well-designed new developments but equally some poor development. The product delivered by volume housebuilders is particularly poor in the majority of cases, satisfaction with new homes is low. Research undertaken earlier this year, during lockdown, found that the newest dwellings are the most uncomfortable, "with the most recently built homes (between 2010 and 2020) recording the lowest proportions of comfortable residents"¹.

The design and quality of development is a key priority for the Council, and we have been working on a new Design Guide setting out principles for development. It is important to note that a well-designed development is not just about aesthetics but how the development is laid out and works for those residents, the connection to adjoining places, the infrastructure supporting the development and much more. Development led purely by specific issues is seldom successful, be it by a particular architectural style or convenience of parking etc.

The use of standard house types with minor 'regional tweaks' for materials designed around standard road layouts and ignoring topography will not be successful and proposals to create a range of standardised 'popular' house types as permitted development is a backward step in creating beautiful and locally distinctive places.

16. Sustainability is at the heart of our proposals. What is your priority for sustainability in your area? [Less reliance on cars / More green and open spaces / Energy efficiency of new buildings / More trees / Other – please specify]

Other. It is difficult to separate out the various elements of sustainability and would reiterate that all the elements listed (less reliance on cars, more green and open space,

¹Home Comforts – Place Alliance http://placealliance.org.uk/wp-content/uploads/2020/10/Place-Alliance-Homes-and-Covid-Report_2020.pdf

DRAFT for Comment

energy efficiency and more trees) above are important factors in place making and good planning. The Council, and its partners, are adopting an approach that aligns our climate change action plan with our efforts to reverse the ecological emergency. This includes a drive to decarbonise our economy across key emitting sectors, such as on-road transport, energy efficiency in our homes, businesses and agriculture. This is linked to our aims for a shift towards active travel networks and our role as one of the pilot areas for delivering increased biodiversity through Local Nature Recovery Strategy. This requires action on all fronts, and the role of planning both in the realisation of our land-based renewable energy aspirations, higher energy efficiency standards and embedding the principles of biodiversity net gain and nature recovery is crucial.

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.

17. Do you agree with our proposals for improving the production and use of design guides and codes? [Yes / No / Not sure. Please provide supporting statement.]

Yes. Cornwall Council welcomes the wider use of design guides and codes as a valuable resource to help improve design alongside other measures. The Council believes that there should be greater emphasis on place-making rather than a pure focus on design to ensure that places function for residents and relate to neighbouring areas. It is also imperative that the process of developing a design codes involves stakeholders and infrastructure providers; this is crucial in ensuring that development is deliverable.

Design codes are one part of a suite of measures that need to be considered to improve design quality. There will need to be thought given to how the design and execution of the final buildings and spaces is controlled. Merely adopting a design code does not necessarily translate into implementation on the ground. Many of the most successful places created using codes and guides are successful because the vision has been held and controlled and enforced rigorously. Developments such as those by the Duchy of Cornwall are good examples, but they are strictly enforced by a landowner/developer/client with a continued involvement in the development. The Council would need to invest resources in not only developing design codes but ensuring their implementation throughout a scheme.

The production of design guides and codes can be useful especially where the local authority can decide how much detail is included within a design code, taking into account the timeframe expected for particular sites to come forward. Design codes will be particularly important in ensuring the protection of existing habitats and the creation of new habitats. With the current enthusiasm for re-engaging with nature and the ambition for more trees locally, the importance of embedding this and environmental standards into design codes is crucial.

DRAFT for Comment

The expectation that Councils will produce detailed design guidance and coding is welcome, but it is unhelpful that whilst evidenced codes could be published in advance of the local plan these would not have any weight until that plan is adopted.

Many Councils no longer have teams with specific design expertise and this either needs to be a resource that is built up or consultancy brought in – both will have time and financial implications. The expectation of the development of design codes and guides alongside the development of the plan will create considerable resource pressures for Councils and necessarily resource choices will need to favour the production of the plan over design coding. This resource challenge may mean that the illusion of control over design may not be possible to achieve. This is further compounded if applications can still be brought forward under national design codes which will be necessarily generic.

The statement that design codes set locally will only be given weight where there is evidence of 'effective community involvement' is likely to be subject to considerable interpretation and it could be very difficult to evidence, and we suggest that further guidance on this is published. The tests will need to be known in advance to give certainty and confidence to communities involved in their creation.

Proposal 12: To support the transition to a planning system which is more visual and rooted in local preferences and character, we will set up a body to support the delivery of provably locally-popular design codes, and propose that each authority should have a chief officer for design and place-making.

18. Do you agree that we should establish a new body to support design coding and building better places, and that each authority should have a chief officer for design and place-making? [Yes / No / Not sure. Please provide supporting statement.]

Not sure. Cornwall Council welcomes some these suggestions, giving greater weight to design and ensuring consistency in decision-making; however, they have resource implications for the Council. The appointment of a chief officer for design and placemaking is surely another word for a Chief Planning Officer, a post for which there is no requirement for an authority to have. We agree there is a need for leadership and this certainly may include a specific person who is an authority lead for design and place making but we are clear that design is everyone's business and cannot be created from a single post alone. There is a need for an increase in design training and preparation of the design codes including associated digital skills to produce these. Again these are further new burdens that need to be resourced alongside potentially reduced income from planning fees. There needs to be further thought given to the resource implications, both locally and nationally, of these proposals.

Whilst the concept of provably locally popular design codes should in theory help to reduce the occurrence of 'anywhere design' it will depend on the weight to be given to generic design and layout in the national code and how that local involvement and agreement will be documented. This could be through a simple consultation statement or even a

DRAFT for Comment

DRAFT for Comment

referendum through a neighbourhood plan process. Design is so subjective that there is potential for innovative design to be stifled through the adoption of 'popular' designs, which are implied in the paper to be Georgian and Victorian leaning. Good design will almost always be drawn from the site constraints rather than prescribed. There is still a danger that layouts that work well in some parts of the country or even county would be unsuitable in others due to topography and local climatic and other conditions.

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.

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

Yes. Cornwall Council is supportive of ensuring that design is given greater emphasis in the objectives for Homes England.

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.

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

No. Cornwall Council considers that a plan and design code does not necessarily translate into a 'beautiful' development. There is the potential for the term 'beauty' to be open to considerable interpretation and therefore any design codes would need to have a degree of flexibility. It is also important to note that aesthetic quality is not the sole determinant of a successful development, residents want a home that is efficient to heat/cool, has flexible space and access to good quality and natural open space (which in the last few months has become more important). Planning is about more than just the aesthetics of a development or the design of a particular building, considerations usually include infrastructure, access, noise, visual impact etc and it is not clear how these other issues will be considered.

There is a clear challenge in attempting to develop a design code for each area of land identified as growth and renewal in terms of the resource and skills required – for Cornwall this is likely to mean that codes are rather more generic and supported by greater detail through neighbourhood plans. There is limited detail on how design codes will be delivered, although it appears that they would follow the adoption of the local plan, potentially leaving a decision-making gap where the national code has weight. The Council would need to invest resources ensuring their implementation throughout a scheme. It is not clear whether design codes would need to be examined by an inspector or the new design body and it is suggested that this is addressed.

The proposal to introduce increased permitted development rights and a pattern book of standard design and building types appears on the face of it to potentially reduce local choice and control over design and distinctiveness. There are some concerns regarding the

DRAFT for Comment

likely impact on the design and amenity arising from existing permitted development rights to extend upwards and conversion of agricultural buildings in rural settings and the potential for a pattern book approach alongside references to increasing speed of development and industrialisation further eroding local decision-making and locally distinctive forms of development.

There are no specific consultation questions relating to the following proposals, however, Cornwall Council wishes to make comment on the proposals set out in the White Paper:

Proposal 15: We intend to amend the National Planning Policy Framework to ensure that it targets those areas where a reformed planning system can most effectively play a role in mitigating and adapting to climate change and maximising environmental benefits.

The Council considers that there is potentially benefit in amalgamating and streamlining the various environmental appraisal systems, however this will be a considerable task and there is no detail of how it will be achieved. Although the proposal makes direct reference to targeting areas where planning can effectively pay a role in mitigating and adapting to climate change, other than a reference to allocating land for renewable energy there are no proposals. There is currently no reference to coastal change or flooding in this proposal. There will need to be considerably more detail provided to understand the scope of the proposals, particularly in relation to the ability for local policies to be created relating to climate change mitigation and area specific standards. Climate change requires a fundamental change to the way that development is planned and executed and far greater thought and action is required. We believe that these areas need to be addressed.

Proposal 16: We intend to design a quicker, simpler framework for assessing environmental impacts and enhancement opportunities, that speeds up the process while protecting and enhancing the most valuable and important habitats and species in England.

The proposal to reduce duplication in the environmental assessments is a way to potentially reduce wasted effort and to focus on the right stage of decision making. This does need to be explored with some caution as the environmental appraisal of any plan is the area most likely to be challenged and there may be a considerable delay between consideration of a strategy or site and implementation of a permission. However, to do so alongside the rapid rollout of an untested new planning system could create an atmosphere of uncertainty with legal challenges potentially slowing plan-making and decisions. With the shifting of responsibility to local authorities for the setting of site parameters and consideration of likely environmental impact, there will be additional burdens of survey and appraisal that are currently borne by the development industry. Whilst there is potential for reduction in the number of surveys undertaken by combining allocation and permission regimes, there is potential for changes to the ecological and other resources that mean that reappraisal is necessary. Environmental appraisal is an often intensely legalistic and process bound element of planning and any new regime will take some time to bed-in.

DRAFT for Comment

DRAFT for Comment

There is almost no detail provided of how environmental standards will be created and administered and the degree to which the Council can set its own local standards. The Council is currently involved in a trial on green infrastructure standards and the development of a Nature Recovery Strategy with Natural England but the approach linking these to the planning system is unclear. The references to climate change are through a reference to allocating for renewable energy and it is suggested that considerable amounts of detail will need to be provided to understand the interactions between the new systems of allocating or classifying land and the setting of standards and achieving better environmental standards and the degree to which local policy can be set that identifies how local environmental challenges should be dealt with through planning.

Proposal 17: Conserving and enhancing our historic buildings and areas in the 21st century

There is a recognition that climate change and a changing economy (particularly changing patterns of shopping meaning that high street uses will change) will mean that listed buildings need to be adapted or changed. Cornwall has undertaken a considerable amount of work understanding how historic buildings can be adapted to new uses and new technologies. There is a cautious support for measures to help reduce processes for simple changes to listed buildings and identify ways of supporting adaptations and reuses that preserve and enhance historic assets but far more detail is required to understand the likely impacts of such proposals. A degree of interpretation is still required to ensure that cumulative losses do not fundamentally harm the integrity of Listed structures.

Proposal 18: To complement our planning reforms, we will facilitate ambitious improvements in the energy efficiency standards for buildings to help deliver our world-leading commitment to net-zero by 2050.

The setting of energy efficiency standards for new buildings is a key issue for climate change mitigation and adaptation and clarification of the role of the Council in setting standards would be welcomed. The speeding up of the implementation of the Future Homes Standard would be welcomed, assuming that the concerns expressed by the Council and other organisations on the potential unintended consequences of the proposals previously made are addressed. The conferment of additional enforcement powers, the role of the Council and resource implications will require further clarification. The imposition of new standards will need to be accompanied by considerable other initiatives to upskill the construction sector and ensure that a clerk of works type role oversees work being undertaken to ensure that standards are being met as these can often be missed (including serious breaches to fire standards) where a number of subcontractors are undertaking works without supervision and checks.

There is no question 21 in the White Paper

Pillar Three – planning for infrastructure and connected places

Summary of key proposals:

DRAFT for Comment

DRAFT for Comment

- Consolidated Infrastructure Levy with removal of S.106 and CIL
- Infrastructure Levy to be extended to Permitted Development
- Affordable housing delivered through Infrastructure Levy
- Resources and skills review

Consultation questions:

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

Cornwall Council considers that affordable housing, infrastructure, design, employment, open space and green infrastructure are all important factors and are key priorities for the Council along with others such as resilience to climate change, flood risk, energy efficiency and biodiversity net gain. The Council considers that there is a significant challenge in terms of infrastructure provision, it is often difficult to engage with infrastructure providers such as Western Power Distribution, South West Water etc and it is key that the providers plans align with the local plan to ensure appropriate and timely delivery. The delivery of infrastructure such as waste water treatment facilities or upgrades to the electricity network are often reactionary, changes to the planning system offers the opportunity for better integration and effective delivery.

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.

Alternative option: The Infrastructure Levy could remain optional and would be set by individual local authorities. However, as planning obligations would be consolidated into the single Infrastructure Levy, we anticipate that there would be a significantly greater uptake. The aim of the de minimis threshold would be to remove the viability risk, simplifying the rate setting process, as this would remove the need for multiple charging zones within an authority. It would be possible to simplify further – for instance, for the Government to set parameters. There would be a stronger incentive for local authorities to introduce the new Levy, as they would not be able to use Section 106 planning obligations to secure infrastructure or affordable housing. In addition, some local authorities have chosen not to introduce the Community Infrastructure Levy out of concern for the impact on viability of development. Because the new Infrastructure Levy would only be charged above a set threshold, these impacts would be mitigated.

This option would address issues around transparency, responsiveness to local needs and consistency. However, the Government's levers over levels of land value capture would be less strong, with decisions about levy rates being taken at the local level.

Alternatively, the national rate approach could be taken, but with the aim of capturing more land value than currently, to better support the delivery of infrastructure. While developers would be liable for paying the levy, the cost of this would be capitalised into land value. This would ensure that

DRAFT for Comment

DRAFT for Comment

the landowners who benefit from increases in value as a result of the grant of planning permission contribute to the infrastructure and affordable housing that makes development acceptable.

23(a). Should the Government replace the Community Infrastructure Levy and Section 106 planning obligations with a new consolidated Infrastructure Levy, which is charged as a fixed proportion of development value above a set threshold? [Yes / No / Not sure. Please provide supporting statement.]

Not sure. A single system would provide clarity and is welcomed as long as the Council receives assurance that this will provide the same level, or preferably more infrastructure funding as at present.

Cornwall Council recognises the benefit of having a single levy, however, it is essential that this delivers the same or more affordable housing than current arrangements. We would therefore ask that Government requires a proportion of the Infrastructure Levy is ring-fenced for affordable housing. This should be at a percentage that ensures development provides the affordable housing requirements set out in the adopted Local Plan policies.

We would, however, not want to see Section 106 agreements completely abolished. They provide for a range of matters that ensure the development is acceptable and promotes sustainable development, not just housing and infrastructure. As legal obligations that run with the land, they have more force than a planning condition and are an essential mechanism for ensuring perpetuity and local occupancy of affordable housing. As such they are integral to the delivery of Rural Exception Site policy that are defined in the NPPF as, 'small sites used for affordable housing in perpetuity where sites would not normally be used for housing'. The existence of a legal mechanism for securing perpetuity and local occupancy requirements are essential to landowners being willing to release sites at a price that makes it viable to deliver affordable housing.

It is important that these mechanisms are taken forward in any revision to the s106 legislation. It is suggested that s106 legislation is retained due to volume of existing s106 agreements that need to be administered. s73 applications trigger deeds of modification, and other agreed modifications between the local planning authority and developers. The legislation must provide for 'saving provisions'.

The existing s106 approach allows for a variety of payment trigger points, which are negotiated on a case-by-case basis. So, the theory of having a set standard point at which contributions are paid is welcomed. The existing CIL approach requires payment at a set time triggered by commencement of the permission. This is clear and works well, although has always been criticised as payment is due early on in development. However, having payment triggered early in development has afforded greater powers of enforcement where developers do not pay, including the issue of Stop Notices. If Infrastructure Levy payments are not due until occupation, it is imperative that local authorities retain some level of enforcement power to encourage developers to make payments when they become due.

DRAFT for Comment

There are minimal powers for enforcing against s106 breaches and we often have difficulties with non-payment time and time again with the same developers, because they know we have limited powers and know how to play the planning system to their benefit. This wastes a huge amount of resource, which is becoming more and more valuable with ever diminishing Council budgets. With CIL on the other hand, we have issued two Stop Notice Warnings, and received payment the very same day!

Whilst in principle we can see the benefits of charging Infrastructure Levy as a fixed charge of development value, the White Paper lacks detail that would allow us to comment on whether its proposed Infrastructure Levy should replace CIL and s106 agreements. As it is drafted it raises a number of potential problems and questions:

1. What are the components of the Infrastructure Valuation, remembering that the land is likely to be used for a range of social, economic and environmental purposes?
2. Who will be responsible for calculating the value of the Infrastructure Levy? In Cornwall, we have a large differential between our lowest CIL rate of £0 per sqm, and our highest rate of £420 per sqm (index linked) to take account of varying land value and development viability.
3. Residential developments in housing value zone 5 areas currently do not pay a CIL in Cornwall. However, these areas do currently pay s106 contributions, so if a minimum value threshold is used for the Infrastructure Levy, there could be a potential loss of infrastructure funding in those areas.
4. How will challenges be made to a valuation of the Levy and what will be the process of adjudication?
5. The White Paper states that the calculation of the levy will be made at the point of planning permission. Permissions can take years to build out and complete and it is not possible to predict future value of a development that far in advance. In some cases, schemes with planning permission are never built.
6. At some points the White Paper states that payment will be made at completion and others at occupation, they are different, and clarity is needed.
7. Taking the levy at the point of occupation is later than that for CIL and it will result in uncertainty for both the local authority and developers. One consequence of this is that it will make it difficult for the developer to know what price to offer for land.
8. Given that it is proposed that the levy will not be taken until occupation, what will fund the up-front infrastructure on these sites? This will be an issue for all sizes of development, but particularly large strategic sites. As we note below the uncertainty of the Infrastructure Levy value and the timing of its payment will make it too risky for this to be covered by local authority borrowing against future Infrastructure Levy payments.

9. Apart from provisions of changes in value where affordable housing is concerned the White Paper does not address how differences between point of calculation and payment of the levy will be addressed. For example, what will happen if there is a fall in development value between planning permission and occupation. Given the fluctuations in the economy and housing markets making provision for these changes will be essential.
10. What happens if the Infrastructure Levy falls in value, but the cost of the infrastructure remains the same?
11. How will the Infrastructure Levy work in low value areas? The de-minimis threshold may mean that in low value areas no infrastructure levy is charged. Yet these developments will still require infrastructure. They also provide a supply of new high-quality affordable housing where the current stock is inadequate and/or of poor standard.
12. What will pay for infrastructure and affordable housing on small site that fall under the de-minimis threshold. These make up a major part of residential site supply in our rural areas and are a vital source of much needed new affordable housing. In addition, even though they are small they will place extra demand on existing local infrastructure.
13. What will happen if a move to an Infrastructure Levy results in either some sites in the Five-Year Housing Land Supply becoming unviable. What latitude will local authorities be given to substitute sites before the presumption in favour of sustainable development is triggered?
14. What happens if changes in Infrastructure Levy value result in large strategic sites in areas identified for growth become unviable?

An alternative which would overcome some of these concerns would be to apply a charge at point of planning permission being granted (as with existing CIL), and then an additional up-lift charge on completion of the development (or ahead of occupation) if the value has been shown to have increased from that predicted when permission was granted. This would allow Stop Notices to still be used if initial payments are not made (which would have no power once the development is complete) and allow local communities to benefit from any unexpected increase in market value. If market value dropped though, developers should not expect to receive any money back from that initially paid, as by that point, the initial payments may have been allocated or spent on infrastructure projects. This would mirror the provisions proposed for affordable housing.

There is a need to consider those sites where developers deliver and pay for infrastructure themselves, i.e. highway works. If the Council receives the levy directly who will negotiate and enter into the build agreements with contractors to deliver those works as Cornwall Council will be holding the funds? Could be onerous on local authorities to deliver.

DRAFT for Comment

Infrastructure could equate to more levy than is due on the development – where will the shortfall come from.

23(b). Should the Infrastructure Levy rates be set nationally at a single rate, set nationally at an area-specific rate, or set locally? [Nationally at a single rate / Nationally at an area-specific rate / Locally]

The Infrastructure Levy rate should be set locally. A nationally set rate could not take account of the huge variations across the country, never mind variations across individual local authority areas. Although s106 financial contributions per dwelling are broadly the same across the whole of Cornwall, we have a large differential between our lowest CIL rate of £0 per sqm, and our highest rate of £420 per sqm (index linked) to take account of varying land value and development viability. Residential developments in housing value zone 5 areas currently do not pay a CIL in Cornwall. However, these areas do currently pay s106 contributions, so if a minimum value threshold is used for the Infrastructure Levy, there could be a potential loss of infrastructure funding in those areas.

The White Paper provides no information on the methodology for setting a national rate, including how it would accommodate local circumstances. For example, any local design guidance, as envisaged under Pillar two, or site constraints/land contamination. Both these will affect cost and therefore the viability of charging a given rate.

If a national rate was set, even with a de-minimis value threshold, a single rate would have to be set at what would be viable in the lowest value area. This would mean missing out on potential payments from having higher rates in more affluent areas.

Given that the viability of a residential scheme is determined by local housing market and site conditions, a national rate would not bring more certainty for the developer. They could only be assured of this by local economic viability testing. These assessments underpin the adopted local plan. Setting the rate locally where it is sensitive to local circumstances and set out in a suitable planning document would provide more certainty to developers. To bring national consistency and transparency to setting local rate, the Government could provide guidance as it currently does for economic viability assessments in the planning practice guide.

23(c). Should the Infrastructure Levy aim to capture the same amount of value overall, or more value, to support greater investment in infrastructure, affordable housing and local communities? [Same amount overall / More value / Less value / Not sure. Please provide supporting statement.]

More money for infrastructure, affordable housing and local communities is always going to be welcomed, but this has to be balanced with what development is capable of supporting whilst still maintaining delivery of good quality homes. We would certainly not want to see a reduction in the amount of contributions obtained from developers, or a system that reduces the amount of contributions for affordable housing.

DRAFT for Comment

Given that the ability of the Infrastructure Levy to deliver existing or improved outcomes is dependent on the valuation, which in turn is dependent on local market and site circumstances. For these reasons the rate of Infrastructure Levy should be determined locally using clear national guidance as currently offered in the planning practice guide.

23(d). Should we allow local authorities to borrow against the Infrastructure Levy, to support infrastructure delivery in their area? [Yes / No / Not sure. Please provide supporting statement.]

Not sure. Whilst in some circumstances it could be helpful to borrow against future Infrastructure Levy payments to bring infrastructure forward earlier, we do not think this is realistic for four reasons. Firstly, the time gap between valuation at planning permission and payment at completion means there is no certainty that the loan can be repaid. Indeed, given that some planning permissions are never implemented there may instances of no payment. Secondly, this degree of risk is likely to increase the cost of borrowing which would impact on the funding available for investment in infrastructure and affordable homes. Thirdly, Cornwall Council already uses its loan facilities to support its Housing Revenue Account and Affordable Homes Programme which could be put at risk if it was unable to meet loan payments secured against future Infrastructure Levy.

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

24. Do you agree that the scope of the reformed Infrastructure Levy should capture changes of use through permitted development rights? [Yes / No / Not sure. Please provide supporting statement.]

Yes. Extending the new charge to developments allowed under permitted development rights could be helpful particularly given proposals to widen the type of developments that will have Permitted Development rights. This would certainly be a potential additional source of Infrastructure Levy if existing floorspace were to not be deducted in calculating the Infrastructure Levy required. A robust system would need to be put in place to ensure that permitted development still have notification requirements through the planning system, so that these could be correctly captured. The existing system for applying CIL to permitted development are mostly reliant on the developer notifying the charging authority of liable development, and if they don't do that or don't realise it is liable, the development could easily be missed, and a liable development get away without paying any CIL.

The current CIL is charged on change of use but only where there is additional floorspace.

A large proportion of planning applications in Cornwall are for single dwelling developments, and to continue to offer relief from paying the Infrastructure Levy for self-builders will support this development coming forward.

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

Alternative option: We could seek to introduce further requirements around the delivery of affordable housing. To do this we would create a 'first refusal' right for local authorities or any

DRAFT for Comment

DRAFT for Comment

affordable housing provider acting on their behalf to buy up to a set proportion of on-site units (on a square metre basis) at a discounted price, broadly equivalent to build costs. The proportion would be set nationally, and the developer would have discretion over which units were sold in this way. A threshold would be set for smaller sites, below which on-site delivery was not required, and cash payment could be made in lieu. Where on-site units were purchased, these could be used for affordable housing, or sold on (or back to the developer) to raise money to purchase affordable housing elsewhere. The local authority could use Infrastructure Levy funds, or other funds, in order to purchase units.

25a). Do you agree that we should aim to secure at least the same amount of affordable housing under the Infrastructure Levy, and as much on-site affordable provision, as at present? [Yes / No / Not sure. Please provide supporting statement.]

Yes. Cornwall has an unmet need for need for affordable housing and even within existing local plan policy it is forecasted there will be a shortfall of 76%. It is therefore essential that the Infrastructure Levy should deliver at a minimum the same amount of affordable housing and as much on-site as at present.

It is also essential that the affordable housing is provided on-site as an in-kind payment towards the Infrastructure Levy. A cash sum in lieu of on-site delivery will not necessarily provide affordable housing where it is needed. This is particularly true in rural areas or high value where site supply is more constrained, something that may be heightened if communities are in a Protected area.

We are concerned that the paper provides no evidence that its proposals will maintain levels of affordable housing delivery in all parts of England, it has to be more disaggregated than a total number of homes that could be provided. As currently proposed, our experience of delivering affordable homes across our area leads is to conclude that current or improved levels of affordable housing will be achieved.

Again, there is a lack of detail which makes it difficult to respond to the proposal and the consultation questions do not provide the opportunity to draw out our concerns or comments. We would therefore like to raise the following questions and points:

1. What measures will be put in place to ensure that affordable housing is not squeezed out by other costs, including infrastructure costs? Where viability is tight or changes over the period of the development what will ensure that the level and type of affordable housing provided meets evidenced need? At a minimum there should be a requirement that a proportion of the Infrastructure Levy is ring-fenced for affordable housing to meet Local Plan policy requirements.
2. How will affordable housing be provided in low value areas where schemes may fall below the de-minimis threshold. This could be a problem in our low value housing market areas of Cambourne/Redruth and the Clay villages in central Cornwall where there is a need to improve the supply of good quality affordable housing.

3. In low value areas, viability already makes it difficult to provide affordable housing. This is not helped by the inability to use Homes England capital grant to make up funding gaps. Could this be reviewed, making it possible to make a small charge towards infrastructure and provide high quality affordable housing in these areas?
4. How will affordable housing be provided on small sites that may fall below the de-minimis threshold. These make up a major part of residential site supply in rural areas and are a vital source of much needed new affordable housing.
5. The failure to charge an Infrastructure Levy on small developments could also potentially reduce the supply of rural exception sites. Without a charge the developer will be able to pay more for the land, which will mean it is less likely that landowners will sell land for rural exception sites that attract a value significantly below that for market developments. As these sites will not be providing affordable housing, rural communities will have no means to meet their housing needs.
6. Is Infrastructure Levy being charged on affordable housing? Given that it is proposed that these homes are bought at build cost and this would be part of the scheme's income and hence its development value, it appears that Infrastructure Levy will be charged on affordable housing. Exempting affordable housing from the Infrastructure Levy would potentially mean more affordable housing could be provided.
7. The White Paper is silent on whether Infrastructure Levy will be chargeable on sites that provide 100% affordable housing. This can include sites in our ownership and Rural Exception Sites. Charging Infrastructure Levy on these sites would reduce the number of affordable homes that could be built, including if this was charged on any market housing that is providing cross-subsidy to make a scheme viable. Moreover, on our own sites, if Infrastructure Levy is charged, we would be paying ourselves.
8. The paper proposes that Custom and Self Build housing will be exempt from Infrastructure Levy. Whilst we can see merit in this where the development is providing affordable housing, it is not clear why this should be the case for high value self-build properties which may be sold within a year, with the individual being the sole beneficiary of any uplift in value.
9. In a similar vein we ask for a similar exemption for Community Led Housing, in all its forms, where the scheme is providing affordable homes. Cornwall Council has successfully promoted and supported this form of development over more than ten years and it makes an important contribution to meeting our affordable housing needs.

10. Section 106 agreements are an integral part of delivering rural exception sites and should be retained. As legal obligations that run with the land, they have more force than a planning condition and are an essential mechanism for ensuring perpetuity and local occupancy of affordable housing. As such they are integral to the delivery of Rural Exception Site policy that are defined in the NPPF as, 'small sites used for affordable housing in perpetuity where sites would not normally be used for housing'. The existence of a legal mechanism for securing perpetuity and local occupancy requirements are essential to landowners being willing to release sites at a price that makes it viable to deliver affordable housing.

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

Yes, affordable housing should be secured as an in-kind payment towards the Infrastructure Levy. It should not be through a 'right to purchase'.

Following the requirements in the NPPF Cornwall Council, like other local authorities, assesses the level and nature of housing needs in its area, including that for affordable housing, specialist housing for vulnerable people and accommodation for our older residents. The White Paper proposal that the developer would choose which of the houses they would sell to the council or Registered Provider would severely undermine our ability to meet these varied needs.

We are also concerned that the ability of the council or an Registered Provider to buy the properties would be dependent on funding being available. Given the concerns we have raised above about the certainty in both amount and timing of Infrastructure Levy payments, we think this may be difficult to manage. The paper proposes that in such cases the affordable homes are 'flipped back' to market homes. Whilst this may provide a cash sum, it does not deliver the affordable homes on site. Neither can we be sure that we will be able to use the cash sum in the community where the Infrastructure Levy is raised because there may not be any alternative sites. This is particularly likely to be the case in our rural areas where site supply is constrained. Something we have already experienced when we have had to take a commuted sum rather than on site delivery in rural areas.

The White Paper proposes that in some cases the local authority could be offered land that it or a Registered Provider could then develop, rather than built dwellings as part of the in-kind payment. The result could be less funding available for infrastructure because the price paid for land would be less than that which the developer would receive for a built dwelling, thus reducing the final development value and in turn the Infrastructure Levy.

Again, this raises the question of whether affordable housing will be subject to infrastructure levy? Will homes built on sites sold to a council, Registered Provider or formal Community Led Housing organisation be chargeable?

DRAFT for Comment

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

Yes, if an in-kind delivery approach is taken there should be steps to mitigate against local authority overpayment risk. The delay between valuation and payment of the Infrastructure Levy means that it is likely that the money will already have been committed. Any reductions would affect not only the supply of new affordable homes, but also undermine our ability to produce a viable Business Plan that underpins our HRA and Affordable Homes Programme.

For these same reasons we welcome that the paper proposes that developers would not have any right to reclaim any over-payments.

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

Not sure. It is helpful that the White Paper identifies that there is a risk that homes built may not be of a high enough quality for Registered Providers or the Council to buy them as an in-kind contribution. The hope would be that the National Described Space Standards and Building Regulations would avoid this situation arising. In addition, we would expect development to conform with our Local Plan's Development Standards policy that cover external as well as internal standards, such as open space provision, car parking, storage and waste recycling.

However, we are not convinced that the proposals will achieve high quality affordable housing. Indeed, it may even have a converse affect. The proposal that the local authority can revert to a cash payment contribution when affordable homes are not built to an appropriate quality will not deliver affordable homes on site where the evidence has shown they are needed. Neither will it necessarily be able to spend the money on another site in the locality.

For some developers, it will be more advantageous to make a cash payment in lieu of the affordable housing on site. The result will be developments of poor-quality housing that run in the face of the paper's drive for building better and more beautifully.

We consider that national space standards should be made mandatory and brought into Building Regulations. We would also propose that securing high design standards is more than internal form, it should also include high quality external space. Local Design Guides, as envisaged by the paper will play a part in securing these and local authorities should have the right to refuse to buy properties where these are not adhered to. One way of ensuring this happens is to retain s106 agreements.

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

DRAFT for Comment

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

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

Not sure. Infrastructure Levy will be collected to address the impact of development on communities, whether that is locally or on a cumulative basis, and it should therefore be spent on infrastructure. The White Paper suggested it could be used for, as an example, lowering Council Tax. This is not considered appropriate. It should be spent on the same items that s106 and CIL income is currently spent on.

If affordable housing is no longer secured through legal agreements, then there should be a ring-fence to ensure that at least a minimum amount goes towards affordable housing provision.

Retaining the existing Neighbourhood Share under the existing CIL scheme is welcomed, as local Councils are best placed to know what local infrastructure are needed in their areas.

The current s106 approach is very rigid as money collected through this route must be spent on what is set out in the agreement. There can be a significant lapse in time between the agreement being signed, and payment of the contribution being triggered, during which time infrastructure needs may have changed. The current s106 system is inflexible in terms of allowing the contribution to be spent on anything other than what was originally set out in the agreement without the developers express agreement – which can be difficult to get. By giving local authorities more flexibility around spending, more in line with the existing CIL approach, this should enable the Infrastructure Levy to be spent on what is required when it is required. Council would need to be clear on what it's priorities for spend are, and ring fence where necessary.

Currently, CIL in Cornwall is being distributed through a funding application process. The Council may or may not choose to continue this approach to spending the Infrastructure Levy, or perhaps a combination of applications and strategic allocation of funding.

Three systems of developer contributions – the new Infrastructure Levy, alongside CIL and s106 – would need to run in parallel for a significant amount of time until all existing CIL and s106 payments and spend had been discharged.

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. In doing so, we propose this strategy will be developed including the following key elements

The Council welcomes a review of resources and skills within the planning sector and considers it vital for local authority planning departments to be properly resourced. We

DRAFT for Comment

would also suggest that planners, from a range of sectors and disciplines, are engaged by the Government to inform and challenge the reform process going forward.

Proposal 24: We will seek to strengthen enforcement powers and sanctions

The Council welcomes stronger enforcement powers and sanctions for unauthorised development. We believe that the proposals need to go further and that new enforcement tools are required to restore public confidence. Local Authorities need capacity and funding to resource proactive enforcement activity. We suggest that the ability to issue on the spot fines for breaches in the same way as councils can do for littering for example should be considered and for retrospective planning applications, which are often more resource intensive, should command a higher application fee.

27. 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?