



BPF response to The Planning White Paper

WE HELP THE UK REAL ESTATE INDUSTRY GROW AND THRIVE

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British Property Federation

The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £100bn to the economy in 2018 and supported more than 2 million jobs. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.

We welcome the opportunity to respond to this consultation on the Government's longer-term aspirations for reform of the English Planning System. Our submission has been informed by extensive consultation with our membership with separate workshops considering the different pillars of the consultation document, a workshop with our network BPF Futures (for those with fewer than 10-years' experience), six meetings with our regional members, a well-attended webinar and several other consultation events.

The rest of this submission responds to the consultation questions. However, we also list our key points below.

Key points

1. We welcome this thorough review of the planning system in England and the Government's aspirations to modernise.
2. We share the Government's ambitions to deliver a simpler and faster system, whilst brokering the compromises that inevitably there are through controlling the use and development of land.
3. Two words that are absent from the White Paper are 'commercial property'. Jobs are the bedrock of sustainable communities and therefore employment land is as integral to communities as land for homes. The White Paper does not provide sufficient detail on how the new system will work in various commercial property settings. For the sake of growth, it is vital that reform works for business, and we seek to support Government in considering how the new system can ensure the efficient delivery of employment land and commercial property development.
4. A further word that only features once in the White Paper is 'placemaking'. Delivering great places is what gives our members their license to operate. We therefore support that with simplicity and speed must come quality and how that is assured.
5. Strategic planning should still have a key role within the new system. Our capital and regional cities benefit greatly from the coordinated approach that can be fostered through the production of a strategic spatial plan and decision taking at the larger than local level.

6. Overall, Government is setting out a very ambitious programme of work. It is vital that whilst considering a new system no momentum is lost in the current system if the Government's aim to Build, Build, Build is to deliver recovery.
7. It is also essential more than ever, given the work involved in moving to a new system, that LPAs and the Planning Inspectorate are well-resourced, and that transition to a new system is well-planned, and uses pilots and other experiments to test some of what is proposed.
8. Finally, whilst we can understand for the purposes of consultation that it is necessary to split the White Paper, ultimately what matters to developers is the whole, and having timely clarity on land, community preferences and the delivery of infrastructure (through levies or direct spending).

Focusing on Pillar 1 – Plan-making:

9. We support the suggested approach to land use planning and use of 'growth', 'renewal' and 'protected' designations. For protected areas, it will be important that the new system is clear why land is being protected locally. There could be a risk that LPAs designate large parts of their districts or boroughs as areas of protection which could in turn limit activity.
10. We suggest a further nuance to the zones proposed, to support large and complex sites, such as major regeneration schemes and urban extensions, with a 'long-term growth' designation. We set out further how that might work in box 1.
11. We agree a 30-month production period for local plans is a good aspiration and want to support Government in exploring if that is possible.
12. We support having a suite of national development policies and suggest local authorities having to explain where they depart from these.
13. We disagree with abandoning the need for a five-year land supply and make suggestions on improving a sustainable development test.
14. Further thought should be given to cross-boundary planning, which even if local authorities are handed housing numbers, will still need to deliver cross-boundary employment land solutions.
15. On housing numbers, any methodology must support growth aspirations across England.

Focussing on Pillar 2 – Digitalisation and Quality:

16. We broadly support the commitment to digitalisation. Investment is needed in digitalisation in the forthcoming spending review if Government is to move forward swiftly on its ambitions. Such investment will be needed not only in hardware/software, but also in the skills within LPAs, to procure and use digitalised systems.

17. 17. Our response makes several practical points that will support digitalisation. A critical aspect is being clear about what digitalisation is, and what is being digitised, standardising documents and processes. Regulation also needs to be clear and up-to-date.
18. MHCLG should also develop tools to support scenario testing during public consultation, standardised requirements for 3D models to accompany planning applications, and the rollout of 'digital twins' to monitor operational performance and long-term sustainability.
19. We stress that digitalisation must be accessible and inclusive, giving people options and providing user-education.
20. We are supportive of quality in development, which includes design and environmental performance, but also wider placemaking considerations.
21. We are supportive of nationally set design principles, which could provide greater certainty, but should seek to avoid overly prescriptive requirements. Any design principles will need to reflect different resident demands on homes that are built for sale, for rent, for retirement, etc.
22. We have concerns about locally set design standards. There is a consensus within our membership that design should not be prescriptive, but rather a process undertaken by qualified and experienced professionals with support from key local stakeholders including communities and local government.
23. Greater clarity is needed on how design codes will work in a commercial property or mixed-use setting.
24. We support the objective of building greater environmental protections into the NPPF, but would stress this needs to be done quickly given climate change imperatives and come before other aspects of reform in the White Paper.
25. The intention to create a quicker, simpler framework for assessing environmental impacts that leads to less replication of work and effort is welcome.

Focussing on Pillar 3 – Infrastructure Funding:

26. Simplification of process would be welcome.
27. Significant simplification and standardisation could be achieved within the existing system. Government should consider again the proposals put forward by the CIL Review Group and standardising approaches to S106.
28. We are ambivalent on the level at which a levy is raised. A national levy may hit specific project development economics and not raise as much as current bespoke arrangements. A local level may not deliver much by way of simplification. Some greater than local level (e.g. combined authorities, county councils or unitary councils) may be a compromise. Without some flexibility a nationally set 'local' level would go against the Government's drive for greater devolution.

29. Any reforms should be reflective of viability and therefore broadly revenue neutral. Raising more will hurt development activity at a time when it is desperately needed to support economic recovery. Raising less will deprive communities of essential infrastructure and affordable homes.
30. Any levy rates would have to take account of the different development values generated on residential (differentiating between for sale and for rent) and commercial development and between brownfield and greenfield sites.
31. Given the importance that communities place on development coming with supporting infrastructure, placemaking and need for affordable housing, it is imperative that any levy funds continue to be spent on infrastructure and not on other local authority priorities.
32. Paying the levy at the end of the development process has cashflow attractions but would raise considerable challenges around trigger points and valuations. It is also imperative for the large schemes our members are engaged in that infrastructure is delivered on time and members have fears about the capabilities of the proposed system to deliver this.
33. We support in principle allowing local authorities to borrow against future levy revenue receipts to forward fund infrastructure but flag some risks.
34. We have no objections in principle to the levy incorporating an affordable housing contribution but in practice it must reflect site viability, otherwise it will impact on the level of development. Moreover, we would want to ensure that the proportion spent on other infrastructure did not suffer, as this would lead to poor quality development and placemaking.
35. The new levy should provide certainty that developers will be able to mitigate the impact of their development. Such measures are currently addressed via S106 planning obligations.
36. We are supportive of in-kind (direct) provision. These will be particularly important for certain parts of the sector, such as Build-to-rent.
37. The Government should consider clear pathways for calculating affordable housing contributions on alternative residential sectors. Build-to-Rent already has this built into the NPPF. It would also be beneficial to have a clear pathway for later year housing products. We are also supportive of a clear pathway for SME developers on small sites, such as the percentage First Homes approach proposed by colleagues at Trusted Land.

Plan-making

Proposal 1: The role of land use plans should be simplified. Local Plans should identify three types of land:

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

38. We support, in principle, the shift towards a more simplified approach although we have concerns that the proposed distinctions between growth, renewal and protected areas will not always work well in dense urban areas and on large sites. For example, Westminster is covered by 80% conservation area pepper-potted throughout the borough. Designated areas will need to be defined to quite a significant level of detail in such circumstances. Sites for protection might be situated right next to sites for renewal or growth in urban locations and there is a danger of abrupt changes rather than the transition between areas we see at present. For the sake of placemaking, some thought will need to be given at the plan-making stage as to how they interact together, as well as being defined separately.
39. The White Paper suggests that in growth areas, development in accordance with the relevant local plan would get automatic outline permission. Our members do not believe that the level of detail required for many outline permissions could realistically be covered at the plan-making stage and in reality what is probably more possible is 'planning in principle' rather than a detailed outline consent. It should be noted that a considerable amount of work goes into achieving an outline consent and thus frontloading the system does transfer quite a lot of risk onto the developer with no guarantee that the engagement will translate into an allocation.
40. Our members bring forward some of the most complex commercial development schemes in the country. They can be major regeneration projects and urban extensions, often mixed-use, and informed by significant engagement upfront to secure the trust of communities and ensure that the views of the communities are considered. A repeated concern that has been expressed to us is that the outline permission on such sites at the start of the development process would be unhelpful. It would not provide the level of consultation that is required, perhaps make promises that could not be kept, and provide too much inflexibility on what are often projects that last years and sometimes decades. We would therefore like to propose a fourth zone, either in its own right, or as a subset of 'growth'. We set out some of the parameters for this in box 1 below.
41. Focussing on the 'protected' areas, the perceptions of the community may be that such land is protected in perpetuity and is not for development. Neither of these perceptions would be true. Protected zones will have restricted development, and restrictions will only last for the duration of the plan. It is important this is understood and that the system is clear why land is being protected locally.
42. The White Paper says very little specifically on employment land, yet jobs are the bedrock of any sustainable community. Pressures for more housing land, however, mean employment land is often being squeezed. There is great opportunity in reform to consider how best to plan for employment land, particularly given the significant shifts being seen in our economy and employment land use.
43. What is proposed is a more intense and detailed local plan making process, and local authorities will need additional skilled resource to deliver the levels of engagement with the community and detail required for an outline permission. The transition from the current system to new system will be particularly resource-intensive.

Box 1 – Long-term growth zone

The following table sets out some of the parameters of a long-term growth zone and the possible options that might help define it.		
Name	Long-term growth	
Definition	Define in terms of number of homes	1000+ or 1500+ homes
And/or	Define in terms of delivery timeframe	30+ or 60+ months
Consenting regime	Key is exception to other growth areas and does not have an outline permission at start	
	Could have a prescribed framework of phases and timescales	1. Working up an outline. 2. Define phases 3. Reserved Matters
	Alternatively, could have a prescribed consenting regime, such as LDO or LCO	
Other issues	Infrastructure – much of it will be early in the process and provided by the developer	Must be in lieu of charge
	Consultation – heavy consultation builds trust upfront	A behavioral covenant
	Design – broad parameters, must be able to accommodate change	National design code sufficient at start

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

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

44. We very much welcome this proposal. We have [long argued](#) that Local Plans need to be made shorter, more concise and targeted at deliverables with development management issues instead dealt with at the national level.
45. There may be certain exceptional circumstances where departure from national development management policy is justified. In these circumstances, and in the interests of transparency, the relevant LPA should be required to explain why such a departure is necessary.

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

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

46. This proposition is supported in principle however it will be important that a system of independent scrutiny of Local Plans is maintained. This will only be achieved if the Planning Inspectorate is much better resourced than at present. This point is also pertinent to the government’s aspiration of shortening Local Plan preparation periods to less than 30 months.
47. Any new ‘sustainable development’ test must test whether plans are effective in meeting the development and housing needs of communities, and unmet need from neighbouring authorities. To ensure that plans are prepared in accordance with legal and procedural requirements and result in deliverable policies over the plan period and beyond they must be independently assessed against a well understood set of criteria which must also include some form of deliverability test.
48. Ultimately, what all parties want is a realistic and achievable local plan at the end of the process.

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

49. The Duty to Co-operate, whilst flawed, is the only statutory arrangement for strategic cross-boundary planning and the sharing of unmet local need to adjacent authorities. We would therefore not support the removal of the Duty to Cooperate unless a more robust process/ mechanism is introduced in its place. Given the arbitrary nature of local government boundaries, and the interconnectedness of areas, co-ordination between authorities is essential and it may be the case that more effective arrangements for collaboration can be developed through the Devolution White Paper. Reform is certainly needed with the last two London Plan examinations clearly demonstrating that, despite the best efforts of all parties, effective collaboration between London and the wider south east is still noticeably absent.
50. However, we continue to support the production of a London plan and other Mayoral plans, but these must be strategic plans and not get into the detail of development control seen in the current Draft London Plan, which stretches far beyond strategic planning issues.
51. The lack of a joined-up approach across authorities is a particularly acute problem for allocating enough strategic employment land in the right places. There remains a significant vacuum in strategic planning following the abolition of Regional Spatial Strategies with logistics development involving complex supply chains that span across geographies with little regard for administrative boundaries.

52. We believe strategic employment land is best planned for at the regional or sub regional level. Given long lead- in times associated with bringing strategic employment sites through the local plan process, we call for an adequate future pipeline of strategic employment sites to be identified in each region/ sub region. This could be facilitated by evidence base reforms to make planning more dynamic and responsive to real time fluctuations and higher than anticipated take-up. We see a role for Mayoral Combined Authorities and/or LEPs in delivering strategic employment site allocations through new spatial planning powers that could be set out in the forthcoming English Devolution White Paper, which has the potential for significant and positive change.
53. A further consideration for government in this sphere is the need to find a means of bringing LEPs, Combined Authorities and HMAs into a single joined up strategic process. Unless this is achieved, any new system will suffer from the same issues as the current one.

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

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

54. We are supportive of this longer-term aspiration of moving to a binding housing requirement for local authorities. We also agree that there should be a strategic role for the combined authorities in allocating the housing numbers within the wider region.
55. However, we would also propose that the requirement for local authorities to demonstrate a five-year land supply should be maintained in any new system. This is because the need to demonstrate a five-year supply of land has proved the most effective government measure to make sure local authorities are incentivised to get their plans up to date as they would otherwise begin to lose appeals.
56. There are of course other measures and sanctions trailed by government in the consultation paper however we would observe that over a prolonged period these existing powers to intervene have not been used widely or effectively but the need to demonstrate a five-year land supply has proved an effective incentive for local authorities to get on with plan-making.

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

57. We have recently responded to the separate consultation on changes to the existing planning system and a key aspect of that consultation was focused on the standard methodology. An important aspect of that consultation was considering how better to accommodate growth aspirations in the North and Midlands and deliver the nation's requirements for 300,000 new homes per annum overall. Each of these remains important objectives and needs to be built into the final methodology.

58. As well as the considerations in the previous paragraph there are range of other considerations that need to be reflected in calculating housing numbers. A lack of affordability can be an indicator of under provision but is not a perfect measure. The use of existing urban settlements may also deliver sub-optimal outcomes in terms of placemaking and quality of life.
59. The White Paper lists several other important considerations in terms of environmental constraints, the need to provide land for employment use, and delivering more sustainable places.
60. We are particularly concerned that housing numbers and land to accommodate them may crowd out land for employment use. A sustainable community relies on access to employment and service provision. We hope the White Paper will also provide the opportunity to significantly modernise and improve the ways that we plan for employment land. For example, ensuring that employment land reviews are up to date. Strategic planning for logistical and wider industrial use is another area that needs to be significantly improved.

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.

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

61. As noted above, we support the principle of streamlining the process. There is, however, some ambiguity over whether the output would equate to something akin to a Permission in Principle or Outline Planning Permission and the level of assessment required through the local plan to justify the grant of PIP or similar. There are significant differences between the two and the language within the consultation document does not make this clear. As well as removing this ambiguity, we also request further details on the reformed reserved matters process and how the process would align with the EIA process.

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

62. The need to repurpose town centres is going to be long-term policy challenge and the designation of renewal areas, combined with a presumption in favour of development, could help drive development. We also note the intent that such areas should benefit from gentle densification, which we support, if allied with good placemaking.
63. Industrial land within existing urban areas often accommodates older buildings that are no longer suitable or fit for modern purposes. Such areas, likely to be designated as Renewal Areas, must remain flexible enough to ensure the buildings and sites can continue to adapt to the wide range of market requirements that fall across industrial and storage and distribution use classes.
64. As recommended in our Delivering the Goods Report, Government, industry and local planning authorities must communicate openly regarding the contribution of the industrial sector to local economic growth and support regeneration objectives. This would facilitate bringing redundant brownfield land back into use, which can have a positive impact on a local area and its communities.

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

65. We have received feedback that the DCO regime is considered a relatively inflexible tool when considered in relation to housing delivery and would require significant legislative reform. In the absence of regional or Combined Authority / Joint Planning Authority 'Regional Policy Statements' the NSIP regime does not benefit from the core National Policy Statement element for housing that drives the certainty needed to invest in the DCO process. The low take-up on commercial DCOs and the slow progress of the London Resort NSIP illustrates the fact that the process does not resolve the more fundamental issues that need to be addressed with major land use change.
66. The DCO regime's other main benefit is land assembly and related consents. The allocation of land and principle of development issues are in practice the main delays to investment, with land assembly not being such an issue in most cases.
67. The BPF therefore considers that public and private sector efforts would be better directed in a period of scarce Parliamentary time and public sector resources to addressing the principle allocation of land rather than changing the process for consenting it.
68. An additional point is that there is an opportunity for the Government to take the principles used to deliver SRFI schemes under the DCO Regime and apply these to a larger scale to deliver new settlements. Introducing new settlements into the DCO regime could facilitate better coordinated delivery of industrial and logistics alongside related infrastructure, distribution networks and customers. The DCO route offers a credible alternative where there are significant cross-boundary issues or difficulties in bringing together all the parties required to create the infrastructure and master planning that makes new settlements sustainable in the long term. It provides the opportunity for industrial and logistics to be properly connected into national networks (transport, energy, utilities, digital), and for sufficient land to be integrated to create sustainable travel patterns and connect local markets to global networks.

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

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

69. Yes, the proposals to modernise and digitalise the planning system are welcome. We have some comments and caveats to add.
70. In reading the consultation, digital planning is cited as an outcome of reforms, but what that is, is never defined. It would be beneficial for the Government to set out its intentions more specifically in due course, but there are some principles that we believe should be included in the Government's considerations:

- 71. Regulation needs to keep pace with digitalisation** - The digitalisation of aspects of planning will hold not only solutions but further challenges, drawing on the experience of other sectors. This will likely create governance sinkholes, absent of rules or guidance, that may require individual organisations to a) make decisions that are reasonable in absentia formal rules and b) the pace of change may mean that normal cycles of review of public policy may need to be accelerated. We recommend the creation of a lead user group (which could be virtual) composed of the main parties of the planning value chain to ensure that the impact of reforms is understood and both industry and Government can respond to change in an agile way.
- 72. Consider the practicalities of data release and the challenges faced by other organisations in so doing** A cited objective is for PropTech entrepreneurs to be granted access to data derived from public repositories, and for those data repositories to be made public and useable. While we support this objective, a note of caution is needed since organisations like HM Land Registry have been grappling with the how to protect consumers from fraud while releasing more useful data into the public domain.
- 73. Listening to communities should extend beyond the Local Plan process** - At present, community engagement aspects of the digitalisation proposals focus on the Local Plan process. However, the interest of our members in community engagement extends beyond that process (e.g. around major applications). This has two key implications: first, how to ensure that community feeling about development and place is accounted for in the period between Local Plan reviews; second, there may be a missed opportunity if PropTech entrepreneurs are geared to provide community engagement platforms that are solely geared toward engagement around Local Plans. It may be beneficial for the real estate sector and MHCLG to co-create some specifications for community engagement platforms.
- 74. Service Design for a community of users with complementary needs** – For the purposes of service design, it is important to recognise that digital planning is not just used by the local community and it will very likely not be consumed only indirectly by the largest professional real estate developers in both commercial and residential purely through the filter of services provided by PropTech Entrepreneurs. There is a need to think in systems to design these services effectively.
- 75. Make use of UPRNs to link otherwise discrete datasets** – We are very supportive of recent efforts by Central Government and the Geospatial Commission to release UPRNs. We would emphasise the importance for the development of robust data in the built environment that UPRNs are allocated to buildings wherever possible; it is our objective that this will also permit in due course the linking of otherwise discrete datasets about the built environment to buildings and premises. It should also facilitate the development of digital twins.
- 76. Curation of Data and security of service during transition** - We support an approach toward modularity and agility in service design and execution. However, it is important to note that certain services provided by local authorities are not subject to competition - there is no ability for users to exercise 'exit' and go to a different provider, they may only 'voice' their concern or complaint. In the context of real estate development, delays to applications or appeals borne of the transition from one regime to another holds implications that may result in financial loss, delays and supply chain risk.

77. We would agree with the general approach of creating a modular software landscape, as this should allow the software to keep pace with technological development as well as adapt to changing preferences in public policy, or to issues that arise that have not been foreseen when policy was first formulated. It may also help to avoid the development of software being subject to delays. However, when users are dependent on services for regulatory purposes, service needs to be maintained during development.
78. In other countries, digital transformation has occurred while existing services are maintained, using a core of lead users to help co-create services by 'forking' Government services as one would a code repository. This permits new services to be pioneered in parallel and given recognition, while ensuring that there is the continuation of the standard service on which may rely. This approach has been adopted by the relevant ministries in Taiwan in particular.
79. **Modernise the way data is served for use** - The way data is served for use matters, especially if regulatory data. In reviewing the provision of data across the public sector, understanding whether data is maintained or archival, the manner of provision and platform used, and reliance on flat data files was prevalent.
80. The Consultation document speaks of making data machine readable and available, but at present common standards for provision of data are not uniform, and historic datasets are often provided in forms that require more pre-processing.
81. In the course of our review of the data on the government's [data portal](#) we have observed that much useful data that was previously collected by central government on land-use and development is not maintained or easily locatable on the Government's website. The solution to this could be a root and branch review of the Government's data portals for public data (which would of course include data collected across Government relating to land and property use).
82. The Government should also work with providers of data and dataset detection standards such as Schema and variants that are used by Google for the purposes of its dataset [search engine](#) to aid discoverability of datasets and automatic population of metadata. This would both contribute to the general corpus of data, but also aid discoverability of relevant data to not just researchers within our sector but across the economy.
83. The industry, for its part, should commit to serve data into the public domain for interrogation and use in a way that is complementary to Government data. The Real Estate Data Foundation has just released a paper funded by UCEM on how the industry can coalesce around agreed data standards in the built environment.
84. **Using regulatory data to inform regulation** - Typically Planning Authorities receive around 450k planning applications per year. An application for a typical household takes 4-7 hours and around 50% of these are returned to applicants marked as invalid because they lack the right information or require modifications.
85. The proposals on page 36 of the consultation indicates a desire to have insight-worthy planning registers. We would support this objective. However, reaching that objective will by necessity involve improvement in the Planning Application process. Most proposals for domestic properties (and also the majority of proposals by throughput) are submitted via the Planning Portal. The portal was pioneering for its time, but will act as a weak link in the data chain of custody since its purpose was merely to funnel applications 'as is' to planning authorities. The Planning Portal needs to be reformed to involve some validation and data detection to ensure that the applications that are reviewed by planning authorities are not missing key data or blank documents as is often currently the case.

86. One caveat is that if the Government and local authorities wish to capture information as to how users are using the system, and tracking the efficiency of new systems, it may be sensible to ensure submitted documentation is captured and allocated a unique identifier. This will help to ensure that planning application registers do not end up being subject to survivorship bias and contribute toward the modularity and agility methodologies that the Government refers to in this section.
87. A further advantage of what we propose is that much of the White Paper proposes to front load much work in the planning system on planning authorities, many of which are already stretched in terms of resourcing. Our proposals are intended to seek to minimise trivial costs and time spent by planning authorities on applications that are incorrectly fulfilled or submitted, and help local authorities to spend the time available on the work where they can best add value.
88. **Digitalisation balanced with inclusivity** - We would welcome clarification as to whether digital planning notices are intended to be sufficient as notice on their own, or whether physical notices will still be required. Again, we would like to ensure that a transition to digital platforms is not excluding of some demographics and underprivileged groups. A related matter is that if machine learning and artificial intelligence are at any stage going to be applied to planning data, there is a need to ensure that data used is not subject to conscious or unconscious bias.
89. Our presumption is the digital template for planning notices will not only be a means of displaying data but also a means of providing a 'view' of data that will already be held by local authorities. The provision of such notices pre-populated is likely to save on administration.
90. **Call In and Judicial Review in the Age of Machine Learning and AI Agents** - Powers of Call In are quasi-judicial powers and the limits of that power are not well-specified. We believe that the power of Call In is useful in holding parties to account, and important for underscoring the principle of ministerial accountability for planning as a whole, but given the wider shift toward separating the judiciary from executive and legislature in the UK political system, perhaps it is a useful opportunity to enumerate conditions under which Call In can and should be used.
91. Relatedly, if the intention is for the planning system to be increasingly digitalised, and perhaps certain decisions to be deferred to machines, there is an issue that needs to be monitored carefully. Issues have been experienced in other sectors of late of the use of machine learning to administer aspects of public services and public policy, but absent facilities for exception handling, wherein a case that is borderline or an outlier is referred to a human being for closer scrutiny and likely a decision. We do not yet know if some of the planning system elements of the future may involve machine learning using parametric or non-parametric models, but it is very important for outcomes as well as legitimacy that exceptions are referred and handled appropriately by someone who is either qualified themselves or advised by someone who understands the limitations of the system that has referred that exception. It will also be important to determine who must arbitrate when decisions taken by a machine and a human being are in conflict. We are a long way away from strong AI (by most estimates) but even weak AI decision-making could surface such issues, especially in the case of unsupervised learning where the relationship between input and output from an algorithm can be non-parametric and thus opaque.

92. The above mentioned issue, that of human and machine agents collaborating in common tasks, is a difficult matter to negotiate and the recent DCMS consultation on a National Data Strategy delves into some of the general principles that may be useful in this regard, including placing a centre for ethics in AI on a statutory footing. The purpose here is not to restrain progress, but simply to provide tools to officials to steer implementation and resolve difficult cases.

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

Q11. Do you agree with our proposals for accessible, web-based Local Plans? [Yes / No / Not sure. Please provide supporting statement.]

93. We welcome the move toward more fictive plans and are keen to see a solution that achieves the Government's objectives for improving public engagement in the plan-making process. However, much of our response to Question 10 applies here.
94. Two key issues are of concern to us: first, to what extent will the information related in Local Plans represent ground truth at any one moment; second, that the way data is served up for use remains inconsistent and data discoverability requires attention.
95. In support of fictive web-based maps, assuming that these maps will be in data structures that permit periodic updating outside of the Local Plan update cycle, this will be of significant benefit both to local authorities and to local communities and stakeholders, including developers. Information and data often fail to keep up with change in the urban environment. We think that Local Plans should progress toward being live documents, although that may not be possible immediately. Over the long term, it may be possible to bring pull in data from a number of sources to provide overlays to local plans. Clearly, there will be resource and skills implications for this and it is highly likely that any such step will proceed at mixed-phases across the country given the differing capabilities of local authorities and the amount of resource they have to devote to them. However, in our understanding, almost without exception, local authorities have some form of in-house geospatial expertise which provides a foundation for this to occur for the data for which they are responsible. As we also relate in our response to Question 10, it is important that implementation of the White Paper avoids lock-in of technological approaches and/or technical debt that arises from choosing an approach that is possible today rather than a better approach that is likely to become available shortly.
96. Insofar as other data held by others is concerned, there is a lack of consistency in terms of how data is presented and offered for use and around the terms on which they are offered. In some cases, this is because the data has attached to it other obligations which prevent it from being offered without certain licencing restrictions (as is the case with postcode data). If the intention is to allow additional data to be represented alongside or as additional layers on top of Local Plans (which is certainly implied by the reference to opening up such data to PropTech Entrepreneurs) at some point these issues will need to be addressed. It is likely that doing so at this point will provide an unwelcome complexity in the early stages of implementation of proposals, but it would be helpful for the Government to use its convening power to bring key stakeholders together and agree a common vision.

97. The rationale for such a convening of stakeholders is illuminated by the work that the Geospatial Commission has been undertaking. The Geo6 via the Geospatial Commission has undertaken a number of initiatives to help to provide connections between otherwise discrete data, especially via the release of USRNs and UPRNs, and aiding discoverability via the Data Discoverability Project, a larger set of organisations (including statutory undertakers) could be trying to emulate this and providing more ready access.

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

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

98. We are supportive in principle although achieving this would clearly represent a step change in the local plan preparation process given that the average time now is around seven years. It is proposed that more is being agreed up front through the proposed different land categories within the local plan and this makes it even more challenging to deliver within the proposed time frame.
99. On the other hand, given that housing numbers will in effect be 'fixed' through the introduction of a binding housing requirement, this could have the effect of taking some time out of the system and enable a more concise process. It is also important to note that any new local plan adoption process should not compromise quality over the need for speed. Ultimately, what all local parties wish to see is an accurate and deliverable plan at the end of the process that is supported by robust evidence and meets the agreed identified needs.
100. The government also needs to think critically about what effective sanctions would look like within this sphere. Too often in the existing system government 'sanctions' ultimately result in more delay and there is also a relatively low bar for authorities to claim exemptions from further sanctions. For example, one inclusion within the existing planning system is that local authorities can receive an exemption from sanctions if they are able to demonstrate that they are moving their plan forward. As noted in response to question 8a, maintaining the requirement for local authorities to demonstrate a five-year land supply is one effective means to make sure local authorities are incentivised to get on with plan-making.
101. Like a number of the White Paper proposals it may be appropriate to pilot one or more approaches to local plan delivery under the new system, before moving to a settled approach for all LPAs.

Proposal 10: A stronger emphasis on build out through planning

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

102. We supported the broad conclusion of Sir Oliver Letwin's Review that on larger sites sales absorption rates mean that the delivery of homes is slow. Sir Oliver recommended that to overcome this, a more multi-tenure approach should be taken on large sites. We agree this would help and see it in practice through the Build-to-Rent sector. Build-to-Rent development can be delivered alongside homes for sale and conventional affordable housing without adversely impacting on absorption or sales rates for other tenures, thereby accelerating overall delivery. The same is true of most forms of affordable housing.

Design

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

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

103. We understand that these proposals are informed by a desire to ensure quality and beauty lie at the heart of the development process. This is an aspiration shared by us and our members. Well-designed, sympathetic, high-quality, places informed by meaningful engagement with local communities ultimately leads to the best outcomes. These principles should be central to development activity. We are however for the following reasons, unsure as to whether the wide adoption of design codes will increase quality and beauty whilst addressing the undersupply of homes and ambitions for durable and sustainable places.
104. The proposals focus on places centred around residential accommodation. This focus is also evident in the National Design Guide, with little attention given to the design characteristics of commercial buildings, in particular uses such as industrial and logistics facilities, which are increasingly important to modern ways of living. We would question the applicability of National Design Guides and/or locally created design guides to such uses with vastly different physical characteristics to homes.
105. The proposals state that it is important that local codes and guides are prepared where possible, and that these will primarily be brought forward through local plans, neighbourhood planning groups, and applicants bringing forward proposals for significant new development areas. We would emphasise the different inputs required for delivering design codes through these methods and likely subsequent outputs. The applicant route is supported by our members and there are examples of such codes being used successfully to date, with extensive prior engagement with stakeholders. This level of production allows for a balance between what is possible and viable on a given development site according to building uses and density requirements, and what is required to uphold quality and conformity with local character. Design codes produced at a neighbourhood planning level are likely to work for largely residential areas where the grain of the existing built environment is a key consideration. However, setting design criteria by “considering empirical evidence of what is popular and characteristic in the local area” could be a difficult task in areas with predominantly commercial uses and with fewer residents. We might also note that in defining what is ‘popular’ the results will only be empirically sound if a representative constituency of the community has contributed. Setting design codes for areas allocated within a local plan will likely be a resource intensive process and will therefore require the necessary skills and expertise.
106. We would also question the likely relationship between design codes set at a local level and the National Design Guide/Model Design Code. If these sources are to be informative of what goes into locally led design codes, this may be in conflict with what is ‘popular and characteristic in the local area’. If the intention is to have significant separation between locally led codes and national guidance, we would question the practicality of having to adapt design processes, materials procurement, and ways of working for developers delivering projects across geographies. It is for these reasons that design principles set nationally are favoured. Nationally set design principles provide certainty and avoid overly prescriptive requirements. The ambition must be to ensure quality alongside variety.

107. There is a consensus within our membership that design should not be prescriptive, but rather a process undertaken by qualified and experienced professionals with support from key local stakeholders including communities and local government structures. An unintended consequence of setting tight design criteria could be to stifle creativity and innovation. Further, if local authority planning departments do not have the requisite design skills to interoperate design codes, decisions could be made on a rigid basis with strict adherence to a code or policies that ultimately diminish the involvement of design experts. Thought will also need to be given to the post-approval phase, whereby some flexibility will be needed in order to amend (where reasonable) design elements of a development for practical reasons to ensure viable build out.
108. We would encourage the government and industry to embrace light touch design codes, that guide and inform rather than stipulate and require.

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.

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

109. A 'step-change in the design skills available to many local planning authorities' will be a crucial precondition to the success of these policies. The provision of design and place-making support and the elevation of the role of design within local planning authority structures would be welcome. We understand from engaging with a range of stakeholders that local authorities often find it difficult to attract design skills and that a higher level of provision would assist the planning and application process. We would however raise several queries.
110. Firstly, we would question the hierarchy of decision making should a chief officer for design and place-making be appointed to every local authority. The title of chief officer suggests that the appointee will sit alongside chief officers for other council functions. Whilst it is crucial that design, place-making (and planning) are central to a local authority's governance structures - given their importance to sustainable communities - we would request some clarity on whether a decision currently taken by a planning case officer could under these proposals be superseded by the chief design and place-making officer? Whilst good design and place-making are important to planning approval, removing a planning case officer's autonomy to make ultimate decisions on an application could lead to undue delay.
111. Secondly, and in relation to ensuring the appropriate level of skill and capacity is available to local authorities to administer design policies and codes, the establishment of a new body to support design coding would be welcome. We would urge the government to ensure that any such body is made up of professionals from a breadth of disciplines that represent the complexities of the development process. This should include architects and designers, but also those with backgrounds in commercial real estate, sustainability, and climate action.

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

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

112. Yes, we agree that Homes England could play a great leadership role in this sphere, and its projects could act as a valuable testing ground for delivering high-quality places. Any lessons learned from Homes England's output should be considered in the context of their unique licence to operate before being applied to the wider sector.

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

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

113. The intent of streamlining certain elements of the planning process is welcome. Particularly where development proposals are compliant with the relevant policies and guidance. We would however emphasise that whilst beauty is a virtue of design, it is largely subjective and there are a considerable number of important elements that lead to good planning and development. The planning process should seek to deliver positive social, economic, and environmental outcomes. Providing a fast track that prioritises compliance with design stipulations may create unexpected results for other important elements of the development process.

114. We would also again note the limited focus of these proposals on residential building design and typologies. Providing fast track planning routes that focus on residential delivery may have a negative impact on the delivery of crucial supporting infrastructure.

115. There remains a question as to the applicability and practicality of a fast track route in complex urban areas where the considerations associated with given planning applications are numerous.

116. Applicable to the introduction of design codes in general, there is a further point around the quality control of the codes and therefore the fast track route. What will the process be for assessing the quality of design codes created at a local level? Associated with this is the mechanism by which design codes and guidance will be updated. Design is not a static discipline. There are notable common attributes of good design, but where real estate organisations are long-term stewards of a place, there will be a necessity to evolve over time. Locking in historic design trends could be unsustainable.

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.

117. The intent of this proposal is welcome but could constitute a missed opportunity. Climate change and decarbonising the economy are the biggest long-term challenges facing the UK, with the latter now enshrined in law. The focus on housing delivery - and in many instances fast tracking delivery – may come at the cost of sufficiently decarbonising the built environment and mitigating the impacts of climate change without stronger commitments. More clarity is needed on how planning authorities are expected to strategically plan for climate change resilience and delivering stretching housing and growth targets in an environmentally sustainable manner. Protecting areas of ecological and environmental value, and promoting greener development is crucial, but given the significant proportion of emissions attributed to buildings and transport infrastructure it is vital that the required standards are considered and implemented in the short-term. The rate of renewal of the building stock is not conducive to missing opportunities.
118. The National Planning Policy Framework would thus need to be swiftly and comprehensively updated to target energy efficiency, embodied carbon, ecology and climate change considerations. Significant resourcing at the local authority level will be needed to ensure that critical issues including decarbonisation and climate resilience are addressed, with due consideration given to issues that are better managed through building regulations and performance standards.

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.

119. There is consensus amongst our membership that the intention to create a quicker, simpler framework for assessing environmental impacts that leads to less replication of work and effort is to be welcome. We believe that any reform implemented should recognise environmental assessments as delivering valuable and accessible information that positively influences development design and planning to the benefit of developers, communities, and the environment.
120. Reform in this field represents an opportunity to remove some causes of unnecessary cost and delay. These and other weaknesses in some current practice stem from a lack of clear requirements and standards as part of, or in support of, any regulatory framework. Rationalising the process and providing robust guidance would reduce uncertainty which is often the cause for disproportionate assessment as an attempt to avoid perceived risks of challenge.
121. We would welcome the publication of clear requirements and standards for streamlined environmental assessment. This would lead to an agreed set of enhanced and simplified requirements and standards and would give practitioners and decision makers the evidence behind approaches taken and decisions made. If the intention is however, to incorporate a greater level of assessment into the plan making process, this must be monitored closely. Whilst front loading this could streamline the application process, there may be a perceived higher risk of expending time and resources at the local plan stage without a subsequent guarantee that such time and resource has contributed to a planning permission or even an outline permission if a site allocation is not ultimately achieved.

122. Any simplified system must acknowledge that biodiversity and ecology are not static. This may present difficulties in defining or assessing them at a single stage in the planning process.
123. The proposals to make data available to local authorities, communities, and applicants in digital form is welcome and should reduce some aspects of duplicated work.

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

124. We support the Government's aspiration to ensure that heritage assets contribute to zero carbon objectives, and the consideration of measures to allow sensitive adaptations to introduce energy efficiency. In order for heritage assets to be conserved and protected for future generations it is imperative that they attract the same investment as other property types. In order to attract such investment historic buildings must not be left behind in terms of fabric standards, operational efficiency, thermal comfort, and indoor air and environmental quality. To this effect the government's intention to review and update the planning framework for listed buildings and conservation areas is very welcome. Greater flexibility in what can sympathetically and appropriately be done to improve the energy efficiency of historic and listed buildings would be welcomed by the industry.
125. We agree it will be important that the planning consent framework is sufficiently responsive to sympathetic changes to designated heritage assets. However, national policy clarifies that great weight should be given to the conservation of a heritage asset. Changes to heritage assets to introduce energy efficiency measures should be considered in this context and decisions on which measures are introduced should be based on a clear understanding of significance, in order to ensure conservation of the asset and avoid harm.
126. The continuing use and re-use of heritage assets can contribute to the potential reduction of embodied carbon emissions, and the historic environment has adapted continuously though time to meet the needs of our changing lives. In ensuring the historic environment continues to adapt and to contribute to long term zero carbon objectives, it will be important that conservation, defined as managing change to significant places in ways that will sustain their heritage values, whilst recognising opportunities to reveal or reinforce those values for future generations, is at the heart of decision making.
127. It is acknowledged that information pertaining to sustainability measures for historic buildings and the impact of these on traditional building construction is generally available. However, there are still gaps in understanding and the practicalities and cost effectiveness of specific sustainability efficiency measures, and significant resourcing should be allocated to the research into and development of measures appropriate to the heritage environment.
128. It will be important to provide clear education and dissemination of information on the relevant zero carbon objectives and potential forms of sensitive adaptation as well as their likely impacts and the weighting to be given in the balance, to ensure that all practitioners and stakeholders are aware of the relevant issues and potential opportunities. Significant investment should be placed in education and resourcing to enable building owners and local authority planning/conservation officers to deliver solutions informed by balanced professional opinions that carefully weigh up potential harm (which should be minimised wherever possible) and the long-term sustainability of the historic building.

129. We support the Government's approach to exploring new and better ways to secure consent for routine works and simplifying the consent process. We would suggest the Government should consider ways to reduce the workload and paperwork associated with small scale applications for Planning Permission affecting heritage assets or Listed Building Consent.
130. This could involve a standardised 'retrofit' approach for consistent building typologies/areas but be administered at a local or regional level allowing for the consideration and preservation of local distinctiveness. This should be a positively worded document which could identify potential change or developments which are appropriate. In conjunction with this, the Government should explore ways to streamline the information needed as part of applications for Listed Building Consent more generally and take advantage of the skills, experience, and professional judgement of suitably qualified professionals.

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.

131. We look forward to the publication of the government's response to the 2019 Future Homes Standard consultation. We submitted a significant response to this consultation at the time which can be seen [here](#).
132. We noted a few concerns relating to the proposed standards and would urge the government to carefully consider these views and those of other respondents to amend the proposals accordingly.

Infrastructure

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.

Q22(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?

133. We support the opportunity to simplify. There are some positive ideas put forward within this section of the White Paper, particularly around trying to alleviate some of the bureaucratic burdens and the greater standardisation of processes. The CIL regime has resulted in complex and unworkable regulations which lack transparency and add nothing to building the community's support and acceptance of development.
134. The focus of reform should be on process and ensuring infrastructure delivery to meet need arising from the development proposed and the transparent and timely funding and provision of that. There is a major tension at the heart of the proposals, between maximising revenue and simplification, and that tension increases as the area covered by any levy gets larger. If the intention is to tax development as opposed to mitigate impact, then the government needs to be clear that is its objective and accept the risks of increasing the tax burden on development activity.

- 135.** A simple national infrastructure levy by its very nature would have to take account of the lowest possible contributor, even allowing for minimum thresholds, otherwise it would impinge on development activity. It therefore cannot maximise revenue. The more any levy can be tailored to individual circumstances the more it is likely to raise.
- 136.** The Government has spent many years trying to perfect the Community Infrastructure Levy through numerous tweaks to the regulation. CIL began with the good intention of being simple but also reflecting the different development economics of different locations and types of development. Our knowledge of the development taxes of the post war era are that they also got mired in complexity over valuations and trigger points such as when occupation occurs.

We therefore support:

- The need for reform, but one that reflects different locations and types of development. It should be noted simplification and standardisation could be achieved within the existing system. We would urge government to look again at the proposals put forward by the CIL Review Group and standardising approaches to S106.
- Mayoral CILs have proved relatively successful where adopted precisely because they have been kept low and focused on specific infrastructure delivery. Mayoral CILs should continue within any new regime.
- A nationally set charge would be difficult to implement. At a combined authority, county or unitary council level (but set low), it might work. The Government could set local rates from the centre, but without some flexibility it would go against the Government's devolution credentials.
- In any new system we move to, there still needs to be a role for S106 and smaller mitigation measures. It makes no sense to fund these through a levy, and the link between new development and the provision of necessary infrastructure for the local community is broken.

We therefore support:

- A simple levy set at a national level cannot take account of the different development economics of locations and assets, for example between build-for-sale and build-to-rent or commercial and residential.
- There is the potential to game the new system – a poorer quality development would attract a lower GDV and hence a lower levy paid.
- Final value assessment could create significant risks and uncertainty which would affect forward funding and wider goals for development. There is a risk that this proposed system could be prone to disputes and also prove a complex system for multi-phase development.
- Site assembly costs are different for brownfield and greenfield. It is not clear in the consultation, whether the increased costs for assembling brownfield will be considered when the new proposed tax is paid (as a proportion of the GDV). This is a possible disincentive to brownfield development.

137. It is also unclear how a consolidated approach incorporating a single ‘Levy’ payable to the Council for both S106 and CIL would provide sufficient certainty to developers and communities that necessary infrastructure and community benefits would be delivered in practice. Such matters were considered within the comprehensive report published by the Expert CIL Review Team in October 2016. The report concluded that it was necessary to retain Section 106 obligations that would also address the delivery of affordable housing, alongside a new Local Infrastructure Tariff to replace CIL.
138. CIL should be based on the cost of necessary infrastructure to support the housing and economic strategies set out within the development plan. Under the current system, when deciding levy rates, an authority must strike an appropriate balance between additional investment to support development and the potential effect on the viability of developments. The proposals in the White Paper fail to address how the preparation of the Infrastructure Levy would be integrated with the preparation of development plans and viability assessments. Under the present approach to setting CIL rates, where the introduction of CIL would threaten the viable delivery of development there are a number of checks and balances in the current system including viability assessments at both CIL Examinations and Local Plan Examinations
139. Any viability assessment should reflect the government’s recommended approach to defining key inputs as set out in National Planning Guidance. These inputs fall under the general categories of gross development value, costs, land value, landowner premium, and developer return.
140. The proposals set out in the White Paper fail to have regard to risks to development viability.

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

141. As noted above, the levy could be set at a combined authority, county or unitary council level provided it is set at a low level. A simple national levy would inevitably not be able to take account of the different development economics of locations across the country and by failing to consider local circumstance may not prove effective at generating necessary revenue.
142. A further issue which is unclear in the consultation paper is whether the new proposed levy would be set at different levels for different assets. Any new levy would need to take account of the different value created and viability of for example build-for-sale development and build-to-rent or commercial and residential.
143. The setting of any rates nationally would also reduce the role of the local community, councils and the development industry within the process and therefore less likely to result in a fairer, simpler, more certain and more transparent way of ensuring that all development contributes something towards cumulative infrastructure need.

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

144. The focus should be on reflecting local circumstance and not undermining development deliverability. The measure of success should also focus on speeding up delivery, reducing long negotiations and delivering the necessary infrastructure and affordable housing.
145. When deciding levy rates, an authority must strike an appropriate balance between additional investment to support development and the potential effect on the viability of developments.
146. Local Authorities must undertake viability assessments with site promoters and developers to ensure that policy requirements for developer contributions are deliverable. This will be an important part of the evidence underpinning the introduction of a charging schedule.
147. We would argue that it is not therefore the case of seeking to capture more or less value, but a matter of setting any Levy and other policy requirements at an appropriate level to ensure it does not prejudice development viability and provides a sufficient return for developers and land owners to bring development opportunities forward.
148. Regard must also be given the potential risks and consequences of introducing substantial changes to the current system including delay and uncertainty to development and additional administrative costs to local authorities. Since the introduction of CIL Regulations in 2010, there has been an almost continuous review and revision to the Regulations to address fundamental issues such as pooling restrictions that has resulted in delays to development and the delivery of infrastructure, compounded by a lack of accountability and transparency over Council's spending of CIL receipts.
149. It is important too that infrastructure funding is seen more holistically. The original intention of CIL was that it would contribute to local infrastructure plans. Any infrastructure levy is only one source of funding for infrastructure and should work in conjunction with other sources, for example, the Single Housing Infrastructure Fund, to deliver the infrastructure required. It is often the government-led provision such as health and education that lags other provision.

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

150. We support in principle allowing local authorities to borrow against future levy revenue receipts to forward fund infrastructure. It could help with the early delivery of infrastructure and therefore facilitate development. There is no reason why it should not happen now though, in the current system with CIL, and is not dependent on any new infrastructure levy.
151. There are risks though, particularly where a levy is collected at the end of the development process. Schemes may not progress at all, or be delayed, and dependent on broader economic conditions values may not raise the same as was anticipated when funds were borrowed. Any interest would also have to be covered by the levy or taxpayers would be out of pocket.

152. Also, not all local authorities might be in a good position to borrow.

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

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

153. In principle, we support the extension of developer contributions to permitted development rights. However, how Government supports wider development priorities should also be a consideration in any decision to apply contributions to conversions using permitted development rights.
154. There is no intrinsic reason why permitted development rights should be relieved of developer contributions, but the re-use of existing buildings can be more sustainable and Government must accept that applying contributions to permitted development rights is likely to see less conversions coming forward, unless other reliefs are given.
155. Permitted development rights can also help breath life back into our town centres, but if that is a policy aim, there are probably more-targeted ways of ensuring that relief is given to all forms of development in town centres than via permitted development rights.

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

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

156. Affordable housing is an indirect tax and policy matter. It is a cost on the scheme. At present, CIL top slices and affordable housing is reduced through viability assessment to get to a viable scheme. That is a political decision but also goes to the principle point as to the role of CIL to mitigate impact and not deliver policy (affordable housing).
157. There is a desperate need for a greater quantity of affordable housing in the UK, but the primary way to expand provision should be through greater funding from general taxation going into the Affordable Homes Programme. Simply increasing developer contributions will be counter-productive, with total housing output shrinking.
158. If because of these reforms however, there were fewer affordable homes coming through developer contributions then clearly that is also going to accentuate current chronic shortages. What developers seek from reform is simplification in process in getting to what is a viable contribution and they are not seeking to cut what is viable.

159. Developers are broadly supportive of affordable housing contributions being made on site, where it leads to sensible outcomes. Mixed-tenure developments can help create mixed communities and prevent the creation of ghettos. However, some types of developments do not lend themselves well to mixing tenures, for example certain types of housing aimed at the elderly. Also, Build-to-Rent developments need to remain as a mix of rental tenures if they are to be managed well, and support branding and trading by investors. They are best suited to provide Affordable Private Rent homes as an integrated affordable tenure type, perhaps at a range of affordability levels.
160. Affordable housing requirements should rarely be required on commercial property sites as that would make such developments unviable and any contributions are usually better spent on other supporting infrastructure. It is also very difficult to deliver housing on site in most commercial property settings.
161. What developers find most useful is having a clear pathway that is well-defined. For example, Build-to-rent has a clear pathway defined in the NPPF and NPPG, which stresses onsite provision of Affordable Private Rent, with an indicative target of 20%.
162. Such an approach could be replicated for other forms of residential development, so for example later living housing products could have one or more clear pathways.
163. We also recently attended a roundtable meeting with the Secretary of State and SME developers. We were taken by the evidence presented by Trusted Land representatives of the challenges and delays that developer contributions have on SME developers on small sites. To assist SME developers, it would also help to have a clear pathway on smaller sites, and the Trusted Land recommendations, based around a percentage provision of First Homes, seemed meritorious:
- a) Encourage landowners and developers to propose sites for PIP that are less than 0.25 hectares, brownfield, and close to transport/local amenities;
 - b) Only allow local authorities to refuse the designation where the impact of residential development can be robustly shown to outweigh the benefits of housing delivery and of reusing brownfield sites;
 - c) Create tenure simplicity by amending the NPPF to require 40% intermediate affordable housing provision or a payment in lieu on these sites and lifting them from the viability process;
 - d) Ensure that the technical consents stage of PIP is an objective assessment akin to prior approval, assessing technical reports and not making discretionary and subjective decisions against the local plan; and
 - e) Ensure firmer deadlines for S106 agreements.

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

164. There will be some forms of development where it will be very difficult to deliver affordable housing without some form of in-kind payment. Build-to-Rent, for example, tends to host market and discounted market rent (e.g. Affordable Private Rent) housing all in the same blocks and with the same specifications and it makes eminent sense to deliver affordable housing in that way. It is good for the residents who are ensured good quality homes that is tenure-blind, good for the local planning authority, and straightforward for the developer to deliver.
165. In general terms, in-kind payments should be beneficial in delivering more affordable housing than 'a right to purchase' and should be part of the policy design.
166. It is difficult to judge a 'right-to-purchase' at a discount without having more details. One of the advantages of the current system is that it often delivers payment of the affordable housing delivery early in the development process, aiding developers' cashflows, and that element should be replicated with any new system.
167. A critical part of the policy will be what is a 'discounted rate' and how that is derived?
168. We have significant concerns over the introduction of a 'first refusal' right for local authorities to purchase a set proportion of 'on-site' units at a discounted price due to uncertainty and potential impact the proposal could have upon development viability.
169. Uncertainty over the quantum of units to be acquired by the local authority, would directly impact the development viability of a site. Whilst it is possible to make an assumption that the authority could purchase its maximum allowance, the allowance would need to be established via plan policy, and assumptions on the price payable included within viability assessments at plan making stage and again at planning application stage if required.
170. The proposals state that the "discounted price" would be broadly equivalent to build costs. This could represent a significant risk to the developer in terms of recovery of 'as built' costs and the reasonable recovery of costs associated with delivering the unit including land, finance, planning, professional fees, site abnormalities and infrastructure and developers' profit. There is a further risk of disparity between baseline build costs that are being used and changes in costs over time.
171. Also, introducing a right to purchase individual plots by the local authority could reduce opportunities to dispose of traditional forms of affordable housing to registered providers improving capital return and reducing the risk profile of developments. The proposed approach could also stifle much needed private investment and commerciality in the affordable housing sector, increasing the burden on public resources and potentially prejudicing the delivery of both market and affordable housing.
172. The Letwin review indicated that affordable housing products have a positive impact on build out rates and can therefore support the wider housing market through the uncertainty. By ensuring large development sites have a 'diversity of offerings', including tenure type, developers can increase the speed of build-out rates and mediate the impact of the absorption rate of new homes into a local market.

173. A further key consideration is the extent to which any new system purposes a greater proportion of infrastructure funding towards affordable housing provision and away from other forms of infrastructure provision. Great places are delivered through a package of infrastructure support and community facilities. Transport improvements, school places, healthcare and leisure facilities are often the ‘deal-breakers’ that make development acceptable to existing communities. By putting all the infrastructure levy in one pot there is a risk that infrastructure spending will be consumed more by affordable housing, and away from the other components of placemaking. Arguably, if we are to create great places, the opposite needs to happen, and a greater proportion of the levy should be spent on good placemaking. In designing this policy, the Government therefore needs to consider what will happen to the proportions of affordable housing and other forms of infrastructure provision.

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

174. We broadly agree with the approach taken in the White Paper to under/over-payments.

175. To reduce the risk of overpayment, threat to the delivery of necessary infrastructure, and to ensure greater transparency and accountability, it would be necessary for Councils to agree to prioritise spend via a cascade mechanism, dividing the Infrastructure Levy into separate pots or typologies similar to the above list with first priority towards necessary infrastructure. Alternatively, funds could be ringfenced for each typology.

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

176. Just as with the current system, there is in-built quality control in that providers can refuse to accept sub-standard affordable housing, in which case the local planning authority could revert to the alternative of a levy payment under the new system. That should be a last resort, however, and after suitable dispute resolution.

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

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

177. Communities have high expectations that development will be supported with suitable infrastructure provision, such as transport improvements and social infrastructure – schools, healthcare and leisure facilities, etc. A revised levy must guarantee the delivery of necessary infrastructure required to: mitigate the impact of the development; deliver policy objectives; and enable the delivery of infrastructure and facilities within the planning permission as key priorities. Any residual funds, following deductions for the ‘in-kind’ provision of affordable housing would be available to spend on key infrastructure. Given the significant existing pressures on local council budgets it would be inappropriate to further dilute such funding by opening it up to other council departments to spend on other ‘policy priorities’.

178. A recent policy development has been infrastructure statements issued by LPAs and we would like to see those continue, so that local communities can see what benefit they are deriving from developer contributions. Such transparency is important.

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

179. As alluded to in our response to the previous question the current pot of infrastructure funding (s106 and CIL) is more than needed for existing infrastructure needs and any additional call on such funds is only going to lead to poorer quality places. There should be no additional calls on such funds beyond infrastructure provision.
180. We recommend that any revised Infrastructure levy continues to deal with key infrastructure necessary to mitigate the impact of development and affordable housing provision under S106 obligations. We would advise against any specific ring-fencing of spending on affordable housing. Different places and sites will have different balances to strike between affordable housing provision and other infrastructure and in the spirit of devolution that should be a decision for local authorities. Some guidance about the considerations a local authority should consider may be appropriate, but a central mandate would be inappropriate and such decisions are best left to be determined site-by-site.

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

181. We disagree that it is just the development sector that benefits from a well-functioning planning system and thus should bear the entire cost of financing the system.
182. The public sector and protected areas are clearly beneficiaries of a well-functioning planning system, as are residents, when the system safeguards them against a poor-quality development going ahead locally. It should also be recognised that developers are responding to a government policy objective to build over 300,000 homes a year.
183. In summary, it is reasonable to say that the development sector should contribute significantly towards funding the planning system but to say that it is developers alone that should fund the system is unreasonable.