



DISTRICT COUNCILS' NETWORK

Innovative and collaborative
solutions for people and places

The District Councils' Network response to the Government's consultation on *Planning for the right homes in the right places*

The District Councils' Network (DCN) is a cross-party member led network of 200 district councils. We are a Special Interest Group of the Local Government Association (LGA), and provide a single voice for district councils within the Local Government Association.

District councils in England deliver 86 out of 137 essential local government services to over 22 million people - 40% of the population - and cover 68% of the country by area. As the housing and planning authorities, we approve 90% of all planning applications and enabled almost 50% of all housing completions in our areas last year. District councils have a proven track record of devising innovative solutions to transform public services, taking a lead role in improving services and outcomes for people and places through better collaboration.

District councils have a proven track record of building better lives and bigger economies in the areas that they serve. Districts protect and enhance quality of life by safeguarding our environment, promoting public health and leisure, whilst creating attractive places to live, raise families and build a bigger economy. By tackling homelessness and promoting wellbeing, District councils ensure no one gets left behind by addressing the complex needs of today whilst attempting to prevent the social problems of tomorrow.

The consultation document includes 19 questions. The DCN's responses to each question are set out in turn below.

Whilst we have responded in detail to each below, drawing on examples from our membership, we would also highlight the following additional proposals that would allow more houses to be built more quickly:

At present, DCN members believe that the current system is unbalanced: once a residential permission is granted or allocation made, there should be an implied contract with the local authority and local residents to build those houses, but many developers and landowners do not necessarily feel that sense of obligation (they might be securing consent to borrow against the increase in land value, and/or might have wholly unrealistic expectations of the land's value post-consent, to the extent that no housebuilder will buy that land, for example).

Once the point of permission or allocation has passed, however, local authorities have very little leverage; they cannot then compel landowners/developers to bring their land forward to start/complete the development – most egregiously, when a development has been technically commenced (and so is “live” in perpetuity) but few or no houses are actually built for years. DCN members and local residents are also hugely frustrated by the many “five-year land supply” permissions, granted (at least in part) due to the lack of adequate land supply, but which they see few, or even no, homes built during the next five-year period.

The DCN therefore believes that there should be further measures introduced, through legislative changes if necessary, to “re-balance” the situation. Importantly, further enhancements/simplifications to the current compulsory purchase regime, to enable councils to purchase “stalled” sites at sensible values and either build out themselves, or parcel out to SME developers, should take place:

- Simplified compulsory purchase powers where a developer has failed to complete construction within, say, two years of receiving full or reserved matters permission or has failed to apply for planning permission within a reasonable period even though a site is allocated for housing (i.e. “step-in” rights). This could include such things as removing any right of appeal against compulsory purchase other than about the market value. However, a stronger incentive would be for legislation to provide that the compensation would be only for the land’s value as if it had no allocation/permission for housing; and
- A power to charge many multiples of council tax where dwellings have not been completed within, say, two years of receiving planning permission. This is to ensure that developers build houses quickly once they have had permission (whether outline or full) and do not delay in order to maximise their profit, whether by being slow on discharging any reserved matters or by failing to commence and complete construction even where full permission is in place.

Community Infrastructure Levy

DCN members are anxiously awaiting the announcement on the future of the developer contributions system at the Budget later this month. It is imperative that there is clarity and certainty on the changes to the system, and the recent suggestion by the Planning Minister that CIL will be “tied back into” viability would be a welcome step forward – the artificial separation of CIL examinations and Local Plan examinations has been frustrating for many DCN members.

New Town Development Corporations

The DCN is strongly supportive the creation of new locally accountable New Town Development Corporations (NTDCs). In particular, the legislation on NTDCs should:

- Place the local authorities in the position of the Secretary of State to the maximum possible degree, including decisions on the appointment of board members, the approval of overall plans and overall accountability for performance; and
- Allow for them to operate across more than one site, including across local authority boundaries, as long as the sites are closely related in terms of the objectives and policies that would govern their development and the local authorities were willing to accept such an arrangement.

The DCN response to the individual questions is below:

Question 1(a)

Do you agree with the proposed standard approach to assessing local housing need? If not, what alternative approach or other factors should be considered?

The DCN broadly welcomes the principle of a standardised approach to assessing housing need, which would need to be accepted by all parties as a starting point for an area’s housing requirement. There are, however, concerns that a national formula can never take into account all local factors but, whilst contentious, this may in certain areas provide greater certainty in plan making and speed up the process in some cases, an outcome which would be welcomed.

Whilst there is overall support from the DCN’s members for this broad approach, there are a range of views as to the appropriateness of the proposed regime. Some of our members are concerned

that the approach makes it more difficult for those authorities who have delivered housing needs consistently (through higher need numbers, based on the higher populations), whilst those authorities which have delivered less previously now have lower needs (based on the population projections). Others are concerned that the standard approach discloses numbers (significantly in some cases) in some districts in the north of England which are significantly below current OAN levels, and risks the misguided perception that the focus on housebuilding is mainly in the south of England.

The affordability “adjustment factor” is felt by many of our members to be an over-simplistic approach to the challenge of poor housing affordability, which does not recognise wider travel-to-work areas and economic geographies (particularly, but not exclusively, in south-east England) – local earnings ratios do not fully reflect the impact of commuting to high-value jobs elsewhere. In some areas of England, this may mean that even if local housing delivery is increased significantly, it may not modify the affordability ratio greatly unless neighbouring authorities do likewise.

Our members will want to be reassured that where there are overriding environment or infrastructure constraints that these can be taken into account in the plan-making process. There are a number of areas where further guidance and/or consideration needs to be given. In no particular order, they are:

- i) Local Plans ideally need to look forward at least 15 years from the date of adoption, but the consultation document makes no mention of how housing need should be considered for years 11+. It is recognised that it is proposed that Local Plans will need to be reviewed at least every five years, and so this *might* be less of an issue in the future, but given the need for proper long-term planning of an area, this is still a concern. Should it be assumed that the adjustment factor will result in house price:income ratio falling to 4 or below by Year 10 (unlikely in areas with a high ratio)? That the ratio will remain exactly the same (which would surely defeat the object of the approach to boost housing delivery)? If somewhere in between, what would reasonable assumptions be as to how this would be expected to change? Unless covered in the methodology, there is the danger that a focus for disagreement and considerable extra work will simply move to the assessment of housing need numbers for years 11+ in the context of Local Plan preparation and examination;
- ii) The consultation document makes no mention of the need to add in a buffer to ensure choice and competition. Whilst there is almost always a need for a buffer of additional housing, there is the danger that unless this is stated clearly in the approach, some non-professionals may conflate the **housing need** number (i.e. Objectively Assessed Need, OAN) for the **Local Plan housing** number (i.e. OAN plus any economic growth assumption plus buffer). The amended NPPF should make this clear;
- iii) Current CLG household projections are based on 5-year migration trends. However, many experts in the field, such as consultancy ORS, believe that using 10-year trends is more robust, and this is the approach that most SHMAs follow. CLG should therefore consider using the 10-year trends for national projections;
- iv) The proposed approach to joint working (paragraphs 30-32) is supported. However, there may be areas where a housing market area (HMA) covers such a number of individual local authority areas that it is impractical to prepare a single Local Plan covering the whole area;
- v) There are very significant challenges to delivering additional housing in many areas of the country. In areas of lower prices, there can be viability difficulties and hence limited interest from volume housebuilders to increase the delivery of housing (including lack of competition in some areas). In some parts of the country, there can be major environmental and/or infrastructure constraints (such as Green Belt and/or poor road

connections) which may prevent the timely delivery of new homes. In all parts of the England, shortages of labour and materials are a major barrier to increasing output.

Secondly, there is the practical capacity of the local housing markets to accommodate major increases in housebuilding. It is simply unrealistic, in many areas, to assume that there can be a 40% increase in housing **delivery**, even if sufficient consents exist to enable this to happen. The proposed 40% “cap” on any increase in housing needs therefore has some merits, but also drawbacks. In many cases, it will be easily apparent, through the Local Plan production process, that it is simply not practicable to deliver such an increase in housing. Should constraints exist, and it could be suggested that the level of need is not deliverable within the plan boundaries, these should be considered as a ‘policy on’ approach to be addressed through the Statement of Common Ground with neighbouring authorities and tested through examination as per the proposal in Paragraph 47. As an example, two Buckinghamshire authorities have an 80% increase on top of household projections, which are themselves well above current Local Plan targets. In other cases – such as Greater Norwich and South Kesteven – there are significant housing commitments, but the market is not delivering at anything like the level that commitments are being added to the landbank, thus causing five-year land supply difficulties. Therefore, greater intervention powers for councils are required (see also the answer to Question 19 below).

As another example, some areas of the south-east of England, like Tonbridge and Malling, have both high constraints (such as Green Belt) and also a high affordability gap. Nonetheless, there has been good delivery, despite having significant constraints to take into consideration, but the uplift suggested by the new methodology would require an annualised delivery of new homes that would be unsustainable and undeliverable.

- vi) Some districts have particular circumstances that the standard, simplified, formula may should reflected to enable appropriate account to be taken (or at least be included within a list of specific issues that might warrant a deviation from the standard approach). Areas with a high, and growing, student population are one example. A second is where there are large populations of armed forces. For example, Richmondshire District contains the Catterick (Army) Garrison, and the different characteristics of that population sub-group (which totals about 20% of the district’s population) means that specific local adjustments to nationally-based population forecasts need to be made to properly reflect these circumstances.
- vii) The impact of having a figure for local housing need for each area means that some councils will have been planning to increase housing in their Local Plan above and beyond the level identified in the consultation document. Whilst we note that the local housing need figure is not a binding figure, in many circumstances the figure will become the ‘alternative’ to the Local Plan figure, particularly where a Local Plan is close to being adopted. The unintended impact of the local housing need calculations on ambitious councils needs to be monitored going forward

Question 1(b)

How can information on local housing need be made more transparent?

This information should be published by the Government annually on a national basis, **at the same date each year**, in a similar format to the ‘housing needs consultation data table’ which was published alongside the Government’s current consultation. This certainty would allow all involved in the consideration of housing needs numbers to understand when the updated numbers will be published each year, and plan accordingly. If this were to be implemented, the annual update should be after the bi-annual revision of Sub-National Population and Household projections (next

expected in May 2018). Significant delays in the publication of planned household and population projections by ONS has caused major problems for some of our members in trying to prepare their Local Plans, and this must not occur again.

The use of interactive maps as well as spreadsheets would add to the usability of the data.

Question 2

Do you agree with the proposal that an assessment of local housing need should be able to be relied upon for a period of two years from the date a plan is submitted?

No. the DCN considers that it is very important that this point is “fixed” at an earlier stage in the plan-making process. Otherwise there is the danger that, if updated needs information is published shortly prior to the submission date, many councils will fear a challenge to the housing needs numbers if they press on regardless (to try to get the Local Plan in place as soon as possible) with the “old” numbers. At the very least, councils should be able to “freeze” the basic OAN number once they have published the Regulation 19 pre-submission document for public representations, but ideally it should be earlier than this in the process, to allow a smoother preparation of the Regulation 19 document.

Councils should be able to rely upon an assessment of housing need for a period of up to three years from the date a ‘pre-submission’ plan is published to the date the Local Plan is adopted. This will ensure that there is greater certainty for all involved in the plan-making process as to the number of homes that are required, in case of unexpected delays in the plan-making process later. The East Riding of Yorkshire is one example where the timescale was more than two years.

Once a Local Plan has been adopted, the revised NPPF should make clear that the OAN figure should be assumed to be “up-to-date” for the next five years for Local Plan purposes (prior to the Local Plan being reviewed). This is to avoid the situation of a Local Plan being adopted, but then new house-price information (say) being published which some would argue would render the Local Plan OAN figure almost immediately out-of-date.

Question 3

Do you agree that we should amend national planning policy so that a sound plan should identify local housing needs using a clear and justified method?

Yes. The DCN agrees with this proposal, which would make scrutiny of the Local Plan process more straightforward for stakeholders.

Question 4

Do you agree with our approach in circumstances when plan makers deviate from the proposed method, including the level of scrutiny we expect from the Planning Inspectors?

Yes, in general. The DCN agrees with this proposal, in particular the assumption that that a higher level of growth than OAN should be assumed to be sound by an Inspector. However, it should be made clear that the “policy-off” OAN (arrived at using the standard methodology) should be the figure that it used for calculating the five-year land supply need against, with any “policy-on” assumptions (plus a buffer) added in to reach the Local Plan housing figure.

There should also be consideration of how Government can help DCN members who are ambitious for growth, but face market and finance barriers to delivering further homes (in areas of regeneration need, for example). Some district areas have Housing Revenue Accounts whilst others do not and therefore the Government must consider both the lifting of the HRA cap as well as new proposals for councils who are not stockholding authorities.

Where an alternative method is proposed, however, there may be some logic to the Planning Inspectorate being able (if requested) to provide a level of challenge **before** the Local Plan is subject to the pre-submission representations period and submission itself. This is to minimise the

potential for an inappropriately-justified methodology reaching the examination stage, with all the costs and delays that could be caused if significant further work is needed to deliver a “sound” Local Plan (suspension of the examination, compilation of new evidence, further consultation etc.). This could be done by way of a “health-check” visit of the kind that PINS used to offer regularly, and so would not be a formal part of the process.

As highlighted in the response to Question 1, the DCN believes that where there are particular population characteristics of an area that mean that a “standard” approach is not necessarily appropriate (large Armed Forces populations, for example), these should be specifically listed, to make clear to all parties the kind of examples that might normally justify a deviation from the standard approach.

Question 5(a)

Do you agree that the Secretary of State should have discretion to defer the period for using the baseline for some local planning authorities? If so, how best could this be achieved, what minimum requirements should be in place before the Secretary of State may exercise this discretion, and for how long should such deferral be permitted?

The DCN disagrees with the proposal that after 31 March 2018 the new method for calculating the local housing need will apply as the baseline for assessing the five year housing land supply; given the significance of recent consultations (on the Housing White Paper, this current consultation, future CIL announcement in November 2017, the proposed draft revised NPPF to be published in spring 2018 etc.) there is a significant amount of uncertainty for plan-makers at present, and a later date is appropriate (no earlier than the beginning of 2019).

The DCN agrees that the SoS should have discretion to defer the period for using this baseline, and this discretion should be applied if a local authority can provide demonstrable evidence that it is making timely progress with a Local Plan review (e.g. evidence of recent consultations etc.). However, it is unclear what stage local authorities would need to be at for the SoS to consider offering additional time before the baseline would apply – ‘significant progress’ is not defined. Putting such a tight deadline on local authorities to submit a plan before the new methodology applies could mean a lot of wasted money and time for authorities who fall short of this deadline. It could also mean authorities rush to push through plans in an unrealistic timeframe, resulting in plans that are not well-considered and do not take proper account of consultation responses. The DCN believes this requires further consideration in terms of the practical implications of this proposal.

Those DCN members who are collaborating on ambitious proposals for new homes welcome the proposed discretion. As an example, Colchester, Braintree and Tendring councils (with Essex County Council) are working together on three North Essex Garden Communities (www.ne-gc.co.uk), to deliver up to 43,000 new homes.

Question 5 (b)

Do you consider that authorities that have an adopted joint local plan, or which are covered by an adopted spatial development strategy, should be able to assess their five-year land supply and / or be measured for the purposes of the Housing Delivery Test, across the area as a whole?

Yes; this power should come into effect at the earliest possible time following the close of this consultation period. However, it should be left as a discretionary option for the relevant LPAs as to whether or not the five year housing land supply and Housing Delivery Test should be based on the area as a whole where joint plans are being proposed. The decision to share housing land supply will depend on various local circumstances, and there could well be circumstances where maintaining the current approach is sensible.

Question 5 (c):

Do you consider that authorities that are not able to use the new method for calculating local housing need should be able to use an existing or an emerging local plan figure for housing need for the purposes of calculating five-year land supply and to be measured for the purposes of the housing delivery test?

Yes. However, clarity should be provided on whether the housing need figure to be calculated by National Parks is part of, or in addition to, the figure calculated for the rest of the LA area. The DCN strongly recommends that the figure for the National Parks **is included as part of** the overall LA housing figure.

Question 6:

Do you agree with the proposed transitional arrangements for introducing the standard approach for calculating local housing need?

Whilst a transitional approach is sensible, it also needs to enable a balance to be struck between using figures in existing adopted Local Plans and applying up-to-date evidence of need (from the new standard methodology). This could have the effect of “penalising” those authorities where up-to-date evidence shows that “current” OAN (not necessarily Local Plan housing numbers) is below “old” OAN.

Even with transitional arrangements, there is potential for the new approach to be disruptive. The NPPF/PPG should be amended to make clear that the new OAN figures would not be a material consideration where Local Plans have been submitted under the current OAN approach.

As an aside, the DCN members would like to see certainty about when the final form of the revised NPPF will be issued in spring 2018, so there can be certainty about when the new regime will apply from. Previous lengthy delays to revisions to national policy and guidance have caused significant problems to our members in the preparation of their Local Plans.

Question 7 (a):

Do you agree with the proposed administrative arrangements for preparing the statement of common ground?

Yes. However, whilst HMAs are the logical geography over which an SCG should be first considered, there may well be other strategic planning matters that go beyond these areas (major roads and rail links, for example), so it will be important to ensure that meaningful engagement happens with consultees in adjoining HMAs. More generally, HMAs should have greater links to functional economic areas, linked where appropriate to the potential for localised industrial strategies and where appropriate snapped to the boundaries of clusters of councils who are delivering planning functions, whilst ensuring greater financial freedoms to deliver more housing within an HMA.

Paragraph 73 refers to the need for statutory consultees to engage effectively in the plan-making process. This is critically important, and it is **vital** that there are additional powers to **require** some of these, particularly privatised utilities companies and Network Rail, to engage more effectively than has sometimes been the case hitherto.

Question 7 (b):

How do you consider a statement of common ground should be implemented in areas where there is a mayor with strategic plan-making powers?

In the case of the London Mayor and GLA, changes would have to be made to the Greater London Authority Act 1999, which only requires the Mayor to have a Duty to Inform, rather than Co-operate. Elsewhere they should liaise with all the LPAs. In London, there is also the Mayoral CIL to take into account – in adjusting this level in the future, the Mayor should work closely (under the

Duty to Inform/Co-operate) with authorities in London and the wider south-east. If CIL powers were to be extended to other Mayors, the Duty to Co-operate should apply to them too.

Question 7 (c):

Do you consider there to be a role for directly elected mayors without strategic plan-making powers in the production of the statement of common ground?

The buy-in of Mayors would be helpful and demonstrate that they are supportive of those with the plan-making function; this should be similar to how the Duty relates to County Councils. However, the primary responsibility should remain for the LPAs to agree.

Question 8:

Do you agree that the proposed content and timescales for publication of the statement of common ground are appropriate and will support more effective co-operation on strategic cross-boundary planning matters?

Yes, in general. However, there is also some concern that delays in agreeing the Statement of Common Ground could potentially delay the plan-making process (recognising that the Duty to Co-operate is not a duty to agree), particularly where there is a need to agree the distribution of housing numbers across a wider area.

A number of authorities (such as Cambridgeshire and Norfolk) have already produced documents which may be perceived as being broadly equivalent to the SCG, such as the Cambridgeshire & Peterborough Memorandum of Co-operation (<http://cambridgeshireinsight.org.uk/file/2129/download>) and the Norfolk Strategic Framework (<https://www.norfolk.gov.uk/what-we-do-and-how-we-work/policy-performance-and-partnerships/partnerships/norfolk-strategic-planning-member-forum>). The DCN asks that there is some way of recognising the existence of documents such as the NSF where they are already in place.

The additional point of how unmet need will be addressed in areas where no neighbouring authorities have the capacity needs to be raised. One of the consequences of the standardised OAN approach is that there are unlikely to be any authorities in Kent that could accommodate the total amount of unmet need in the county. How could Statements of Common Ground take this into account?

Transitional arrangements also need to recognise that LPAs that have submitted their Local Plan prior to the publication of the revised NPPF cannot legally do any more to demonstrate compliance with the Duty to Co-operate (which stops at the point of submission).

Question 9 a):

Do you agree with the proposal to amend the tests of soundness to include that:

- i) plans should be prepared based on a strategy informed by agreements over the wider area; and**
- ii) plans should be based on effective joint working on cross-boundary strategic priorities, which are evidenced in the statement of common ground?**

The DCN feels that as there is already a statutory Duty to Co-operate and this is a matter that inspectors already consider through the examination process, it is questionable what the benefits of amending the tests of soundness are. However, if the Government is still minded to do this, a key question is how a strategy could be informed by agreements if agreements cannot be reached? A default approach could be to focus on travel to working areas which are snapped to relevant local planning authorities' boundaries in instances where there are negligible effects in neighbouring areas.

Question 9 b):

Do you agree to the proposed transitional arrangements for amending the tests of soundness to ensure effective co-operation?

Yes, this is supported – this ought to give sufficient time for LAs to engage effectively with each other to agree and produce the SCGs.

Question 10 a):

Do you have any suggestions on how to streamline the process for identifying the housing need for individual groups and what evidence could be used to help plan to meet the needs of particular groups?

In order to identify the housing needs of specific groups of the type identified in paragraph 89, a Strategic Housing Market Assessment-type document would still need to be prepared. It is possible that relevant national data sets could be identified or created which LPAs could use and would provide a consistent basis for assessment. The Government should investigate this, and the DCN would be happy to work with them to see what could be done. However, understanding the needs of individual housing markets involves not only quantitative but also qualitative assessment e.g. speaking to local agents, registered providers etc. It is therefore difficult to see how there are easy ways of streamlining this process.

The guidance for preparing SHMAs, as well as the NPPF, should therefore be amended to make clear the identification of housing needs for different groups (as recommended by the LPEG). Close working with County Council/Unitaries to get a better understanding of the needs for care and retirement accommodation will be especially important. One key matter that needs careful reflection by CLG is the fact that methodologies for identifying housing needs for particular groups (e.g. elderly and students) may disclose different numbers to the standard approach – this could be fertile ground for challenge at Local Plan examinations.

Planning Policy for Traveller Sites could also usefully be amended/amalgamated into the NPPF, to make clearer how work-related nomadism and other factors should be assessed in the determination of whether a Gypsy/Traveller “counts” as such for planning purposes; some claiming Gypsy & Traveller ethnicity, but who do not travel for work-related reasons, still seek broadly equivalent accommodation (i.e. a pitch for a caravan and associated elements). Guidance on the periodic reviews for the housing needs for caravans and houseboats was published in draft form in March 2016, but has never been finalised. The opportunity to do this, alongside the revisions to the NPPF should, now be taken.

Whilst being imperfect (it is known that some people register on more than one authority’s Register, for example, which may inflate the actual overall demand), the best measure of custom-build and self-build demand is likely to be the numbers on a council’s Self-Build Register, although there is no reason that many self-build and custom-build houses could not be built on normal housing allocation sites (particularly smaller ones).

Question 10 b):

Do you agree that the current definition of older people within the National Planning Policy Framework is still fit-for-purpose?

The definition would benefit from identifying what should be deemed the retirement age for the purposes of identifying needs. Should it remain as over 65 or an alternative? Many of the current workforce will not be eligible for a state pension until they are 67 or older.

Question 11 a):

Should a local plan set out the housing need for designated neighbourhood planning areas and parished areas within the area?

This is a difficult issue. Many Local Plans covering non-urban areas do not necessarily make allocations on a parish boundary basis, but on a settlement basis. It is often the case that a large rural parish may only have one or, perhaps, two settlements with any level of services; allocations would more normally be made in a Local Plan on a settlement basis (consistent with a settlement hierarchy) than a parish basis. An emerging Local Plan will likely need to make allocations in most/all suitable parishes (consistent with the emerging settlement hierarchy and Sustainability Appraisal), because it may not be safe to assume a Neighbourhood Plan would necessarily come forward or continue to completion in that parish. In addition, it needs to be remembered that there is no requirement for Neighbourhood Plans to allocate housing land – many Neighbourhood Plans do not do this.

For this reason, requiring an emerging Local Plan to set out housing figures for neighbourhood areas and parishes would be fraught with difficulty, and would run a significant risk of causing major complications in the production of the Local Plan. At best, it could cause delays (possibly significant) as there is discussion (and potential disagreement) about appropriate levels for particular parishes; at worst, a Local Plan could run into major SA difficulties if there was serious doubt about whether the choice of sites and housing numbers was “the most appropriate” (or even “an appropriate” strategy).

Applying the proposed standard formula to discern the starting point for housing needs in neighbourhood planning areas appears attractive and straightforward at first glance. However, there are a number of difficulties with the approach set out in paragraphs 99 and 100:

- i) It could not take account of any existing, committed growth in a parish (i.e. housing allocated and/or permitted, but yet to be built);
- ii) It could not take account of any constraints to growth (say, Green Belt, flood risk etc.) in the parish;
- iii) It could not take into account any historic restrictions to growth applied through current/previous Local Plans – for example, a focus on certain other settlements or parts of the district for good planning reasons, or simply a lack of interested landowners putting sites forward. It might also not (depending on timing) reflect a change in approach in an emerging Local Plan in relation to distribution options. For example, a previous (current) Local Plan might have had a strong focus on particular brownfield sites, and/or settlements (perhaps linked with large employment growth areas). An emerging Local Plan might wish to take a more dispersed approach to growth, to provide more small sites in a wider range of locations as an aid to SME builders and to boost delivery, but the application of a simple population-based formula could not allow for this. Similarly, a proposal for a “new town” in a rural area (or areas) might not work on this basis either;
- iv) Any standard methodology may be difficult to apply in circumstances where a neighbourhood area adjoins or extends partially into a strategic town; this would require negotiation between the steering group and the LPA, particularly where the neighbourhood plan may be seeking to set a housing requirement that ignores the relationship with the strategic location and is, by default, constraining the potential for the strategic town to grow within the neighbourhood area. However, it is recognised that a NP must broadly accord with the strategic policies in the Local Plan so any new strategic policy/allocation, once adopted, would take priority over the NP;
- v) It is not easy to see how Neighbourhood Planning groups could meaningfully assess constraints. There is a real chance of duplication of work with the Local Plan, and potential for disagreements about the scale and significance of any identified constraints.

The danger of this approach is therefore that a housing need figure is produced mechanically for a parish, but that the emerging Local Plan has to reach its own judgement of an appropriate figure (taking into account constraints etc. across the whole area), which might well be higher – causing distress and frustration for the parish when this housing number is consulted on, and perhaps later adopted, in the Local Plan.

Question 11 b)

Do you agree with the proposal for a formula-based approach to apportion housing need to neighbourhood plan bodies in circumstances where the local plan cannot be relied on as a basis for calculating housing need?

For this reasons given in answer to Question 11a), the DCN suggests that if the Government is still minded to follow this approach, despite concerns, any housing need number for an emerging Neighbourhood Plan area or parish should use the proposed “current proportional population” approach set out in paragraph 99 – but add defined additional percentage to the total. This would then be the “starting point” for the parish’s housing need, and would have the twin benefits of boosting delivery of housing in neighbourhood plan areas, whilst adding robustness and buffers to the overall numbers in a district where there may be constraints in some areas preventing the normal minima from being met.

Where there are significant areas of a district which are highly constrained, the proposed approach is even more problematic; it would not be possible for neighbourhood plans in these areas to meet their housing need, based on the ‘apportionment’ approach. This could therefore lead to a shortfall in the provision of homes across the district. The only sensible approach in this case would be for housing numbers to be left entirely to the Local Plan to distribute, with Neighbourhood Plans indicating instead preferred locations of housing growth rather than exact numbers and locations of sites.

Question 12:

Do you agree that local plans should identify the infrastructure and affordable housing needed, how these will be funded and the contributions developers will be expected to make?

Yes. This approach is essentially the same as existing. However, in order to make it work as effectively as possible, detailed longer-term engagement from utilities providers will need to take place; too often, near-complete certainty of costs (say from a water and sewerage company) can often only be provided 5-8 years ahead, due to the nature of the legislative and regulatory regime. This can make it difficult for LAs to understand what some of the infrastructure costs might be, especially on larger sites or those planned to come forward later in the Plan period, raising viability concerns when some of these sites come forward later through planning applications.

The DCN believes that it is very important that there remains an element of flexibility as to the minimum threshold of affordable housing in a Local Plan. A “one-size-fits-all” figure of 11, as might come forward in the revised NPPF, would be very damaging to some of our member authorities, both urban and rural, which deliver a significant proportion of their housing on small sites, and could seriously threaten the delivery of needed affordable housing quantities.

Question 13:

In reviewing guidance on testing plans and policies for viability, what amendments could be made to improve current practice?

See the answers to questions 14-16 below

Question 14:

Do you agree that where policy requirements have been tested for their viability, the issue should not usually need to be tested again at the planning application stage?

Yes, in principle, although clearly the longer the time-gap between the Local Plan being adopted and sites coming forwards, the greater the chance of various costs and values changing in a way that might legitimately impact viability (construction industry costs, for example). Viability information should be required at the application stage only if the applicant claims that they cannot

deliver key policy requirements (such as an appropriate level of affordable housing), but it needs to be recognised that there can be legitimate reasons for costs changing over time in a way that may make a site unviable when assessed against the Local Plan requirements.

This may require a much greater understanding of site specific costs, or else there is a risk of economic inefficiencies. An inflexible area-wide approach could lead to lower (lowest denominator) overall policy requirements and super profits/land receipts on the most viable sites. Guidance should expect land values to fall where there are 'exceptional' costs.

That being said, the DCN members are deeply unsympathetic to situations where developers over-pay for allocated land, and try to negotiate affordable housing costs down to make more profit. Viability guidance should make even clearer that this scenario is not appropriate, and where developers try to argue this, refusal of planning permission on this basis (even if there is no five-year land supply) should be supported on appeal by the Inspector/Secretary of State. Our members are very frustrated by cases where such refusals are overturned on appeal, and we want to make clear how corrosive such decisions can be to local trust in the planning system (to say nothing of the impact of reduced affordable housing has on those in need).

The consultation is focused on speeding up the planning application process to avoid it being delayed by negotiations over viability. However, the suggested approach could potentially delay the plan making process as any viability assessment that supports the Local Plan would come under particular scrutiny and most likely be challenged by the development industry through the examination process.

Viability assessments could be simpler and quicker by introducing a standardised method for sampling local values and costs would help (perhaps the use of the Homes England approach, for example). The existing PPG, Harman and RICS guidance leaves a lot open to judgement and debate. Consultation on such changes would be welcomed by the DCN and we could offer many real-world examples from our membership.

Where the LPA needs to assess the contents of a viability report, perhaps through an independent expert (such as the District Valuation Service), legislation/guidance should make clear (after being altered, if necessary) that LPAs can legitimately recharge the costs to the applicant – in too many cases, developers have tried to argue that LPAs cannot lawfully recharge this cost to them.

Question 15:

How can Government ensure that infrastructure providers, including housing associations, are engaged throughout the process including in circumstances where a viability assessment may be required?

The Government can help to ensure that infrastructure providers are engaged through the process by requiring regular Infrastructure Delivery Plan reviews and consultation with those bodies. It may be appropriate to align infrastructure planning timescales for all stakeholders. This could mean consistent business plan/infrastructure plan review dates and time horizons. We are currently in a position where infrastructure plans are for 20 years, whilst utilities business plans only cover the next five years or so and often do not account for planning development unless it has permission.

Many DCN members have particular difficulties in liaising with infrastructure providers during the production process of Local Plans. There is a relatively simple answer to this: all key infrastructure providers, including housing associations, should become subject to the Duty to Co-operate (irrespective of whether they are technically private sector bodies). This has long been sought by many LPAs, and the Government should take action, through legislation if necessary, to make this happen. The NPPF and PPG should be updated also to reflect the importance of this engagement to LPAs.

Question 16:

What factors should we take into account in updating guidance to encourage viability assessments to be simpler, quicker and more transparent, for example through a standardised report or summary format?

Essential to improving viability is bringing forward a non-attributable national build cost database. The RICS BCIS index is currently optional and often unpopulated by the volume builders that are most able to drive costs down through bulk buying power. As a result, the prices it reflects tend to be higher than those which can be achieved (on average).

The following should also be taken into account;

- Section 106 Heads of Terms and development viability (where this is likely to be a consideration) should be discussed at 'pre-application stage';
- An expectation that proposals submitted should be designed in a form that accords with Local Plan policies and associated guidance;
- Viability assessments should reflect the PPG on viability as well as any individual local planning authority guidance relating to methodology and inputs. This would usually be found in the validation checklist;
- Viability evidence must be robustly justified and appraisal assumptions benchmarked against publicly available data sources;
- An element of future-proofing of future sales values should be considered – for a large site, values can change significantly over 5-10 years of sales. The inclusion of "clawbacks" in Section 106 agreements can partially deal with this, but the DCN is aware of caselaw/Inspectors' decisions which seems to indicate that clawbacks cannot be secured from single-phase developments. Legislation should be amended to correct this, but some "future-proofing" would be good to see too.

Much clearer guidance is required on land release values. There is a current PPG tension between two methods but the DCN recommends the former:

- Uplift against existing use values
- What was paid for land nearby.

DCN members would be very happy to share their experiences of viability and viability assessments with CLG to try to find better ways forward

Question 17 (a):

Do you agree that local planning authorities should set out in plans how they will monitor and report on planning agreements to help ensure that communities can easily understand what infrastructure and affordable housing has been secured and delivered through developer contributions?

Yes. These could be set out in Authority Monitoring Reports, which must already be produced and published on councils' websites on an annual basis.

Question 17 (b):

What factors should we take into account in preparing guidance on a standard approach to monitoring and reporting planning obligations?

Each report should cover a single financial year only and contain information on all receipts and spending, plus the developments that they relate to. They will need to be clear as to which stage of the process the developments referred to are at; for many sites, this information will need to be recorded over a number of years (outline consent; reserved matters consent; when triggers

requiring particular S106 payments have been met (at a certain threshold of housing completions, for example).

To avoid the process becoming an expensive and involved paper-chase for LPAs to produce, it would be sensible for a minimum threshold of development to be included, to be monitored in detail: perhaps 50 dwellings. All other, smaller, developments, could be grouped together for simplicity's sake.

Question 17 (c):

How can local planning authorities and applicants work together to better publicise infrastructure and affordable housing secured through new development once development has commenced, or at other stages of the process?

Press releases, local newspapers, digital bulletins and newsletters, Council and housebuilders websites, signage at development sites, developer roadshow briefings and information packs to all residents are all potential options. In particular, signage at development sites could indicate the total numbers of completions (market and affordable) both in the current (financial) year and overall at the development and would be strongly encouraged (accepting that there can be differences of opinion between developers and Local Authorities as to when exactly a "completion" can be said to have occurred).

However, it is important that any list does not become a requirement, and that there is local flexibility.

Question 18 a):

Do you agree that a further 20 per cent fee increase should be applied to those local planning authorities who are delivering the homes their communities need? What should be the criteria to measure this?

The DCN believes that planning fees should be able to be set locally to fully reflect the costs of planning applications and has long called for a change in policy to reflect this. In the absence of localised planning fees, we are supportive of a further uplift which must take account of constraints. Whilst LPAs are a very important part of the process – allocating sites, granting consents, discharging conditions etc. – housebuilders actually build most of the homes in the country. Many councils build what they can themselves, and so do housing associations, but at present the private sector is the dominant delivery partner.

A further 20% increase in planning fees for all authorities (the extra income being ring-fenced for investment in the planning department) would therefore help authorities to get closer to full fee recovery.

There may also be instances where timescales for the determination of planning applications and delivery of a decision is delayed through no fault of the local planning authority (delays in critical consultation comments from statutory consultees (such as Highways England or Network Rail, for example) or a "holding" direction from the Secretary of State, for example) The Government needs to be mindful not to penalise where delayed decision making (if defined as 'non-delivery') does not lie with local planning authority.

Question 18 b):

Do you think there are more appropriate circumstances when a local planning authority should be able to charge the further 20 per cent? If so, do you have views on how these circumstances could work in practice?

All LPAs should be able to increase their fees as long as that increase is to be invested in the planning teams (as with the forthcoming 20% increase).

If trigger points are to be applied they could include one or both of the following:

1. Having an up-to-date Local Plan; and/or
2. Are meeting Development Management performance targets.

Question 18 c):

Should any additional fee increase be applied nationally once all local planning authorities meet the required criteria, or only to individual authorities who meet them?

It should be applied to individual authorities. However, special consideration should be given to some authorities whose income overall is not sufficient to enable them to invest enough in their planning service (perhaps because of low viability, low council tax and low business rates income), for whom an additional 20% income could be the only way of enabling them to invest more to improve their service.

Question 18 d):

Are there any additional issues we should consider in developing a framework for this additional fee increase?

There should be longer-term certainty about the likelihood of additional fee increases being allowed, not just the additional 20%, but whether future annual increases will be planned for (perhaps at RPI or CPI rates of inflation). Councils have found recent short-notice changes (cuts) to the New Homes Bonus regime very difficult to deal with; this is inimical to good, sensible, long-term financial planning.

Question 19:

Having regard to the measures we have already identified in the housing White Paper, are there any other actions that could increase build out rates?

Councils must have more effective levers to ensure that developers swiftly bring forward sites for development and quickly complete dwellings once permission has been granted.

At present, DCN members believe that the current system is unbalanced: once a residential permission is granted or allocation made, there should be an implied contract with the local authority and local residents to build those houses, but many developers and landowners do not necessarily feel that sense of obligation (they might be securing consent to borrow against the increase in land value, and/or might have wholly unrealistic expectations of the land's value post-consent, to the extent that no housebuilder will buy that land, for example).

As an example, it is common for many authorities (especially rural authorities), to receive land bids for many times the number of total homes needed during their Local Plan production process. The competitive process of site selection means that the authority (typically) allocates only a small proportion of the total sites submitted. It is therefore a source of considerable concern, both to the authority and to unsuccessful landowners (who might have had every intention of developing their land at the earliest opportunity), when some of the allocated sites then do not come forward for planning permission (without good reason) and so do not get developed.

Once the point of permission or allocation has passed, however, local authorities have very little leverage; they cannot then compel landowners/developers to bring their land forward to start/complete the development – most egregiously, when a development has been technically commenced (and so is “live” in perpetuity) but few or no houses are actually built for years. DCN members and local residents are also hugely frustrated by the many “five-year land supply” permissions, granted (at least in part) due to the lack of adequate land supply, but which they see few, or even no, homes built during the next five-year period.

The DCN therefore believes that there should be further measures introduced, through legislative changes if necessary, to “re-balance” the situation. Importantly, further enhancements/simplifications to the current compulsory purchase regime, to enable councils to purchase “stalled” sites at sensible values and either build out themselves, or parcel out to SME developers, should take place.

Specifically, the DCN also seeks measures such as:

- Simplified compulsory purchase powers where a developer has failed to properly commence construction within, say, two years of receiving permission (as distinct from a “technical” start to development, which may be as little as digging trenches for foundations) or has failed to apply for permission within a reasonable period even though a site is allocated for housing – in effect, “step-in” rights. This could include such things as removing any right of appeal against compulsory purchase other than at market value. If it was desired to provide a stronger incentive – and the DCN would support this – legislation could provide that the compensation would be only for the land’s value as if it had no allocation/permission for housing; and
- A power to charge many multiples of council tax where dwellings have not been completed within, say, two years of receiving planning permission. This is to ensure that developers build houses quickly once they have had permission (whether outline or full) and do not delay in order to maximise their profit, whether by being slow on discharging any reserved matters or by failing to commence and complete construction even where full permission is in place.

Community Infrastructure Levy

DCN members are anxiously awaiting the announcement on the future of the developer contributions system at the Budget later this month. It is imperative that there is clarity and certainty on the changes to the system, and the recent suggestion by the Planning Minister that CIL will be “tied back into” viability would be a welcome step forward – the artificial separation of CIL examinations and Local Plan examinations has been frustrating for many DCN members.

New Town Development Corporations

The DCN is strongly supportive the creation of new locally accountable New Town Development Corporations (NTDCs). In particular, the legislation on NTDCs should:

- Place the local authorities in the position of the Secretary of State to the maximum possible degree, including decisions on the appointment of board members, the approval of overall plans and overall accountability for performance; and
- Allow for them to operate across more than one site (including across local authorities) as long as the sites are closely related in terms of the objectives and policies that would govern their development and the local authorities were willing to accept such an arrangement.

These streamlined planning procedures should also give regard to:

- sufficient resources to ensure LDOs are prepared appropriately and positive community involvement takes place;
- use of masterplans and design codes; and
- new garden towns and villages requiring infrastructure up-front therefore Government need to align their investment programmes to support the growth of new strategic settlements.

If you need to clarify any element of this consultation response, please contact the District Councils’ Network at dcn@local.gov.uk or on 0207 664 3049.