



WOKINGHAM BOROUGH COUNCIL

A Meeting of an **INDIVIDUAL EXECUTIVE MEMBER DECISION** will be held at the Civic Offices, Shute End, Wokingham on **MONDAY 9 MARCH 2015 AT 1.00 PM**

A handwritten signature in black ink, appearing to read 'Andy Couldrick', written in a cursive style.

Andy Couldrick
Chief Executive
Published on 27 February 2015

Our Vision

A great place to live, an even better place to do business

Our Priorities

Improve educational attainment and focus on every child achieving their potential

Invest in regenerating towns and villages, support social and economic prosperity, whilst encouraging business growth

Ensure strong sustainable communities that are vibrant and supported by well designed development

Tackle traffic congestion in specific areas of the Borough

Improve the customer experience when accessing Council services

The Underpinning Principles

Offer excellent value for your Council Tax

Provide affordable homes

Look after the vulnerable

Improve health, wellbeing and quality of life

Maintain and improve the waste collection, recycling and fuel efficiency

Deliver quality in all that we do

For consideration by

John Kaiser

Officers Present

Carol Lovell, Principal Planning Officer

IMD NO. 2015	WARD	SUBJECT
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IMD9/ None Specific

**WOKINGHAM BOROUGH COUNCIL'S RESPONSE TO
THE DEPARTMENT OF COMMUNITIES AND LOCAL
GOVERNMENT CONSULTATION ON PROPOSALS TO
ENCOURAGE BUILDING MORE HOMES ON
BROWNFIELD LAND**

5 - 38

To consider Wokingham Borough Council's response to a Government consultation on proposed measures to encourage housing on brownfield sites.

CONTACT OFFICER

Susan Coulter

Tel

Email

Postal Address

Senior Democratic Services Officer

0118 974 6059

susan.coulter@wokingham.gov.uk

Civic Offices, Shute End, Wokingham, RG40 1BN

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NOTICE OF INDIVIDUAL EXECUTIVE MEMBER DECISION

ITEM NO.	IMD 2015 - 09
TITLE	Considering response of Wokingham Borough Council to the Department of Communities and Local Government Consultation on Proposals to Encourage Building More Homes on Brownfield Land
DECISION TO BE MADE BY	John Kaiser – Executive Member for Strategic Planning and Highways
DATE AND TIME OF DECISION	Monday 9 March 2015 at 1:00pm
VENUE	SF2 Meeting Rom, Council Offices, Shute End, Wokingham
REPORT TO BE PUBLISHED ON	Friday 27 February 2015

INDIVIDUAL EXECUTIVE MEMBER DECISION
REFERENCE IMD: 2015 - 09

TITLE	Considering response of Wokingham Borough Council to the Department of Communities and Local Government Consultation on Proposals to Encourage Building More Homes on Brownfield Land
FOR CONSIDERATION BY	John Kaiser – Executive Member for Strategic Planning and Highways
ON	Monday 9 March 2015
TIME	1:00pm
WARD	None specific
DIRECTOR	Heather Thwaites, Director of Environment

OUTCOME / BENEFITS TO THE COMMUNITY

That the final proposals chosen by the Department for Communities and Local Government on measures to underpin the delivery of housing on brownfield land has minimal negative impacts upon Wokingham Borough and that any positive benefits are maximised.

RECOMMENDATION

The Executive Member for Strategic Planning and Highways

- a) approves the comments outlined in this report and the attached appendix; and
- b) that they be submitted as a formal response to the consultation from the Department for Communities and Local Government regarding 'Building more homes on brownfield land'.

SUMMARY OF REPORT

The Department for Communities and Local Government has published the 'Building more homes on brownfield land' consultation which seeks views on a range of proposals to support local planning authorities in identifying and recording brownfield land suitable for housing, and to put permissions in place for new housing on the identified suitable land through Local Development Orders.

There are four main concerns for the Council:

- 1) The proposals could result in resource implications;
- 2) The consultation refers to allowing challenges to the LPA regarding inclusion or exclusion of particular sites, yet does not provide details regarding the mechanism for such a challenge;
- 3) The report does not clearly define many of the terms used; and
- 4) The impacts on other land uses have not been considered.

It is important to respond so that any issues for Wokingham Borough Council can be considered and addressed by the Government.

Background

The Department of Communities and Local Government (DCLG) is consulting until 11 March 2015 on proposals to encourage building more homes on brownfield land (land that has previously been developed). The proposals are part of the Government's drive to make the planning system work more efficiently and effectively, and to increase the number of available homes.

The DCLG consultation includes proposals aimed at increasing the number of homes built on brownfield land by requiring local planning authorities to:

- Create a list of brownfield sites that are suitable for new housing;
- Publish the list and keep it up-to-date; and
- Put in place Local Development Orders (LDOs) on 90% of suitable sites by 2020.

The consultation document proposes using the definition of 'brownfield' (previously developed) land as defined in Annex 2 of the National Planning Policy Framework with the additional criteria of being deliverable, free of constraint, capable of development, and capable of supporting five or more dwellings.

Definition of 'brownfield' land, Annex 2 NPPF:

Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes:

- *land that is or has been occupied by agricultural or forestry buildings;*
- *land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures;*
- *land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and*
- *land that was previously-developed, but where the remains of the permanent structure have blended into the landscape in the process of time.*

Local development orders are made by local planning authorities (LPA) to grant planning permission for specific types of development within a defined area, and by doing so remove the need for a planning application to be made. LDOs can:

- Apply to a specific site or sites, or to a wider geographical area;
- Grant permission for a certain type or types of development; and
- Grant planning permission outright or subject to conditions.

According to the National Planning Practice Guidance (Paragraph 076, 13-076-20140306), LDOs provide certainty and can save time and money for those involved in the planning process. Predominantly, LDOs are used by different authorities, mainly for employment uses. As of December 2013, nationally there were no LDOs which allowed new build residential development. Development that occurs under an LDO would be liable for the same Community Infrastructure Levy (CIL) fee that it would be liable for if it

were given planning permission in the normal way.

The consultation proposes two measures DCLG is considering to encourage progress in getting LDOs in place on brownfield land identified as suitable for new housing:

1. Designate the local planning authority as under-performing if they do not meet the 90% target; and/or
2. Failure to meet the 90% target would result in the inability to claim a five year housing land supply.

Analysis of Issues

The Council recognises the Government's goal of using suitable previously developed land for new housing but seeks further clarification about how the proposals would be implemented in order to better assess the impact this would have on our services. The key issues are outlined below and the Council's proposed response to DCLG can be found in Appendix A.

Potential Impact on Council Spatial Vision

The Government's proposals could potentially have a negative impact on the Council's spatial vision for the Borough, which locates most of the Borough's new housing in four Strategic Development Locations (SDL) which are mostly on greenfield sites (Core Strategy policies CP18 - 21). The proposed measures to increase suitable brownfield land for new housing could pose a risk to the future planned income streams from forthcoming developments on the SDLs.

Resource Implications

In order to create a list of suitable brownfield sites, the Council considers that a number of steps, which have resourcing issues, would need to be taken. Although an accurate estimate of the number of brownfield sites in the Borough cannot be given until there is further clarification regarding the criteria and some initial research undertaken, a rough estimate would be that it would take a minimum of one full-time Senior Planning Officer Grade 8 – 9 (£37,600 - £48,800) at least one year to undertake this work. Additional resources, such as from a technical officer and a legal advisor, would also be required. Following creation of the list, work would need to commence on putting LDOs in place for 90% of the suitable sites, which it is estimated would take at least two years. It would then be likely that there would be an on-going resource need of somewhat less than 1.0 FTE.

Other costs that could be incurred could involve technical reports. Depending on the level of detail desired in a particular LDO, it may be necessary to commission technical studies such as environmental contamination, flooding and/or viability studies, to name a few. While these studies are generally paid for by the developer, with an LDO the Council would be responsible.

Incentives

DCLG is proposing two measures if LPAs do not reach the target of having LDOs in place for 90% of the identified suitable brownfield land. It is not clear in the consultation whether DCLG is proposing to select one of the two measures, or whether both measures would be used.

1. The LPA would be designated as under-performing. This means that applicants could choose to apply to the Secretary of State directly for planning permission rather than applying to the LPA.
2. The LPA would not be able to claim an up-to-date five year housing land supply when considering applications for brownfield development, which would mean that the relevant policies for the supply of housing would be out of date.

Both of these measures would result in the Council having less control over development in the Borough and potentially may mean that less suitable sites are developed for housing, which could undermine the Council's planning strategy.

While the 90% target relates to 2020, there is an interim target of 50% of LDOs on identified suitable brownfield land by 2017. This tight timetable may result in rushed and poorly constructed LDOs being put in place just to meet the target, which could result in less suitable sites being used for new housing.

LDO Process

- a) Preparation – identify LDO scope, including uses and site boundary; undertake technical assessments, in particular environmental screening and assessment; prepare statement of reasons; informal consultation with main stakeholders.
- b) Consultation –consultation for not less than 28 days.
- c) Adoption – Council approval required.
- d) Implementation –the developer is required to notify the LPA when undertaking development permitted by the LDO.
- e) Monitoring – reporting through monitoring report

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	Nil*	Nil	Nil
Next Financial Year (Year 2)	Nil	Nil	Nil
Following Financial Year (Year 3)	Nil	Nil	Nil

*Note: This report is requesting permission to respond to a Government consultation, which has no cost. However, if the proposals are approved, there will be financial implications. See next section for more information.

Other financial information relevant to the Recommendation/Decision

If the proposals being consulted on go ahead, it is likely that a minimum of one full-time Senior Planning Officer Grade 8 – 9 (£37,600 - £48,800) would be required to undertake this work for at least three years. Additional resources, such as from a technical officer and a legal advisor, would also be required. It would then be likely that there would be an on-going resource need of somewhat less than 1.0 FTE.

The Council would be responsible for the cost of any technical reports/studies necessary to create the LDOs. Although not all sites would require such reports, the cost could be as much as £10,000 or more per site for complicated large sites with environmental contamination.

Cross-Council Implications (how does this decision impact on other Council services and priorities?)

No significant implications from responding to the consultation, but there may be implications should the proposals go ahead.

SUMMARY OF CONSULTATION RESPONSES

Director - Resources	Awaiting response
Monitoring Officer	No specific comments Error! Bookmark not defined.
Leader of the Council	“This is an important consultation and it is vital that all issues associated with Wokingham are fully documented.”

Reasons for considering the report in Part 2

n/a

List of Background Papers

Consultation document from Department for Communities and Local Government Research, Planning Advisory Service - <http://www.pas.gov.uk/45-local-development-orders>.

Contact Rebecca Bird	Service Land Use & Transport, Environment
Telephone No 0118 974 6456	Email Rebecca.Bird@wokingham.gov.uk
Date 26 February 2015	Version No. 6

Appendix A. Wokingham Borough Council Proposed Response to DCLG Consultation re 'Building more homes on brownfield land'

Council responses below the questions in italics

Identifying brownfield land suitable for new housing

Question 1: Do you agree with our proposed definition of brownfield land suitable for new housing and the criteria that are applied to define land suitable for new housing?

We would question whether the 90% should also cover 1) sites with planning permission (to include outline, reserve, and full permissions) and 2) sites that are allocated in the development plan, as both of these show that the LPA is working effectively to deliver housing on brownfield land.

We would request that there be further clarification on the criteria, as detailed below.

Regarding the criteria for 'Deliverable', what evidence would be required to prove that a landowner is willing to make land available? Would evidence be necessary to prove that a site is deliverable having regard to the CIL rate? Who would pay for a viability study? How would 'under-utilised' be defined and what evidence would be required to show that a site is under-utilised?

Regarding 'Free of constraint', how would 'severe physical, environmental or policy constraints' be defined? Who would determine whether the constraints can 'realistically be mitigated while retaining the viability of redevelopment'? If the local authority is expected to do this work, there would be resource implications. Who would determine whether the cost of remediation to contaminated land would make the site unviable? Land within floodzones 2, 3a and 3b ought to be explicitly excluded in addition to other excluding constraints such as countryside. What other constraints would result in exclusion? What would be the impact on ensuring adequate measures are available to ensure adverse impacts upon European Sites, i.e. Thames Basin Heaths Special Protection Area? Are major developed sites in Green Belt acceptable for inclusion on the suitable list?

Regarding 'Capable of development', how will it be determined if a site is a 'genuine option'? How must it 'be clear' to the LPA? Is the interest only from 'developers' or does this apply to landowners and others? Could this be done through the SHLAA process, with evidence submitted alongside site promotion?

Regarding 'Capable of supporting five or more dwellings', in order to ensure best use of resources and economies of scale, a higher dwelling number threshold would be more appropriate. We would propose that sites capable of supporting 100 or more dwellings would be a more effective threshold. If sites of at least 5 dwellings should be included, will the related evidence proving land is available for residential with both a willing landowner and developer mean that the site can count in the LPA's five year housing land supply? What impact would this have on the recent changes that exempt sites of less than ten dwellings from planning contributions, specifically the cumulative impact of this loss of infrastructure funding?

Will this apply to brownfield land suitable for C3 housing only or would it be applicable to C2 as well?

Regarding paragraph 15, through what process will the brownfield land that is suitable for new housing be identified? Will it be through the SHLAA? If so, what about the sites that are not promoted through the SHLAA? How would the LPA measure whether there is 'little realistic prospect of [a site] being used for new housing'? This could potentially allow sites that are not suitable for new housing being put forward.

Question 2: Do you agree that local planning authorities should be transparent and publish the small subset of data at source and update it at least once a year, to a common standard and specification?

We have concerns about the resource implications of being required to publish this data.

In paragraph 16, the term 'house-builders' is used. The document uses different terms throughout—developers, landowners, house-builders, etc. It would be useful if the terms used were consistent.

In paragraph 18, it would be useful to have some clarification on how the data will be able to be challenged—using what mechanism and what is the status of the data?

In paragraph 19, the Duty to Cooperate is mentioned. Would the process of gathering, analysing, and publishing this data be subject to the Duty to Cooperate?

Question 3: Do you have views on how this common standard and specification should be developed?

We would like LPAs to be able to participate in what form the common standard and specification will take. This seems very similar to the approach used in the National Land Use Database (NLUD which was developed by CLG). Will it be an adaptation of NLUD?

Question 4: Do you agree that local planning authorities should review their baseline and progress regularly, at least annually, to ensure that information about permissions on suitable brownfield land is current, reflecting changes in the availability of suitable housing sites?

Again, we have concerns about the resource implications of this requirement. In addition, we think it may be useful if the baseline were to take account of permissions and allocations in addition to LDO as this information will show whether LPAs are making full use of available land.

Measures to encourage progress

Question 5: Do you think that the designation of under-performing planning authorities in the way suggested would provide an effective incentive to bringing forward planning permissions on brownfield land?

We would like to see a financial incentive rather than a measure that could be perceived as a penalty used as a measure to encourage progress. Please see response to Q12 for further information.

If designation is to be used as an incentive, we would like to see the 90% include both brownfield sites with planning permission and brownfield sites that are allocated for housing since this demonstrates how authorities are proactively delivering housing on suitable and appropriate sites.

Question 6: Do you agree that:

- a) Authorities should be designated from 2020 if they have not met the 90% objective?
- b) Performance against the 90% objective should be calculated on the extent to which the brownfield land suitable for housing identified a year earlier is covered by local development orders?

If designation is to be used as an incentive, we think it appropriate that authorities be designated from 2020 if they have not met the 90% objective, but think sites with planning permission and sites already allocated for housing should be included in that total. We think it appropriate that the 90% objective should be applied to the sites identified the year before the reporting year, but again we would like to see sites with permission and sites already allocated for housing included in the total since this enables authorities flexibility to consider the range of tools to achieve the Government's objectives which take account of local circumstances and priorities.

Question 7: Do you agree that:

- a) Authorities should be assessed against an intermediate objective in 2017?
- b) Having local development orders in place on 50% of brownfield land identified as suitable for housing (and which does not already benefit from planning permission) in the preceding year is an appropriate intermediate objective?

Considering research by the Planning Advisory Service indicates that it takes approximately 8 months to put a local development order in place (taking account full appropriate consultation on draft orders), being assessed against an intermediate objective in 2017 seems onerous and it is suggested that 2018 is used instead.

Question 8: Do you agree that authorities should be designated from 2017 if they have failed to make sufficient progress against the intermediate objective?

We feel it would be more appropriate for the first designations for authorities not meeting the targets to be in 2020 (taking account the recommendation that sites allocated in local plans or with permission should count towards the target) since this also provides flexibility to local authorities regarding tools to deliver brownfield homes.

Question 9: Do you agree:

- a) With our proposed approach to identifying and confirming designations, including the consideration of whether exceptional circumstances apply?
- b) With our suggested approach to de-designating authorities from 2020?
- c) That the provisions for handling applications made to the Secretary of State should be the same as where an authority is designated under the existing performance measures?

If designation is to be used as an incentive, it seems reasonable to apply similar tests for brownfield performance as for under-performing authorities regarding designation, exceptional circumstances, de-designation, and applications to the Secretary of State. However, we query whether the approach to applications only applies to sites which are

on the LPA's list of brownfield sites deemed suitable for new housing or whether it would apply to any brownfield site (including those that had been rejected because of constraints). Another issue might be where a landowner had not given the LPA the opportunity to consider a LDO for a site.

Question 10: Do you:

- a) Think the policy-based approach would provide an effective incentive for authorities to put local development orders in place on suitable brownfield land?
- b) Agree with the proposed thresholds and dates at which this measure would take effect?

As with the designation incentive, we would like to see a financial incentive rather than a penalty used as a measure to encourage progress. Please see response to Q12 for further information.

As with the designation approach, we feel it would be more appropriate for 2020 to be the year when an authority would first not be able to claim a five year housing land supply due to the resources required to get LDOs in place for the required sites. In addition, we think all options should be based upon a percentage of sites either with planning permission, allocated for housing in the development plan, or with a local development order, as all show the effective working of the LPA to get more housing on brownfield land.

Question 11: Do you agree that the measures proposed for failing to publish information on progress are proportionate and effective? If not, what alternative would you propose and why?

We have the same concerns regarding the measures proposed for failing to publish information on progress as they are fraught with the same problems as the measures to encourage progress.

Question 12: Do you have any other suggestions for measures that could help to deliver local development orders on brownfield land suitable for new housing?

Wokingham Borough Council shares the Government's ambition to maximise housing delivery on brownfield land. However, the Council does not support the proposals contained in this consultation for the following reasons. The proposals would take significant resources away from working on the local plan, which could result in a delay to delivering housing on suitable brownfield land. In addition, the Council has an adopted spatial vision for the Borough which may be at risk if new housing on brownfield sites is given priority over those identified in the adopted local plan. Creating an incentive that would allow local authorities to recoup the costs of the technical studies that would be necessary to creating an LDO would be an effective incentive.

Other Comments

6-Week Consultation Schedule: Wokingham Borough Council objects to the consultation timetable. The Government's [Consultation Principles](#) sets out the principles that Government departments should follow for engaging stakeholders when developing policy and legislation. These principles state that 'Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response' and that the 'amount of time required will depend on the nature and impact of

the proposal (for example, the diversity of interested parties or the complexity of the issue...). The guidance then states that *'For a new and contentious policy, 12 weeks or more may still be appropriate.'* The proposals in this consultation could have a serious impact on local planning authorities, are of interest to a diversity of parties and are complex. Therefore, the Council contends that the consultation should have been for a longer period of time, ideally twelve weeks, to give local authorities and those who would be affected by the implementation of Local Development Orders allowing housing development on previously developed land more time to consider the impact and formulate a response than a six week consultation allows.

Cost of LDOs: Wokingham Borough Council is concerned that the cost of preparing an LDO, in particular the technical reports which will be necessary for large complicated sites, will fall to the Council. These are costs that should be borne by the site developer / promoter not the local planning authority as these demonstrate the suitability of the site for redevelopment.

Loss of Local Powers & Potential Impact on Adopted Spatial Vision: If implemented, the proposals contained in the consultation would result in a loss of local powers to determine which sites are the most appropriate to build new homes. Every local authority is different yet these proposals take a 'one size fits all' approach. Wokingham Borough Council has an adopted up to date spatial vision that locates the vast majority of our new housing in four strategic development locations (SDLs) and Wokingham town centre. If brownfield sites are given priority over these SDLs, the viability and timely deliverability of the Borough's spatial vision could be at risk. The SDL approach Wokingham Borough Council has taken locates the Borough's new homes in infrastructure rich new communities and urban extensions. Brownfield sites in areas with little to no appropriate infrastructure should not be given priority over the Council's adopted spatial vision.

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Department for
Communities and
Local Government

Building more homes on brownfield land

Consultation proposals



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Department for Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

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January 2015

ISBN: 978-1-4098-4470-9

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Ministerial Foreword

The Government knows that local authorities share its ambition to maximise housing delivery on brownfield land. In June last year we announced that we expect to see local development orders being used to get permissions in place on over 90% of suitable brownfield land by 2020, and we made a commitment to implementing a package of measures to support authorities in delivering this goal. Since then local authorities taking forward local development orders for housing on suitable brownfield sites have started to receive support and today I am inviting authorities to bid for a further round of funding.

I am confident that most authorities will make good progress in putting local development orders for homes in place. This Consultation proposes ways in which local authorities can collect and share information on suitable brownfield land in an open and transparent manner so that progress will be clear to all. The Consultation also seeks views on measures that may be needed in more exceptional circumstances where further action is needed to drive progress.

I hope that as many authorities, development partners and other organisations and individuals as possible respond to this consultation to help us ensure that we have the best system in place to help deliver the homes that we need.

Brandon Lewis MP

Minister of State for Housing and Planning

Basic Information

Topic of this consultation:	Measures to underpin the delivery of housing on brownfield land
Scope of this consultation:	Seeks views on a range of proposals to support authorities further in identifying and recording brownfield land suitable for housing, and to encourage them to make good progress in getting permissions in place for housing through local development orders.
Geographical scope:	England
Body/bodies responsible for the consultation:	Planning Directorate, Department for Communities and Local Government.
Duration:	6 weeks (ending 11 March 2015)
Enquiries:	For enquiries please contact: UnderpinningMeasures@communities.gsi.gov.uk 030 3444 1706
How to respond:	<p>You can either respond to the consultation using the online Survey Monkey form at: https://www.surveymonkey.com/s/TTKRPYP</p> <ul style="list-style-type: none"> • Or you can email your response to the questions to UnderpinningMeasures@communities.gsi.gov.uk • If you need to provide a written response, please make it clear which questions you are responding to. • Written responses should be sent to: Anne Wood Department for Communities and Local Government Third Floor Fry Building 2 Marsham Street SW1P 4DF <p>When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"> • your name, • your position (if applicable), • the name of organisation (if applicable), • an address (including post code), • an email address, and a contact telephone number
Getting to this stage:	<p>The Government announced in June 2014 that it expected to see local development orders in place for homes on more than 90% of brownfield land suitable for new housing by 2020.</p> <ul style="list-style-type: none"> • A £5 million fund has been made available to support up to 100 local development orders. • A package of support for local authorities will be made available to encourage the preparation of local development orders, including local development order templates. • £400 million of government funding is being invested to create housing zones to support development on brownfield land.

Introduction

1. The Government is committed to increasing the level of house building in England to ensure that communities can access the homes that they need. A significant level of investment and other support has already been committed to unlock housing sites and encourage house building, including:
 - A £474 million Local Infrastructure Fund which is helping to free up large-scale housing developments.
 - A £500 million Get Britain Building investment fund which is providing finance to unlock smaller stalled sites.
 - A £525 million Builders' Finance Fund which will provide development finance for smaller sites to support the construction of up to 15,000 new homes.
 - £720 million through the Growing Places Fund to deliver the infrastructure needed to bring forward stalled schemes that will promote economic growth and build homes.
 - The New Homes Bonus has allocated almost £3.4 billion since April 2011, recognising delivery of over 700,000 homes and over 100,000 long-term empty homes brought back into use.
 - £150 million Estate Regeneration fund which will help kick start and accelerate the regeneration of housing estates.
 - Over £200 million direct funding has been made available to bring empty property back into use.
 - The Public Sector Land Programme which has identified land with a capacity for over 100,000 homes, and the Strategic Land and Property review which has identified scope to generate £5 billion of receipts from Government land and property between 2015 and 2020.

2. The Government is also investing £200 million to help create around 10 Housing Zones outside London with a further £400 million being invested jointly with the Mayor of London for around 20 new Housing Zones in the Capital. It is also seeking powers to create an Urban Development Corporation for the Ebbsfleet area to accelerate the construction of a garden city development that will help to deliver up to 15,000 homes.

3. We have also reformed the planning system to ensure that it supports the delivery of housing, including homes on brownfield land. The National Planning Policy Framework makes clear that planning should encourage the effective use of land by

re-using brownfield sites, provided they are not of high environmental value¹, and that local councils can set locally appropriate targets for using brownfield land. We have also amended planning practice guidance to stress the importance of bringing brownfield land back into use.

4. Planning regulations have been amended to make it easier to change the use of an existing building from commercial, retail and agricultural use to residential use. Permitted development rights have been expanded, including for flats above shops and allowing for new temporary uses. Budget 2014 announced our intention to further extend these flexibilities.
5. Changes to Community Infrastructure Levy rules now provide an increased incentive for brownfield development, and extended exemptions for empty buildings being brought back into use. We have also introduced changes to national policy to lift Section 106 burdens on vacant buildings being returned to use or demolished for re-development.
6. This investment and support is already delivering results. Over 700,000 additional homes have been delivered in England since 2009, including over 217,000 affordable homes. Housing starts are at their highest since 2007. Housing construction orders have doubled since 2009 and the number of empty homes is at a ten year low in England.
7. But the Government wants to go further to deliver more new homes. Brownfield land suitable for housing has a vital role to play in meeting the country's need for new homes while protecting the countryside, and for this reason the Government wants to maximise the number of new homes on suitable brownfield land.
8. The planning system plays a key role in facilitating housing, and local planning authorities through their policies and decisions have the potential to drive up the number of homes coming forward on brownfield land. Historic data suggests that there is enough suitable brownfield land to accommodate up to 200,000 homes, and the Government wants to see local planning authorities taking a proactive approach to realising this potential, through the use of local development orders.
9. Local development orders are an important way of speeding up the planning process and providing certainty for developers and investors. The Government therefore expects that permissions on brownfield land suitable for housing will in future be granted by local development orders, demonstrating the local planning authority's commitment to creating planning certainty to deliver growth in their area. To underpin this ambition the Government has set an objective that by 2020 local

¹ Paragraph 17 of the National Planning Policy Framework

development orders should be in place on over 90% of brownfield land suitable for housing, and which does not already benefit from planning permission.

10. We know that local authorities and communities share the Government's ambition to maximise the use of brownfield land, and we want to support them in driving up the number of homes permitted on suitable sites. We are already providing financial support to some authorities who are developing local development orders for housing and have launched an Invitation to Bid for further support in tandem with this consultation.
11. This consultation document seeks views on the Government's proposals for identifying suitable brownfield land and sharing data openly and transparently, measuring progress towards the Government's goal for housing permissions on brownfield land, and options to support authorities where additional action is needed to get permissions in place.

Identifying brownfield land suitable for new housing

12. Robust and up-to-date information will be essential if we are to know what brownfield land is available and suitable for housing, and to what extent local development orders are being put in place. Local planning authorities are best placed to lead on this, building on good practice. The Government is keen to support authorities to put in place open and transparent data. This section sets out the Government's proposals for identifying suitable land and how this information can be shared in an open and transparent manner.

Defining brownfield land suitable for new housing

13. 'Brownfield' (previously developed) land is defined in Annex 2 of the National Planning Policy Framework as:

Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes:

- *land that is or has been occupied by agricultural or forestry buildings;*
- *land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures;*
- *land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and*
- *land that was previously-developed, but where the remains of the permanent structure have blended into the landscape in the process of time.*

14. This is a very broad definition and (apart from the exclusions) covers all land in England where there are or have been buildings or other development. Much of this land is already in productive use and would not be suitable for new housing. If we are to ensure progress towards the Government's objective of having local development orders in place on more than 90% of suitable brownfield land by 2020, it will be important to have good quality data about land that can be used for this purpose. We are therefore proposing that local planning authorities should identify land which follows the definition in the National Planning Policy Framework and also meets the following criteria:

Deliverable

- The site must be available for development now or in the near future. This will be a site not in current use, or a site in use (though not for housing) or under-utilised where the local authority has evidence that the owner would be willing to make the land or buildings available for new housing, provided planning permission can be obtained.

Free of constraint

- Local planning authorities should not identify as suitable for housing any land which is subject to severe physical, environmental or policy constraints, unless the constraints can realistically be mitigated while retaining the viability of redevelopment. Contaminated land should also be excluded if there is clear evidence that the cost of remediation would be out of proportion to its potential value, making re-development unviable.
- The Government attaches great importance to the Green Belt and the National Planning Policy Framework makes clear that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence. Inappropriate development on brownfield land in the Green Belt should not be approved except in very special circumstances.

Capable of development

- The site must be in a condition and location that would make it a genuine option for developers: that is, it must be clear to the local planning authority that there would be interest from developers in purchasing the site and building housing there in the near future.

Capable of supporting five or more dwellings

- This criterion is intended to provide a proportionate threshold and is in line with the Government's advice in Planning Practice Guidance to local planning authorities when conducting their Strategic Housing Land Availability Assessments. For this reason local planning authority progress in meeting the Government's 90% objective will be measured in relation to sites capable of supporting five or more dwellings. However authorities should also aim to get permissions in place on smaller sites whenever possible because of their valuable contribution to meeting overall housing supply.

15. Much brownfield land suitable for new housing will be easily identifiable and clearly fall within the definition. But some will not, and we recognise that in these cases the

local planning authority will need to take an informed view. We would, though, encourage local authorities to be as proactive and constructive as possible. They should reject sites only if they can demonstrate that there is little realistic prospect of them being used for new housing.

Question 1: Do you agree with our proposed definition of brownfield land suitable for new housing and the criteria that are applied to define land suitable for new housing?

Sharing information on progress

16. Local planning authorities are already asked to compile and publish an objective assessment of housing land availability as part of the evidence base for their Local Plans. Authorities will want to be aware of potential new housing sites that may have the capacity to meet local need. Publishing the details of land suitable for housing should also attract interest from house-builders.
17. We propose, therefore, that local planning authorities share a small subset of this data which would include: authority name, site reference, name, address, co-ordinates (for mapping), size, an estimate of the number of homes the site would be likely to support, planning status, and ownership (by type, for example public sector). We would welcome thoughts on other data that would have to be included. Local planning authorities will also be free to add to the list as they see fit.
18. We envisage that local planning authorities would publish data that is updated at least once a year at source on their own websites, in an open, accessible format. Publishing data openly and transparently will allow a broad range of individuals and groups to assess and, if necessary, challenge the inclusion or exclusion of particular sites as brownfield land suitable for housing. This will help to ensure the robustness of the local planning authority's data.
19. We propose that data should be published to an agreed, common standard and specification. Publication in a standardised form would benefit local authorities – for example, by enabling an authority to compare its brownfield land with that in neighbouring areas, and thereby aid compliance with the Duty to Cooperate on the allocation of housing land. Others could use this open, standardised data too: for example to generate innovative new mapping and data visualisation tools for developers seeking to identify sites, including those that cross local authority boundaries.
20. We also believe that standardised, open data sets will encourage the development of innovative new on-line services – for example, to harvest brownfield information from individual local sources, and aggregate and present it to different audiences. These audiences could include local authorities themselves – for example, to assist

with tracking or benchmarking development of housing on brownfield land amongst a group of neighbouring authorities.

Question 2: Do you agree that local planning authorities should be transparent and publish the small subset of data at source, and update it at least once a year, to a common standard and specification?

Question 3: Do you have views on how this common standard and specification should be developed?

Assessing progress towards meeting our objective

21. The Government's objective is to see local development orders in place on more than 90% of suitable brownfield land that does not already benefit from planning permission by 2020. As sites are developed and new sites become available, authorities will need to review their stock of brownfield land and its permission status on a regular basis. The Government expects this to be at least once a year. This means that both the baseline against which local planning authorities are making progress and their achievement against that baseline will be rolling rather than set against a single fixed point. This will help to support the Government's objective to maximise the scope for new housing on suitable brownfield land.

Question 4: Do you agree that local planning authorities should review their baseline and progress regularly, at least annually, to ensure that information about permissions on suitable brownfield land is current, reflecting changes in the availability of suitable housing sites?

Measures to encourage progress

22. The Government and local authorities have a shared ambition to maximise housing delivery on brownfield land. The financial support already in place for local planning authorities developing local development orders on larger housing sites, together with the [further funding](#) announced alongside this Consultation will help authorities achieve this shared goal. In addition we are supporting local planning authorities developing orders for smaller sites through the Planning Advisory Service, and advice – including local development order templates – will be published to support the wider use of orders for smaller sites. The Government expects, therefore, that most authorities will make good progress in getting local development orders in place on suitable brownfield land, but where additional action is needed we are proposing two options which are described in this section.

Designations

23. Under section 62A of the Town and Country Planning Act 1990, local planning authorities can be designated as under-performing where the speed or quality of their decisions has fallen below a prescribed threshold. Our proposal is to extend this measure so that authorities could also be designated as under-performing where they do not meet the objective for bringing forward sufficient coverage of local development orders on brownfield land suitable for new housing, or where authorities have failed to provide sufficient evidence that this objective is being met. Where an authority is designated, applicants would then have a choice of applying directly to the Secretary of State for planning permission. This would be implemented through a change to primary legislation, and by revising the criteria for designation and de-designation.²

24. The designation process has been in operation since October 2013 and is well understood by local planning authorities. It has also shown itself to be an effective measure in driving improvements in the time taken to determine applications for major development. The latest statistics show that between July and September 2014 local planning authorities decided 78% of applications for major development on time³, up from 69% a year earlier and a low point of 53% in January-March 2012.

25. If this approach is to be extended to planning positively for brownfield land, it needs to be aligned with the overall objective of the policy, which is to allow residential

² Existing criteria document available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319849/Improving_planning_performance_-_criteria_for_designation_revised_2014_.pdf.

³ Within the relevant statutory period, or such longer period as had been agreed in writing with the applicant.

development to come forward more easily on suitable brownfield sites. For this reason, we propose that only applications relating to brownfield land would be capable of being submitted to the Secretary of State where an authority is designated. In addition, applications would need to be consistent with the size threshold proposed in this consultation of five residential units or more.

Question 5: Do you think that the designation of under-performing planning authorities in the way suggested would provide an effective incentive to bringing forward planning permissions on brownfield land?

26. The Government is committed to seeing local development orders in place on at least 90% of brownfield land suitable for new housing, and which does not already benefit from planning permission, by 2020. Therefore we are proposing that this would be the threshold that would trigger any designations in that year.
27. However, this consultation makes clear that the baseline against which local planning authorities report their progress should be kept up to date. That baseline could fluctuate significantly where additional large brownfield sites become available. We recognise that it may not be possible for an authority to put local development orders in place on at least 90% of suitable brownfield land where large sites become available shortly before 2020. Because of this we propose that authorities would be assessed on the extent to which brownfield land suitable for housing identified the previous year was covered by local development orders. For example, at 2020 authorities would be liable for designation where they had not put local development orders in place on 90% of the brownfield land they had identified as suitable for housing in 2019 (and which did not already benefit from planning permission at that date).

Question 6: Do you agree that:

- a) Authorities should be designated from 2020 if they have not met the 90% objective?**
- b) Performance against the 90% objective should be calculated on the extent to which the brownfield land suitable for housing identified a year earlier is covered by local development orders?**

28. We also propose to assess the progress of authorities against an intermediate objective in 2017. This would give local planning authorities time to implement the policy while leaving sufficient time to improve before 2020 where this is necessary. We are proposing that local planning authorities should work towards an objective of putting local development orders in place on 50% of their brownfield land suitable for housing by 2017 (where the land does not already benefit from planning permission), but we would welcome your views on alternative percentages.

Question 7: Do you agree that:

- a) Authorities should be assessed against an intermediate objective in 2017?**
- b) Having local development orders in place on 50% of brownfield land identified as suitable for housing (and which does not already benefit from planning permission) in the preceding year is an appropriate intermediate objective?**

29. Where local planning authorities have not made sufficient progress against the intermediate objective at 2017, our proposed approach is to designate the authorities concerned: these authorities would then be invited to prepare an action plan and offered support to improve, and would be considered for de-designation after 12 months provided their performance then exceeds the 50% objective under which they had been designated. Other potential approaches exist, such as publishing a list of those authorities not meeting the objective, so that it is clear where more rapid action is required (and where peer support or other forms of assistance is most needed). However, we would need to ensure that the approach is sufficiently robust to encourage real progress in those areas where more needs to be done.

Question 8: Do you agree that authorities should be designated from 2017 if they have failed to make sufficient progress against the intermediate objective?

30. Once 2020 is reached, we would make designations once a year, in the spring. We would identify authorities as being at risk of designation where the data they have published on their websites suggests that the authority had not, at the time of the assessment, put local development orders in place on 90% of their brownfield land identified a year previously as suitable for housing.

31. Under the existing criteria, authorities at risk of designation are given two weeks in which to set out any data corrections or to offer exceptional circumstances as to why a designation would be unreasonable, which are assessed prior to designations being confirmed. We propose that this approach would also be appropriate when considering whether to designate authorities for their performance in bringing forward local development orders on suitable brownfield land.

32. The existing criteria document sets out two general tests that are applied in considering whether exceptional circumstances apply:

- a) whether the issue significantly affects the reasonableness of the conclusions that can be drawn from the recorded data for the authority, over the assessment period; or
- b) whether the issue had a significant impact on the authority's performance, for reasons that were beyond its control.

We would welcome your views as to whether similar tests should be set out for brownfield performance.

33. For consistency with the existing approach to performance, where authorities are designated at or after 2020, we would consider them for de-designation once a year, on the basis of their performance against the 90% objective. Authorities would remain designated until their performance reaches the appropriate level, unless exceptional circumstances apply.
34. Where authorities are designated under this policy, and an applicant applies to the Secretary of State for planning permission, we would mirror the provisions that already exist in relation to designations⁴. The key principles of these provisions include:
- The Planning Inspectorate receiving the application fee for any applications submitted directly to it;
 - The process for determining applications made to the Inspectorate mirrors, as far as possible, that which usually applies when an application is submitted to a local planning authority;
 - The relevant local planning authority would be required to carry out a small number of administrative functions in relation to the application; and
 - A presumption that public hearings would be held in most cases to inform the decision of the Inspector.

Question 9: Do you agree:

- a) With our proposed approach to identifying and confirming designations, including the consideration of whether exceptional circumstances apply?**
- b) With our suggested approach to de-designating authorities from 2020?**
- c) That the provisions for handling applications made to the Secretary of State should be the same as where an authority is designated under the existing performance measures?**

Policy-based incentive

35. A second option would be to amend the National Planning Policy Framework. The policy change would mean that local planning authorities that had failed to make sufficient progress against the brownfield objective would be unable to claim the existence of an up-to-date five year housing land supply when considering applications for brownfield development, and therefore the presumption in favour of

⁴ More details can be found in the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 (available from <http://www.legislation.gov.uk/ukxi/2013/2140/contents/made>), the Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013 (available from <http://www.legislation.gov.uk/ukxi/2013/2141/contents/made>), and the Town and Country Planning (Section 62A Applications) (Written Representations and Miscellaneous Provisions) Regulations 2013 (available from <http://www.legislation.gov.uk/ukxi/2013/2142/made>)

sustainable development would apply. For the effective implementation of this approach, authorities should maintain up-to-date information on the extent to which suitable brownfield land in their area has local development orders in place, so that their performance against the objective can be reflected in decisions on planning applications and appeals.

36. This measure would benefit applicants as it would make it easier to obtain planning permission on brownfield land where authorities had failed to make sufficient progress towards the Government’s objective for permissions on brownfield land.
37. We propose that this measure would take effect fully from 2020, and would apply to any local planning authority that had not met the 90% objective by that date. However, in light of the need for local planning authorities to make continuous progress towards the 90% objective, we also propose that there would be a series of intermediate objectives to which this policy would apply; so from 2017 local planning authorities would be unable to claim the existence of an up to date five year supply of land for housing when considering applications for brownfield development, where they had failed to put local development orders in place on the following percentages of brownfield land identified as suitable for housing:

Year	Percentage below which the policy would apply
2017	50%
2018	60%
2019	75%
2020	90%

Question 10: Do you:

- a) Think the policy-based approach would provide an effective incentive for authorities to put local development orders in place on suitable brownfield land?**
- b) Agree with the proposed thresholds and dates at which this measure would take effect?**

Dealing with data gaps

38. The options that we have set out will work most effectively where regular information on progress in getting local development orders in place on brownfield land is published by local planning authorities. Where authorities consistently fail to publish information on progress, we consider that it will be reasonable to assume that insufficient action is being taken. Therefore we propose that either designation or the policy measure would be applied automatically where a local planning authority has not published data within the last year preceding the objective dates of 2017 and 2020, and in subsequent years.

39. Under the designation approach, this would mean automatic designation; with authorities being considered for de-designation only once data was provided that showed them to be above the 90% objective (or 50% objective in the case of authorities designated in 2017). For the policy approach, it would mean that authorities would be unable to claim an up-to-date five year housing land supply when considering brownfield applications, until the data had been published and showed them to be above the relevant objective for that year.

Question 11: Do you agree that the measures proposed for failing to publish information on progress are proportionate and effective? If not, what alternative would you propose and why?

Other approaches

40. This consultation has outlined two specific measures to encourage improved progress where insufficient action is being taken to bring forward local development orders on suitable brownfield land, but we would welcome suggestions of other approaches that could be taken.

Question 12: Do you have any other suggestions for measures that could help to deliver local development orders on brownfield land suitable for new housing?

Implementation

41. Meeting the Government's objective for getting local development orders in place on suitable brownfield land is consistent with the objectives for planning in the National Planning Policy Framework and is a recognised part of the Government's wider policy for housing delivery. Local planning authorities are already required to collect housing data, including information on brownfield land, for their Strategic Housing Land Availability Assessments and to inform their Local Plans. We do not think that publishing this data locally would constitute a new burden for local planning authorities. However, we will use the responses to this consultation to verify our conclusions.

Summary of Questions

Identifying brownfield land suitable for new housing

Question 1: Do you agree with our proposed definition of brownfield land suitable for new housing and the criteria that are applied to define land suitable for new housing?

Question 2: Do you agree that local planning authorities should be transparent and publish the small subset of data at source and update it at least once a year, to a common standard and specification?

Question 3: Question 5: Do you have views on how this common standard and specification should be developed?

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- b) Agree with the proposed thresholds and dates at which this measure would take effect?

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About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups who wish to respond are asked to include a summary of the people and organisations they represent and, where relevant, of any other party they have consulted in reaching their conclusions.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your information technology system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not, or if you have other observations about how we can improve the process, please contact:

Department for Communities and Local Government Consultation Co-ordinator.
3rd Floor, Fry Building
2 Marsham Street
London,
SW1P 4DF

or by e-mail to: consultationcoordinator@communities.gsi.gov.uk