**HIGHBURY GROUP ON HOUSING DELIVERY**

**RESPONSE TO PLANNING FOR THE FUTURE WHITE PAPER**

**Introduction**

The Highbury Group comprises an independent group of specialists from the public, private and independent sectors with a membership drawn from housing, planning and related professions. It offers advice to and makes representations to Government and other agencies with the aim of maintaining and increasing the output of housing, including high quality affordable housing (see footnote).

The stated objective of the White Paper is to introduce a fundamental reform of the planning system, in effect to replace key elements of the 1947 Act based regime. Ministers, including the Prime Minister, have argued that the planning system is unfit for the 21st century, and has been responsible for the undersupply of housing and for constraining economic and business growth. However, no evidence has been provided or these assertions, either within the Planning White Paper or in any Government research reports. The timescale for determining Local Plans is given as demonstrating the case for 'system failure', with no recognition of economic and governance factors. The White Paper seeks to deliver two distinct objectives – to increase housing output and economic growth through deregulatory measures and to achieve more 'beautiful' developments. Leaving aside the issue of whether 'beauty' is equivalent to measurable design quality, there is no recognition within the White Paper that there may be some incompatibility between the two objectives.

The proposals in the paper do not appear to have emerged from discussion with planners, planning authorities or professional bodies representative of planners, such as the RTPI and the TCPA. While some academic reports are referred to in the document, some of the conclusions apparently drawn from these reports are questionable, and it is clear from some of the content of the document that the authors have given insufficient thought to potential implications of the proposals or to transitional arrangements. MCLG officials have recognised that considerable further work is required on the details of the proposed new regime, and how it would be introduced through statutory legislation and guidance.

The White Paper proposes to repeal existing planning legislation and to replace the current planning framework with a simplified local plan system and a curtailment of the process for determining applications for individual developments by a planning authority. There are no specific proposals for strategic planning at an inter-authority level and the current requirements in relation to the duty to cooperate with neighbouring authorities will be abolished. The fundamental basis of the post 1947 system that local authorities should control land use appears to be abandoned and replaced with a simplified zoning approach – the Local Plan should comprise three zones – a *growth* zone, a *renewal* zone and a p*rotected* zone (para 2.8). The White Paper suggests that the first two categories could be merged (para 2.9).

The Highbury Group recognises that the current planning regime requires significant improvements and in previous statements we have made specific proposals, especially in relation to planning policy

for housing and strategic planning. We are however of the view that the approach proposed in the White Paper if implemented would represent a significant weakening of the current planning regime, both in relation to the roles of local planning authorities and in relation to public involvement in development decisions which impact on them, rather than the strengthening which is required.

**Pillar 1: Planning for Development**

**Proposal 1 Simplification of land use plans**

It is proposed that Local Plans should no longer comprise lists of policies but instead should set minimum requirements for development, though it is unclear what requirements could be set other than a design code. The Plan could set out suitable development uses for Growth and Renewal Areas but these would seem to be general for each zone or for sub-areas rather than applied to specific sites. The Plan could set limitations on height and/or density (para 2.10) but it is unclear whether or not there could be other requirements beyond what is set in national policy or the proposed National Model Design Code. There is a recognition that High Streets and Town Centres could have specific designations while sub-areas could be identified for higher density residential development. Sub areas could also be designated for 'custom build homes and community led housing developments' but it is unclear whether Local Plans could specifically identify sites for other land uses such as schools or health facilities, offices or retail, warehousing or industry. The implication is that within a growth or renewal zone, it is for the developer to decide the most appropriate development. The current requirement for Local Plan policies to be based on evidence such as an assessment of development requirements and development capacity within an area appears to be dropped in favour of a stronger presumption in favour of development within growth and renewal areas. The White Paper is highly critical of the current evidence base requirements and the Geddesian principle of Survey, Analysis, Plan would be consigned to history. There would be no requirement for Survey or Analysis. While we recognise that guidance on Local Plans needs to be updated, we do not support the replacement of the current regime by a simplified zoning system. It is essential that Local Plans continue to be able to designate specific sites for specific land uses.

**Proposal 2 Development Management Policies will be established at national scale.**

It is proposed that Local plans should no longer comprise long lists of 'generic' policies but focus on specific development standards. The NPPF would be the primary source of development management policies. Local authorities and neighbourhood groups through neighbourhood plans would produce local design guides and codes to give certainty to reflect local character and references about form and appearance of development. We do not support the proposal as it stands as it lacks detail as to how such a system would operate in terms of the relationship between the Local Plan and a system of design codes. Planning policies are not limited to matters of design.

**Proposal 3 Existing tests of soundness would be replaced by a 'sustainable development' test**.

This proposal implies separate viability test and deliverability test would no longer be required. The Duty to Co-operate test is to be abolished., which also implies Statements of Common Purpose would no longer be required. However, it is unclear how a simple test of environmental impact would be undertaken and what criteria would be applied. There is no recognition of potential conflict between economic growth and environmental objectives. There is no reference to social sustainability. Para 2.20 states that sites should not be included in a plan where there is no

reasonable prospect of infrastructure coming forward within the plan period. Given plan periods are much longer than budget cycles, it is unclear how this assessment is to be undertaken. We therefore cannot support the proposal as it stands, as it lacks clarity as to how the new 'sustainable development' test would operate in terms of adequately replacing the existing requirements.

**Proposal 4 A standard method for assessing housing requirement figures**.

The objective of this proposal would appear to be is to release more land where affordability is worst. This ignores both the issue of increased supply does not necessarily increase affordability and the issue of development capacity. There is an assumption about increased density, given Green Belt protection policy will be maintained – Green Belts will be automatically Protected zones, but no recognition of implications for housing type and meeting the full range of housing needs. The relationship between hyperdensity/ concentration of population/ small flats and the spread Coronovirus has not been recognised. There is an assumption that Local Authorities can release land to meet their housing requirement as derived by a national formula – there would no longer be any no need for an assessment of local housing requirements. There is an implication that there may be some national formula to calculate housing land requirements, though Para 2.28 puts the alternative suggestion that this could be left to the planning authority. There is a suggestion that Mayors of combined authorities could co-ordinate housing distribution between authorities, though there is no requirement set for a combined authority Strategic Housing Land Availability Assessment. Para 2.25 notes that land may be required for non-residential development, but there is no indication how this be assessed – the focus is almost entirely on housing numbers and for housing targets to reflect 'market signals.' There is no reference to an infrastructure assessment and presumably the current requirement for an Infrastructure Delivery Plan would lapse. It is recognised that the current and proposed new Housing Requirements Assessment methodology does not recognise land constraints and para 2.29 rather oddly askes for proposals as to how this could be incorporated in a formula, without recognising that Strategic Housing land Availability Assessments might continue to be of some use. As we have stated in our response to the proposals in the consultation paper on Changes to the Current Planning System, any local housing target has to reflect residential development capacity within an area as demonstrated by the Strategic Housing land availability Assessment (SHLAA). We are happy to provide MHCLG with advice based on our own experience on how this issue can be taken forward.

**Proposal 5 Automatic planning consent**

The proposals for consideration of individual applications are as follows: Development within a *growth* zone would receive automatic consent for the principle of development in the form of an outline consent– there would be no opportunity for either public consultation or assessment by local authority councillors or officers of the development proposal though there would be a process for determining details, either through a reserved matters process, through a Local Development Order or, for exceptionally large sites trough a Development Consent Order under the Nationally Significant Infrastructure Projects regime or through a Development Corporation determined planning process. There is no recognition that matters of detail may not be entirely technical matters, nor that there may be a public interest in some aspects.
Proposals within a *renewal* zone would be subject to a presumption on favour of development. Schemes for pre-specified types of development meeting design requirements as set out in a design code would be granted automatic consent; other schemes might need to be subject to a separate approval process in the context of the published Local Plan, though this could be predetermined

through a Local or Neighbourhood Development Order process. The assessment and determination process remains somewhat unclear, and there is no reference to public consultation. Any proposal not consistent with the published Local Plan would need to be subject to some assessment and determination process but again this is not specified nor is there any reference to any mechanism for public consultation, other than an acknowledgment in para 2.36 that this matter may need further consideration. Given a Plan would apparently not be specifying specific land uses for specific sites ( as opposed to very broad-brush zones), and would not be setting out a list of policy requirements in the traditional format, the basis for determining compliance or non- compliance with a Local Plan may not be a simple process and the focus may be on conformity with the design code rather than with matters such as appropriateness of land use and whether the proposal contributes to specific planning policy objectives.
Development proposals in *Protected* areas would be subject to a normal planning assessment and determination process (except where Permitted Development or Development Orders apply. It is interesting that it is not proposed to curtail PD rights in *Protected* areas.
These proposals do appear to leave a number of unanswered questions as to how applications will be processed and the extent to which public consultation will be involved. We therefore cannot support the proposals as they stand.

In relation to question 9c) on the proposal that major settlements could be brought forward within Nationally Significant Infrastructure Projects regime, we would support the proposal, but with a number of significant caveats.

Use of the NSIPs regime could help provide certainty for delivery of nationally significant new settlements. However, there are various essential preconditions and caveats, Firstly, they must be considered as Nationally Significant new settlements set within a National Policy Statement approved by Parliament. importantly new settlements must be viewed as more than just housing. They are new communities which need careful place-making, and consideration of the location of development, environment, cumulative impact of housing development, funding and timely delivery of infrastructure and community engagement. They will also need new types of Development Consent Orders that can be constructed to operate over much longer development time periods and offer flexibility in their delivery over this time. They will also require significant commitment from Government for their implementation including for social infrastructure, affordable housing and sustainable design and development.

The NPS should take into account the principles of development including location and the integrated relationship with other strategic development. The process of currently delivering NSIPs through the DCO process often, but not always, lacks a joined up spatial vision and tends to be delivered through a more ad-hoc approach, as infrastructure bodies seek to bring forward their specific projects. It is critical that under the planning reforms, NSIPs for local and regional communities are delivered through an NPS which is part of a national spatial planning framework.

This would help ensure that appropriate low carbon infrastructure is front-loaded and the development fits with the social, economic and environmental vision for the area. We would have reservations about the use of DCOs without clear demonstration of how they are integrated with wider development proposals in the local area.

An NPS, which identifies the principles and potentially locations for Nationally Significant Communities could provide national policy considerations for all parts of the planning delivery system.

Environmental protections and considerations must not be lowered if a development is delivered through the NSIPs regime and biodiversity net gain requirements must be included in the DCO for this to work. NSIPs should be required to contribute to improved environmental outcomes and meeting the targets set out in the 25 Year Environment Plan and that are developed pursuant to the Environment Bill.

Any NPS should provide that DCOs should also secure sustainable development that contributes to achieving (i) the target for 2050 net zero set out in s1 of the Climate Change Act 2008 and (ii) applicable carbon budget(s) made pursuant to s4 of the Climate Change Act 2008, having regard to the anticipated life of the development in question.

The New Towns experience demonstrates how essential public sector involvement in the promotion of NSIPs communities through the DCO process will be. This could be done via a development corporation or a community-specific delivery vehicle. It should be encouraged through Guidance that DCOs set out the structures by which the NSIPs communities are delivered and maintained in the long term, including an appropriate role for the public sector.

**Proposal 6 Faster decision making**

The proposal for use of digital technology and standardisation of information are all useful. However, it is important to recognise that planning assessment is more than a tick-box exercise that can be carried out by mechanical means. However, providing financial incentives (through penalties) to LAs to ensure speedy decisions can have negative consequences, in terms of forcing inappropriate decisions where time is needed to negotiate with an applicant to modify a development proposal. The White Paper appears to be based on the false assumption that planning decisions are a binary process – either yes or no, whereas a key role of a planning officer is to seek to improve a development proposal rather than issue or recommend an unconditional approval or outright rejection. It is unhelpful to propose that where a LA decision is overturned at appeal, the planning fee is refunded to the applicant as this will encourage further appeals, as well as discourage LAs from seeking to maintain a policy position, especially in a context where Planning Appeal decisions, and for that matter Ministerial interventions, may be both unpredictable and inconsistent. The Government approach betrays an unjustified lack of confidence in local authorities and local authority planners.

**Proposal 7 Local Plans should be visual and map based.**

These proposals are welcome. Digitisation can help civic engagement in the plan-making process, but it is important that residents without digital access are not excluded from the process.

**Proposal 8 Statutory timescales for Local Authorities and the Planning Inspectorate in relation to the pan-making process.**

The proposed 12-month timescale for local plan preparation is unrealistic. Any timescale needs to reflect the resources available to a LA. The Planning Inspectorate is under-resourced in terms of the targets proposed here, and there is no recognition of the role of central government in contributing to delays in the plan-making process. The assumption that quicker plan-making increases land release is somewhat questionable. The option in para 2.54 of LAs undertaking plan self-assessment rather than plans being subject to an Examination stage is not acceptable, though the Examination in

Public process can certainly be simplified and shortened through a more focused approach.

**Proposal 9 Retention of Neighbourhood Plans**

It is unclear how Neighbourhood Plans would relate to more limited Local Plans and how they would relate to a shortened plan-making timescale.

**Proposal 10 A stronger emphasis on build out**

We support a recognition that larger sites may require a phased build out by different builders. This however must be under the leadership of the local planning authority, which should have the power both to manage and modify phased development as appropriate.

**Pillar 2: Planning for beautiful and sustainable places**

The urban design-based approach set out in this section is a parallel approach to the statutory planning approach set out in Pillar 1 and Proposals 1-10. This design approach derives from the Building Better Building Beautiful report and it is unclear how the approach can be incorporated within a statutory planning framework. It is important that quality and sustainability are incorporated in a planning system, but these factors must be based on objective criteria not subjective factors. Moreover, neither 'quality' or 'sustainability' are equivalent to 'beauty', for which there is no objective and measurable criteria. The concept of 'sustainability' used in this section relates to environmental sustainability, with little or no regard to social or economic sustainability. Given the vacuity of the concepts used, it is difficult to draft a coherent response to many of the proposals in this section, however virtuous they may appear in terms of the language used, where the proposals themselves lack coherence. There is no recognition that some of the design requirements set, so far as they are specific, may have an impact on access to development in terms of affordability.

**Proposal 11. Design Codes**

It is puzzling that having proposed radical simplifications to the planning system, which limit the role of both local authorities and residents, the White Paper then proposes that in addition to a national design code, there will be a range of local design codes. This will hardly simplify the development process for developers working across different areas. It is noticeable that while tight deadlines are set for local plan preparation, no such timescale is set for the preparation of design codes, nor is there a process for a) their approval; b) the determination of whether there has been sufficient public involvement in the process for a code to be considered to be a material planning consideration**.**

**Proposal 12 A new national body to support local design codes and requirement for each LA to have a chief officer for design and place-making.**

It is unclear how a new design body would relate to MHCLG planning team to ensure advice provided to local authorities and developers is consistent or how a new LA chief officer for design and place-making would relate to the existing role of chief planner. An organisation similar to CABE, with the same non-statutory remit, would however be of value.

**Proposal 13 Homes England to be made responsible for delivering beautiful places.**

While clearly Homes England have a continuing role in ensuring design quality of schemes funded with Government investment, it is unclear how including a subjective concept such as 'beauty' in their strategic objectives will have significant positive impact. An enforcement of current standards for publicly funded schemes using scheme audit and the powers of the Regulator of Social Housing, combined with a strengthening of the building control regime would be much more effective. While funding from Homes England can make an important contribution to the delivery of communities which are both sustainable in social, economic and environmental terms, and affordable by households with low and middle incomes, It is not appropriate to give Homes England responsibility for delivery of planning functions which are the responsibility of Local Planning Authorities or to make Homes England an arbiter of 'beauty.'

**Proposal 14. A 'fast track' to approve high quality/beautiful schemes**

This proposal is highly problematic. To introduce any subjective assessment into a planning process is questionable, but to give such subjective assessment as a justification for a priority treatment for a development proposal is unjustifiable and bluntly unworkable in terms of planning law, as legal challenges will be based on whether or not a scheme is 'beautiful'. The proposal in para 3.19 to extend Permitted Development to schemes which are of a popular design does not set out who would determine whether or not a specific design proposal was popular. To say, as 3.21 does, that this concept will require some technical testing and piloting is something of an understatement.

**Proposal 15 Amend NPPF on how reformed planning system can respond to climate change, mitigation and adaption and maximise environmental benefits.**

While we support further consideration of this important aspect, the White Paper does not make any specific recommendations. It will be a challenging task to include these science- based criteria in a manner which is compatible with an assessment of 'beauty'.

**Proposal 16 A quicker framework for assessing environmental impacts and enhancement opportunities**

Simplification of the current complex contradictory and often crude tick-box approaches would be welcome. Para 3.28 identifies a number of objectives which may be difficult to achieve in parallel. It should be recognised that there are a range of special interests, as well as different scientific and theoretical approaches, which cannot be disregarded in such a process, and both the science and the theory tends to change over time.

**Proposal 17 Conserving and Enhancing Historic Buildings**

The White Paper states that detailed proposals are still under consideration. The possibility of exempting approved specialists from building consent requirements is floated. We would not however support any weakening of the existing building consent regime which should be applied equally to all applicants.

**Proposal 18 Improvements to energy efficiency standards**

The White Paper states that the Government will respond in the Autumn on the Future Homes Standard and for energy efficiency targets beyond 2025. We will comment separately when this response is available.

**Pillar 3 Planning for infrastructure and connected places**

**Proposal 19 Community Infrastructure Levy should be reformed as a fixed proportion of development value.**

This proposal follows the recommendation of the CIL review task force chaired by Liz Peace in 2017. While such an approach would simplify the current situation and ensure consistency between LA areas ( some of which do not currently levy CIL), such an approach assumes a direct relationship between CIL value and landowner/developer profit and therefore does not reflect the specific cost/value relationship of an individual development, which can currently be assessed through a financial appraisal process and consequently incorporated in a s106 agreement. The critical issue, which is not clarified in the White Paper is what limitations would then be imposed on s106 negotiations and on financial appraisals. Our preferred option would be a fixed rate CIL as proposed supplemented by a s106 to incorporate affordable housing and other social infrastructure contributions where demonstrated to be viable through a transparent and standardised financial appraisal.
We would support the use of CIL revenue to fund affordable housing provision. This would be especially important should s106 be restricted.
Ministers appear to assuming that the new mechanism would increase the level of developers' contribution to infrastructure relative to the current mechanisms. This is unproven. This would depend both on the rate of levy raised and on external economic factors such as development value.
We are also concerned that the proposal is that the levy would be collected on the basis of sales value at the point of sale for residential units, and at the point of occupation for non-residential development. This means that the funds would not be available up front to fund the required infrastructure. There would still be a requirement for assessment of value at point of occupation which could still be a source of dispute for non-residential development and a process for applying the levy to unsold residential units needs to be established.

**Proposal 20 CIL to capture changes of use through Permitted Development Rights**

This proposal is strongly supported. S106 obligations should also apply where appropriate.

**Proposal 21 CIL could be used to support Affordable Housing provision**

This is supported. However, this should not restrict s106 planning obligations also contributing to affordable housing, where this is viable.

**Proposal 22 More freedom for LAs on how they spend CIL**

This is supported, subject to Local Authorities continuing to be being required to justify and publish their spending priorities.

**Delivering Change**

There is inadequate recognition of the disruptive impact of implementing the proposals under both Pillars 1 and Pillars 2 of the White Paper. The proposals in Pillar 3, while welcome, nevertheless would be disruptive in both over-riding individual Local Authority policies and processes developed since 2011 and will also have implications for the development plans of LAs, landowners and developers. It will be necessary to have some transitional arrangements for pipeline schemes. For areas where CIL does not apply, there will be an incentive for developers to bring forward schemes before CIL is applied.

With respect to Pillar 1, there is a reference to a new Use Classes Order in para 5.2, while it remains unclear whether LAs will be able to control land use of individual sites.

**Proposal 23 Development of a comprehensive resources and skills strategy**

It is stated that this strategy is to be resourced primarily by the beneficiaries of 'planning gain'. It is unclear whether this would be through a reformed CIL system, a residual planning gain/s106 regime, or through planning fees, or through a combination of the three. Regrettably, central government does not appear to have recognised that many of the deficiencies of the current regime could in practice be dealt with by a resourcing strategy supported by adequate funding, while over the last decade we have seen a drastic depletion of LA planning capacity, as well as weakening of LA powers and authority. The delivery of LA planning functions should not be dependent on funding from the recipients of planning decisions as this can lead to conflicts of interest. Statutory Local Authority planning functions, like other public services, should be funded from general taxation.

**Proposal 24 Enforcement powers and sanctions will be strengthened.**

The lack of powers and resources for planning enforcement is perhaps the greatest weakness in the current planning system. It will be difficult for LAs to give adequate attention to enforcement, when the entire planning system is subject to disruption and significant LA powers in respect of determining planning applications are removed. If enforcement is to be dependent on compliance with a new national design code, rather than with the specific local planning authority's policies, such a national code has to be objective with measures than can be quantified – the subjective cannot be enforced.

**Footnote**

The views and recommendations of the Highbury Group as set out in this and other papers are ones reached collectively through debate and reflect the balance of member views. They do not necessarily represent those of all individual members or of their employer organisations. The group's core membership and previous statements and research presentations are on the group's website:

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