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White Paper: Planning for the Future

A response by the Town and Country Planning Association to the MHCLG consultation

October 2020

1. Introduction

The Town and Country Planning Association (TCPA) challenges, inspires and supports people to create healthy, sustainable and resilient places that are fair for everyone. To this end we aim to improve the art and science of planning in the UK and abroad and work to secure fresh perspectives on major issues, including planning policy, housing, regeneration and climate change.

The TCPA has a strong track record in research and policy formulation. We have fed much of this into the detailed thinking underpinning our response and other responses we have co-produced¹. From discussing the White Paper with Ministers and senior officials we are mindful that this consultation is the start of a process of policy and legislative development. The TCPA would welcome the opportunity to continue to feed into this important process to make sure the reforms deliver a planning system that delivers better outcomes for people and the environment. If MHCLG is setting up workstreams to further develop specific topics relating to the reform agenda, we would urge them to include workstreams on climate change; the purpose of planning, trust and democracy; and delivery mechanisms.

This response sets out our overarching comments about the proposals set out in the White Paper [section 2] and our responses to the specific questions [section 3]. We note, however, that there is not an opportunity to respond to all of the proposals through the specific questions asked. Section 4, therefore, sets out our response to some of the proposals not covered by the questions.

As set out in section 2, alongside this response we have published and are submitting *Common Ground*². It should be considered an annex to this response. The short document offers a holistic vision, focused on a principled but practical and measured reform of our existing system.

2. Overarching comments

¹ See for example this submission from the TCPA and Centre for Sustainable Energy - <https://www.cse.org.uk/downloads/reports-and-publications/policy/planning/planning-white-paper-consultation-october-2020.pdf>

² *Common Ground* is also available at: <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=d5f99199-aa48-47d9-8512-5c598d0bdf7>

As the White Paper recognises, planning is important. What we build and where we build it affects our health and well-being as well as the natural environment and climate change. It is therefore vital the system can support the creation of high quality and affordable places. It is also vital that the system gives local communities real power over the decisions that affect them most.

The White Paper states the reforms attempt to rebuild trust in the planning system and promote good design. While these aspirations are important, we are concerned that they are not supported by the specific proposals set out in the White Paper. Instead, the specific proposals focus on streamlining processes and removing key opportunities for participation like the right to be heard in person at planning inquiries. Taken as whole, therefore, the TCPA does not support the direction of travel set out in White Paper which we believe would be both disruptive and threaten the core public interest objectives of the system. We also note that proposal would be implemented in the context of the continued expansion of permitted development, which undermines both local democracy and basic housing standards.

The need for clarity and consensus on the purpose of planning

Clarity about the purpose of the planning system is essential to inform the reforms and in guiding a new system once it is in place. Reforms to the planning system must put in place a clear, statutory purpose for planning which focuses on sustainable development and health and well-being of all of us.

The new purpose of planning should be “to positively promote the long-term sustainable development of the nation and the health, safety and wellbeing of individuals. Within this, ‘sustainable development’ should mean: a) managing the use, development and protection of land, the built environment and natural resources in a way which enables people and communities to provide for their social, economic and cultural wellbeing while sustaining the potential of future generations to meet their own needs; and b) promoting social justice and reducing inequality.”

Clarity around the purpose of planning would help restore confidence that decisions were in the wider public interest and not dominated by needs of developers. It would give all parties confidence that the system was about making healthier more sustainable places and not just about housing numbers.

A holistic approach to planning reform

We recognise that the White Paper states that the proposals “have not comprehensively covered every aspect of the system”³. But in the Prime Minister’s foreword it states it is time to “tear [the system] down and start again”. By not setting out a comprehensive package of reforms it is difficult to fully understand how the proposals can aim to tackle the challenges highlighted, or deliver the aspirations of, the White Paper.

We agree there is a need for reform, but we do not believe that the White Paper is the right starting point for the reform. Alongside this response to the consultation, therefore, we have published *Common Ground*⁴, which offers a holistic vision, focused on a principled but practical and measured reform of our existing system. We believe that the vision it sets out would secure better outcomes

³ Paragraph 6.2 of the ‘web accessible’ version of the Planning White Paper available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907956/Planning_for_the_Future_web_accessible_version.pdf

⁴ *Common Ground* is also available at: <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=d5f99199-aa48-47d9-8512-5c598d0bdf7>

for people and would begin to restore public trust in the planning process. It is not a detailed paper, but rather an indication of an alternative approach. It is an attempt to build a wider consensus for change, which is vital in securing a lasting settlement in the public interest. *Common Ground* should be considered to be an annex to this submission.

If the government is to pursue the proposals set out in the White Paper, before taking any of them forward it is essential that further work is undertaken to address the gaps so reform is not undertaken in a piecemeal manner. These gaps include the future of strategic planning and the delivery mechanisms for securing the delivery of new communities.

The White Paper also fails to make links with other important government documents, such as the 25 Year Environment Plan and the Flood and Coastal Erosion Risk Management Strategy. Planning should be seen as a crucial tool to implementing elements of these Plans, including but not limited to, Local Nature Recovery Strategies, a Nature Recovery Network and strategic coastal realignment. It is disappointing that the proposals do not identify the role of local plans and strategic planning in delivering these commitments.

3. Responses to specific questions and proposals

Question 3. Our proposals will make it much easier to access plans and contribute your views to planning decisions. How would you like to find out about plans and planning proposals in the future?

We acknowledge the aspiration in the White Paper to make planning more accessible and we recognise that digital tools will help make planning more accessible for some people. We believe that a combination of approaches is needed to ensure people are not excluded.

Question 5. Do you agree that Local Plans should be simplified in line with our proposals?

No – We agree that there is a need to make local plans more accessible and visually engaging, but they need to be about much more than simply allocating land for development. The Planning White Paper recognises the importance of planning and the impact places have on people’s mental and physical health. It goes on to propose that local plans will become shorter and “limited to no more than setting out site- or area- specific parameters and opportunities”⁵. Development management policies will sit at the national level. But then it is envisaged that requirements should be “machine readable”⁶.

Local plans should set out positive visions for the future of areas. There is therefore a need for clarification about how local plans and decision making will take into consideration important issues such as the impact of proposed development on health and wellbeing and climate change. For example, how can positive policies about active travel or climate change, which may be set out in the National Planning Policy Framework, be taken into consideration for schemes coming through in ‘growth’ or ‘renewal’ zones? How will the new system make sure local plans are ambitious about promoting equality and reducing socio-economic exclusion? How will the detailed evidence carbon reduction measures be handled and expressed?⁷

⁵ Paragraph 1.16, 5th bullet point of the web accessible version of the White Paper

⁶ Paragraph 2.15 of the web accessible version of the White Paper

⁷ For a detailed explanation and solution to this problem please see our joint response with the Centre for Sustainable Energy available at <https://www.cse.org.uk/downloads/reports-and-publications/policy/planning/planning-white-paper-consultation-october-2020.pdf>

If the reformed system is to deliver better outcomes, which is the aspiration of the White Paper and one we share, there needs to be assurances that those outcomes will not be solely based on local design guides. Plans need to address much more than just housing design and ensure that climate and human health are at the heart of planning for transport, employment, minerals and waste.

In light of the importance of local design guides in the new system, and to make sure that they carry sufficient weight and local communities are central to their development, the proposals should be revised so that local design guides must be developed for inclusion in the local plan with the status of development plan documents, rather than it being seen as a 'twin track' approach.

Both design guides and local plans should be underpinned by strong, legally binding minimum standards on all issues which determine the decency of our homes, including minimum space, access to green areas, fire safety, climate change, walkable neighbourhoods and air pollution. These should be defined at the national level to ensure that all new homes support the health and wellbeing of their residents. Doing so would bring clarity to confusing systems and demonstrate how seriously the government takes these issues.

Question 6. Do you agree with our proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally?

No – While we support the proposal that local plans should not needlessly repeat high level national policy there must always be scope for detailed development and implementation of local development management policies based on diversity of places and local people's aspirations. Local plans should set out a vision for a positive future for the area they cover and should be able to include the policies necessary to enable development and growth considered to be appropriate in the context of that plan.

If development management policies can only be set out at the national level, the quality of outcomes for communities would depend entirely on the quality of those policies. Since the White Paper gives no sense of the scope or content of these national policies, it is not possible to form a judgement on their merit. We are concerned, however, that centralised national policies undermine local choice, democratic control and, therefore, wider public trust in the system.

Question 7(a). Do you agree with our proposals to replace existing legal and policy tests for Local Plans with a consolidated test of "sustainable development", which would include consideration of environmental impact?

No – Without understanding the detail of a "simplified process for assessing the environmental impact of plans" we cannot support the new consolidated test. We recognise, however, that there is scope to improve on the current approach, but the proposal to replace the current tests needs further development.

We strongly support the provisions of the Strategic Environmental Assessment regulations and any new system would need to have at least as wide assessment scope and include, if not strengthen, requirements for public participation. Such an assessment framework must be proscribed in law and should be the key method for the consideration of the wide range of factors necessary for successful local plans, such as carbon and health evidence.

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

Planning in England should consist of four interlocking tiers, each with a defined focus and governance arrangements and each designed to support the activities of the other. This framework may be read by some as 'top-down' imposition, but this would not be the case because this proposed system is designed to locate the bulk of the decisions which matter to people at the Local Plan level.

Sub-regional and national plans would provide a vital source of key data on national and strategic growth issues as well strategic constraints. They would synthesise and make transparent the differing national policies which shape local development, allowing local communities, for the first time, to understand what is going to happen to them and what they can do about it.

The two new tiers recommended below would also support local planning to be more effective, because local planning authorities and local communities would have confidence that they will be supported, and not frustrated, by the decisions taken in 'another place' or by another body. To bridge the strategic gap that exists now, these higher-level plans would have to be considered in the preparation of Local Plans.

The structure would operate as follows:

National Sustainable Development Plan: The National Sustainable Development Plan (NSDP) would have three core objectives:

- To provide a long-term and integrated strategy to guide the sustainable development of the nation. This would involve expressing on a map the planning implications of all the government's national strategies that are relevant to development, including the Industrial Strategy, the 25 Year Environment Plan, the Infrastructure Needs Assessment, NHS and public health strategies, etc. The NSDP would provide the opportunity, for the first time, to set out a national housing strategy that could indicate preferred areas of search for strategic growth.
- To work with other national agencies (including the Office for National Statistics, the Environment Agency, the Infrastructure and Projects Authority, etc.) in order to collate and map all the data that already exists and is essential for effective planning, including economic and demographic data and data on water resources, transport, flood risk, health, social exclusion, and regional inequalities. The data should be presented in map form, made accessible to everyone and thus reducing the need for local planners to produce their own data.
- Responsibility for preparing National Policy Statements would shift from government departments to the National Infrastructure Commission, and they would be prepared in the context of the NSDP. These documents would be subject to our ambitions for increased community participation and would require separate parliamentary approval. The definition of Nationally Significant Infrastructure Projects would be returned to the focused original description set out in the 2008 Planning Act. The need to retain National Policy Statements as separate documents rather than integrated into a national plan is not logical, but it does reflect the special legal status of National Policy Statements in decision-making.

The NSDP should be revised every five years and approved by Parliament by positive resolution. It should be prepared by an enhanced and refocused National Infrastructure Commission and informed by a 'national conversation' about the needs of the country.

Sub-regional strategic plans: The current system in England sees a variety of strategic approaches, from statutory arrangements in London to informal non-statutory arrangements in some shire

counties. We are clear that the model of strategic planning in London, with the accountability offered by the Greater London Authority and the formal relationship between the London Plan and borough Local Plans, is the most logical and democratic way to organise strategic planning. We are also clear that a return to the standard regions of England, arbitrary though they were, would be a marked improvement on the current chaotic arrangements. We also recognise that at present there is little political consensus favouring the creation of such a regime outside of Greater London.

In this context the current ad hoc system could be improved by making it clear that strategic plans should:

- be adopted by combined authorities, county councils, unitary authorities and joint committees;
- be focused on strategic issues and provide clear guidance for Local Plan preparation, including identifying strategic growth areas and areas of significant constraint;
- be prepared having full regard to the NSDP;
- be subject to public examination;
- be approved by each constituent authority; and
- have a clear and direct form of democratic accountability to communities.

Local development plans: Within these proposed tiers, the Local Plan would remain the key statutory development plan for an area. It would reflect the ambition for a people-centred plan capable of being the key co-ordinating strategy for a locality and integrating the ambitions of other agencies in relation to issues such as health and wellbeing, as well as jobs, housing and the environment.

Neighbourhood Plans: Neighbourhood Plans should remain a central and powerful tool for community planning with no reduction in their legal status in decision making. Such plans should be subject to the same legal requirements as Local Plans in relation to sustainable development and other issues including climate change.

Question 8(a). Do you agree that a standard method for establishing housing requirements (that takes into account constraints) should be introduced?

No - The TCPA strongly supports an evidence based and nationally agreed methodology for housing forecasting in local plans. We also believe that this methodology should be based primarily on demographic data on household formation rates and should be supplemented by data on hidden households and local housing needs. Priority should be given to those in greatest housing need through a range of tenures including a central role for socially rented homes. These requirements need to be set against local environmental and infrastructure constraints to arrive at sustainable and realistic target.

This process is complex and not susceptible to a single simplistic method. The government should consider how expert support for local authorities in setting housing numbers could be provided, drawing on the experience of those involved in the short-lived National Housing and Planning Advice Unit

Ultimately, however, we would highlight that it is not possible to isolate a standard method for housing needs from the methods of delivering homes in a coherent strategic framework. The standard method may drive higher housing land allocations, but without a clear linkage to sub-regional apportionment and effective delivery vehicles it will not ensure the homes we need get built. Delivering a credible framework for higher housing delivery in areas such as the South East of

England should not be isolated from the wider environmental and infrastructure constraints which exist in these areas.

Question 8(b). Do you agree that affordability and the extent of existing urban areas are appropriate indicators of the quantity of development to be accommodated?

No - We do not agree that any arbitrary factor, including the size of an existing urban settlement nor the relative affordability of places, can have any direct relevance to a rational determination of local housing needs.

The idea that the increased supply in land allocations in plans will automatically address affordability is a flawed assumption because:

- The needs of those in greatest housing need will not be met by any expansion of home ownership. Instead their needs are best met by targeted measures including the provision genuinely affordable housing products.
- House prices result from complex factors including the availability of credit and wider investment trends so increased affordability is not simply about supply and demand.
- The number of houses necessary to reduce prices in high demand areas implies a quantum of units which is often simply unrealistic.
- Increased land allocation is ineffective when, as now, such allocations are disconnected from effective delivery. No model predominately based on private sector housing delivery will result in reductions in house prices since these businesses will never build at rate which reduces unit price.

The affordability crisis can be best solved through the targeted provision of affordable tenures and particularly through the rapid expansion of socially rented homes.

A different approach is needed because, in broad terms, the policy of 'growth on growth' has failed in England to create either affordable homes or a well-balanced and efficient economy. In considering the expansion of new homes in England alongside the levelling up agenda the government should actively consider a much stronger role for the identification of strategic growth zones across the whole of the country supported by the necessary investment and delivery vehicles.

Question 9(a). Do you agree that there should be automatic outline permission for areas for substantial development (Growth areas) with faster routes for detailed consent?

No - We agree that local plans should be made more visual and accessible and that engaging more people in plan-making would be positive. This should not be at the expense of democratic processes, however, and the government must understand that making a system more accessible to the public is not the same as making it more democratic.

Four elements have to operate successfully together in order to ensure that there is a democratic planning system:

- Direct democracy through referendum, which operates for Neighbourhood Plans where they exist.

- Representative democracy has to operate at national and local levels to ensure that decisions are ultimately accountable to the whole electorate.
- Participative democracy has to ensure that communities have a real measure of power to co-create decisions.
- Finally, citizens must have defined civil rights to ensure that their participation is meaningful – for example, rights to information, rights to be heard when policy is made, and rights to challenge decisions on public interest grounds.

The specific details of the proposals reduce representative democratic accountability and the individual rights of the citizen to participate and this must be addressed as planning reform is taken forward.

It is unrealistic to propose that the level of detail needed to inform whether or not a large-scale site should receive outline planning permission can be included in a key and annotation supporting a map. References are made in the White Paper to master plans being produced, which are a critically important ingredient to deliver high quality new mixed communities, but it is unclear how existing and future communities will be involved in that process.

We are also concerned that the new system would give developers certainty on land allocation while allowing them to retain the ability to submit applications speculatively, to be determined by national policy, and by local design guides where they exist. The developer's right to appeal against refusal decisions would, we assume, also be retained. These proposals would, therefore, continue to entrench the current asymmetry in favour of the development sector in the planning system.

If the government is serious about democratizing planning and strengthening the planned approach, the reforms should introduce a limited third party right of appeal if decisions are made in renewal and growth zones that go against the plan or local design guides.

If the government wants to support large scale development, consideration needs to be given to how better support such development. To enable such development, local authorities need to plan for 40 plus years. It is currently unclear how the new system will deal with strategic sites/ new communities that are well beyond the proposed 10 year plan period. Points raised in our response to questions 7(b) and 14 also relate to this issue.

Question 9(b). Do you agree with our proposals for the consent arrangements for Renewal and Protected areas?

No – Our understanding of the consent arrangements for 'renewal areas' is that they would be a complex mixture of permitted development, permission in principle, and traditional development management. For some forms of development, design codes and patent books would determine the outcome of 'gentle densification'. We do not support the continued use of permitted development as we believe it undermines local control and place-making.

We are also concerned about the expansion of permission in principle. The Association has always been strongly opposed to any approach where the principle of the suitability of a site is divorced from its detailed impacts and design requirements. The separation of principle and detail in determining the consent for housing sites risks undermining sustainable development and results in unnecessary delay and controversy when subsequent details emerge that make a site wholly unsuitable in principle. The existing tools of outline planning permission strike a reasonable compromise balance by ensuring that design can be fully considered before full planning permission is granted. The permission in principle regime shifts this careful balance in favour of developers and

away from councils and communities by granting more weight to the first stage 'in-principle' consent. The ability of a local planning authority to require fundamental alterations to a permission in principle consent, including the number of dwellings and design requirements, is strictly limited.

For 'protected areas', these would be designated locally, but based on government guidance, and the traditional development management process would apply. In so far as policy would need to be applied to development management decisions it would be set out nationally in a set of development management policies. Until we understand what those development management policies are, we cannot be confident that this arrangement will enable appropriate development.

As we set out in our response to question 9(a), we are concerned that the new system would continue to entrench the current asymmetry in favour of the development sector in the planning system. If the government is serious about democratizing planning and strengthening the planned approach, the reforms should introduce a limited third party right of appeal if decisions are made in renewal and growth zones that go against the plan or local design guides.

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

Based on the current NSIPs regime, no - The TCPA favours the use of modernised New Town Development Corporations to deliver large scale new communities. We set out further detail on this in our response to question 14.

We do not believe that the current Nationally Significant Infrastructure Projects (NSIPs) regime is suitable for allowing new settlements. There may be value, however, in exploring how the NSIP regime might be updated and improved so it could be deployed to support growth in some circumstances. Improvements to the NSIPs regime would need to include the introduction of clear safeguards on democratic accountability.

If the NSIP approach is to be adopted, we believe the minimum requirements for changes include:

- democratic rights to participate in the preparation of any relevant National Policy Statement,
- clear design standards; and
- positive consent of the relevant local authorities.

Question 10. Do you agree with our proposals to make decision-making faster and more certain?

No – We welcome the aspiration to involve more people in planning and to focus on delivering better outcomes. We are concerned, however, that the specific proposals focus on speed and certainty for developers rather than demonstrating a real commitment to working with local communities.

Question 11. Do you agree with our proposals for accessible, web-based Local Plans?

To an extent, yes – we agree that local plans should be more accessible and part of making them more engaging could be making them web-based. While we support the aim of increasing public participation and broadening the audience for local plan making, it is essential that new processes are able to include and engage people who are not so keen to engage digitally. This must be a consideration in the further pilots that are proposed.

Further consideration needs to be given to the data, and the quality of that data, which will underpin these plans. Environmental information should inform the development of local plans but to use evidence successfully, local authorities will need to have access to much richer information, systems, and the support of ecologists, tree officers, environmental planners and data managers. Critically, though, such an approach will not replace the need for site-specific data and potentially new survey work to understand current sensitivities, to determine whether development should be allowed.

Public health data should also underpin new local plans. This should include evidence relating to local health needs developed by local public health teams.

Question 12. Do you agree with our proposals for a 30-month statutory timescale for the production of local plans?

No – We recognise the proposal includes “comprehensive ‘best in class’ ways of achieving public involvement” at the plan making stage and agree that more can and should be done to involve communities in plan making. But this must not be used to justify the removal of other democratic input. People’s right to be heard in person by a planning inspector must be retained. It is not sufficient to propose that inspectors will have discretion about how citizens can be involved in the examination of local plans.

The right to be heard under Section 20 (6) of the 2004 Planning Act is the only clear civil right that exists in the planning process for the individual citizen. It includes the important phrase: “Any person who makes representations seeking to change a development plan document must (if he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination.” This allows an individual to appear in front of an inspector and exercise other opportunities to ask questions of witnesses. This opportunity for the public to interrogate the evidence is absent from the major infrastructure regime but crucial to any meaningful opportunity to participate. It is not sufficient to suggest the opportunity to appear at a public inquiry could be replaced with the opportunity for inspectors to have a telephone conversation with the citizen, or ask for further written comments, if they choose to do so.

The right to be heard in person is even more important because development plans will become the only meaningful opportunity for community engagement.

Question 13(a). Do you agree that Neighbourhood Plans should be retained in the reformed planning system?

Yes – we recognise the value of neighbourhood plans and as set out in our answer to question 7(b) believe they should be retained within a reformed, four tier planning system.

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

The Secretary of State’s foreword states “communities will be reconnected to a planning process that is supposed to serve them, with residents more engaged over what happens in their areas”. Far from meeting this goal, restricting Neighbourhood Plans to matters of design will disempower communities as it will reduce their ability to secure the nature, scale and form of development that meets their needs.

It is important that within a reformed system Neighbourhood Plans should retain their current purpose and functions to bring forward high quality development and shape the use of land, so it meets their social, economic and environmental needs of the community.

To achieve this Neighbourhood Plans should be able to:

- zone land as part of a sub area in any type of area zoned through the Local Plan;
- allocate 'community priority sites' where the development specifically addresses the housing needs of their community;
- include development management policies that are specific to their Neighbourhood area. These should include design codes, but be wider to include housing mix and tenure, requirements for open space, pedestrian and cycle access, standards that move the community towards a net zero carbon position; and
- All planning decision mechanisms should require that any development in the Neighbourhood Area meets the policies and zoning included in Neighbourhood Plans.

Question 14. Do you agree there should be a stronger emphasis on the build out of developments? And if so, what further measures would you support?

Yes – we agree there should be a stronger emphasis on the actual delivery of development and are disappointed that while the White Paper refers to Oliver Letwin's *Independent of Review of Build Out Rates*, there was not more detailed consideration of this important challenge. We also note that the government expects to respond shortly to the consultation on development corporations⁸.

The TCPA's research has demonstrated that the most effective way to deliver high quality, genuinely affordable homes in good quality environments at speed would be through modernised New Town Development Corporations (NTDCs). These bodies should combine the high place-making objectives of the Garden City movement with the effective delivery mechanisms of the New Towns Programme. Reforming NTDCs in this way would reflect the key learning of the outcomes of the original programme, particularly around governance and finance.

The TCPA also recognises the powerful opportunities for a modernised Development Corporation model to deliver the renewal of our existing towns and cities through the co-ordination of resources, delivery powers and through a strategic, long-term approach. Our work has also demonstrated the opportunity for Development Corporations to deal with large scale population change caused by the climate crisis.

In 2014 the TCPA published a detailed set of recommendations for reforming the New Towns legislation, based upon extensive research of the successes and failures of the post-war New Towns programme⁹. This recommended amendments to the existing processes and procedures, to ensure good placemaking, including a commitment to transfer assets to a long-term stewardship body to provide the resources to look after community assets in perpetuity, and changes to enhance public participation and commitments on climate change mitigation and adaptation. It also set out how processes of designation should be led by local authorities but enabled by government and underpinned by a robust evidence base at a national or sub-regional level. Consideration of locations should take a national strategic view, which looks beyond the South East.

Changes in 2018 to the New Towns Act 1981 creating a parallel route by enabling the creation of locally led New Town Development Corporations, enhance requirements for long-term stewardship

⁸ Paragraph 5.9 in web accessible version of the White Paper

⁹ See *New Towns Act 2015?* <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=a1abf968-2127-4e0c-a04d-fbed529fb230>

and empower local authorities to have a greater role in delivery. However, these changes are not a substitute for a strategically planned, locally led and nationally enabled programme of New Towns. Further changes to the Act, alongside a clear policy framework, and investment programme are necessary to achieve the full benefits and legacy of a 21st century New Towns programme, including delivery rates.

Urban Development Corporations (UDCs) share with NTDCs the common feature of having powers of planning, land assembly and investment. However, UDCs do not have plan-making powers, have a shorter life, cover a smaller geographical area, cannot develop housing themselves, and are more likely to be micro-managed by their sponsoring department and HM Treasury. UDCs have been used by successive governments for area renewal and regeneration in places such as the London Docklands and, more recently, in West Northamptonshire and at Ebbsfleet. In the past they have driven change but have also proved controversial in terms of public engagement and securing high-quality outcomes. For example, some UDCs in the 1980s appeared to make little effort to follow plans and policies laid down by the local authority, whereas many NTDCs made strenuous efforts to do so.

The Government's use of an Urban Development Corporation at Ebbsfleet demonstrates the need for clear duties on quality and inclusion. Neither the Order setting up Ebbsfleet Urban Development Corporation nor the policy brief from the then Department for Communities and Local Government contained reference to any clear standards on social housing, climate change or long-term stewardship of development values for the community.

Until recently Ebbsfleet UDC did not have the opportunity to own any land within the site, making it more than challenging to implement the full range of Garden City principles and the opportunities they present at the site. Any future use of UDCs for large-scale development, whether for new development or renewal of existing places, must address the core issues of Objects and Powers, Oversight and Governance outlined above.

The TCPA is committed to the need for a modernised New Towns Act. A modernised Act could consolidate the law for Development Corporations and outline their renewed commitment to delivering high quality, genuinely affordable and economically vibrant places in healthy communities, at speed. This should be backed by a strong policy support and investment as part of a strategic, national approach to considering housing growth and renewal.

Question 15. What do you think about the design of new development that has happened recently in your area?

The TCPA has consistently raised concerns about the quality of new development and our belief that too many new homes are undermining people's health, wellbeing and life chances. To address this issue, both for homes being granted planning permission and those being delivered via permitted development rights, we believe the planning system should be underpinned by strong, legally binding minimum standards on all issues which determine the decency of our homes. This includes minimum space, access to green areas, fire safety, climate change, walkable neighbourhoods and air pollution. These should be defined at the national level to ensure that all new homes support the health and wellbeing of their residents. Doing so would bring clarity to confusing systems and demonstrate how seriously the government takes these issues.

If the government is serious about engaging more people in decision making and improving the quality of development, they should also give local authorities the power to decide which permitted

development rights are applied to their local area. This decision should be informed by the needs of the local community.

Question 16. Sustainability is at the heart of our proposals. What is your priority for sustainability in your area?

Tackling the climate crisis is the top priority for tackling sustainability in all areas.

The planning system has a unique contribution to make in the effective delivery of the UK Government's carbon reduction target. Planning is fundamental to positively delivering new renewable energy systems, to promoting the carbon performance of what we build, of finding the right sustainable locations and of designing places to support healthy and zero carbon transport options.

It is vital any new planning system should have climate change as its first legal and policy priority. But the White Paper, creates real uncertainty about the role of the system in tackling climate change and fails to provide any detailed explanation of how carbon reductions will be secured through the new proposed framework. Where the White Paper is specific, for example, on the energy performance of buildings, it is deeply disappointing that there is no specific date by which zero carbon homes will be delivered. This could have previously been achieved in 2016.

In considering the objectives of a new planning system for England it is vital that government sets out clearly how carbon reduction fits with its other objectives around housing delivery and securing beauty. The new system must align the legal objectives of town planning with the 2008 Climate Act. As part of the new system the existing legal duty on development plans to address climate change should be expanded in scope and strengthened in effect. The duty must apply to both development planning and development management and include explicit reference to implementing the carbon reduction budgets required by the 2008 Climate Act. The duty should also apply to the development of any design codes and pattern books and to neighbourhood plans¹⁰.

Question 17. Do you agree with our proposals for improving the production and use of design guides and codes?

No – As stated in response to question five, considering the importance of local design guides in the new system, and to make sure that they carry sufficient weight and local communities are central to their development, the proposals should be revised. Local design guides must be developed for inclusion in the local plan, rather than it being seen as a 'twin track' approach.

We recognise that there are examples of local design codes being developed with existing communities and used effectively. They can be positive in terms of ensuring places are more walkable, have access to green space and new development fits with the existing design and their scope must be broad enough to make sure they deliver beautiful, healthy new homes and development. This should include them being able to set out standards for the quality of new homes, as well as requirements for the external environment. I am concerned however about the extent to which they really will be able to inform development within the proposed new planning system.

¹⁰ Far more detail on this is set out in our additional joint response developed with Centre for Sustainable Energy, *Why the Planning System needs to be at the heart of delivering the UK's Climate Change targets* - <https://www.cse.org.uk/downloads/reports-and-publications/policy/planning/planning-white-paper-consultation-october-2020.pdf>

The front of the White Paper shows Nansleden in Cornwall, which has successfully developed and used a local design code. A key factor in the success of the code, however, is the control that the Duchy of Cornwall has over what development and changes are allowed in the area. They have much more control than a local planning authority. Further thought needs to be given to how to make sure local design codes or pattern books carry enough weight in the system to make them meaningful. Especially as permitted development rights continue to operate.

Question 18. Do you agree that we should establish a new body to support design coding and building better places, and that each authority should have a chief officer for design and place-making?

Yes, in principle – we support the proposal that each authority should have a chief officer for design and place-making. But as the White Paper notes, this needs to be in the context of improving resourcing and supporting culture change in local authorities. It will be important that the chief officers are effective leaders and have enough agency to support place-making.

If the new chief officer role is to be able to make a difference the planning reforms must include the returning of powers to local authorities by giving them the power to decide which permitted development rights are applied to their local area. This decision should be informed by the needs of the local community.

In terms of establishing a body to support design coding and building better places we agree that options should be explored. We do not however believe it necessarily needs to be a ‘new’ body. Considering that the Commission for Architecture and the Built Environment was merged into Design Council in 2011, we hope careful consideration will be given to the role of the Design Council, and other existing bodies with relevant expertise, and how they might be able to provide support.

Question 19. Do you agree with our proposal to consider how design might be given greater emphasis in the strategic objectives for Homes England?

Yes – we agree that Homes England’s objectives should be strengthened to give greater weight to design quality, and that design quality and environmental standards should be more deeply embedded in all Homes England’s activities and programmes of work.

Question 20. Do you agree with our proposals for implementing a fast-track for beauty?

No – while we agree with the principle that the planning system should enable the delivery of high-quality development, we do not support the proposed widening of permitted development rights. Good design cannot be reduced solely to a pattern book approach, which allows developers to simply tick boxes to achieve consent. Rather, good design requires both detailed community participation and acute awareness that each site and development will be different.

We appreciate the valuable role design codes and pattern books can play in some locations. But a crucial part of being able to make sure developers adhere to these relates to control. Speaking about Nansleden, for example, a representative of the Duchy of Cornwall highlighted that their control over what is built and changed is critically important to achieving a well-designed, beautiful place. The representative noted that the Duchy has more control as the owner of the estate than a planning department does.

Codified requirements that are used to determine the acceptability of development also have major drawbacks. Where requirements are light touch, as is the case with the current Permitted

Development Rights regime, the outcomes are too often extremely poor. Where more detailed codes are proposed minimum standards can be improved but limited building types can lead to monolithic and potentially boring urban development. We do not support, therefore, the idea of using permitted development rights to deliver well designed places.

We do however support the element of the proposals that would require masterplans to be developed for sites designated as growth areas.

Question 22(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?

No – before a decision about whether a consolidated Infrastructure Levy should be taken forward much further detailed policy work and modelling is needed.

Consideration also needs to be given to how important but non-monetary elements of Section 106 Agreements could be captured within a reformed Levy. So, for example, how do we make sure that rural affordable homes are affordable in perpetuity or arrangements are made to support the long-term stewardship of new community assets?

We recognise there is potential merit in a nationally established levy for infrastructure, which could reduce the well documented transaction costs of Section 106 agreements. It is also the case that the TCPA has long advocated the capture and recycling of land values to more effectively deliver high-quality places secured over the long term through stewardship agreements. But a national levy needs to draw on the lessons of past attempts to capture a fair share of development values and to provide clarity on precisely how the overall yield of values would be increased.

There are four key initial concerns here:

- The mechanism of ‘right pricing’ land, where policy requirements are established upfront and then factored into land transactions, is a credible route to capturing values for public benefit. Changes in national policy and guidance on viability testing were made in 2019 to allow this mechanism to be more effectively deployed. A comprehensive economic assessment of the effectiveness of these changes is important in shaping the debate about future reform.
- In order to sustain the assertion that any new system would provide greater yields it is necessary to provide detailed modelling showing at what level the ‘value-based minimum threshold’ could be set and the impact of that threshold on development values, land prices, and developer profits. Given that some factors, such as build costs, are largely fixed, the delivery of increased public benefits rests on reducing developer profits or landowner returns.
- Development values are not a money tree. Landowners will not bring land to market if they think that they can wait for more positive policy conditions – this is the history of the three previous attempts at nationally organised betterment taxation. While capital gains tax is mentioned in the White Paper, land tax stamp duty is not – and this is important, because aspects of betterment values accruing to landowners are already subject to this taxation regime. These costs, plus the wider costs of delivering better design and the proposed new legal requirements for net gain for nature, have to be met by development values which are ultimately a finite resource.
- The proposals are silent on what would happen if landowners do not wish to sell, but we can infer that public authorities would need to compulsorily purchase the land. If that were to be the case, changes also need to be made to the compulsory purchase code, at least to clarify

the differing application of hope value between viability testing and compulsory purchase compensation.

One obvious problem with the current regime, noted in the White Paper but not dealt with, is the highly spatially regressive impact of Section 106 agreements. The current system yields most in high-demand areas and therefore disadvantages lower-demand places with real regeneration needs.

Again, further consideration must be given to this challenge before any reforms are taken forward.

The Final Report of the Raynsford Review discusses how elements of betterment values could be redistributed through both capital gains tax and land tax stamp duty; and it also advocates a more focused approach to capturing land values for large-scale development through Development Corporations. These measures remain a more practicable approach to the reform of Section 106 agreements and CIL¹¹.

Question 22(b). Should the Infrastructure Levy rates be set nationally at a single rate, set nationally at an area-specific rate, or set locally? [Nationally at a single rate / Nationally at an area-specific rate / Locally]

Locally – if there is to be a Levy thresholds and rates should be set locally. Setting a national threshold and rates will take no account of differences in housing markets, that can even vary within local authority areas.

Question 22(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?

More value – The TCPA has long advocated the capture and recycling of land values to more effectively deliver high-quality places. But, as set out in our response to question 22(a), much more detailed consideration needs to be given to how value is captured and distributed before any reforms are taken forward.

Question 23. Do you agree that the scope of the reformed Infrastructure Levy should capture changes of use through permitted development rights?

Yes – it is important that all homes, including those delivered via permitted development rights contribute towards to delivery of much needed infrastructure, including but not limited to affordable homes.

Question 24(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?

Yes – Section 106 agreements are currently a critically important route for delivering affordable housing and any new system must aim to secure at least the same amount of affordable housing and ideally more. We are concerned however that much more detailed modelling and policy development needs to be undertaken to make sure that this commitment is met.

¹¹ See recommendations 17 – 20 in *Planning 2020: Raynsford Review of Planning in England Final report* - <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=30864427-d8dc-4b0b-88ed-c6e0f08c0edd>

In continuing to develop this policy proposal it is important that the government recognises the need for affordable housing to be provided in mixed use developments. This is why prioritising on-site provision is crucial.

We are also clear that additional government funding for genuinely affordable, social housing is needed if homes are to be delivered to meet needs.

Question 25(a). If yes, should an affordable housing 'ring-fence' be developed?

Yes – an appropriate amount of Levy funding should be ring-fenced to ensure that affordable housing continues to be delivered on-site at current levels or higher.

Question 26. Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?

We are disappointed that the government has not undertaken its own impact assessment to understand the potential impacts of these proposals and published it alongside the consultation.

Local plans should be made more accessible and transparent and digital tools have a role to play in that. But those sections of society who are less willing and/or able to access information digitally should not be excluded from processes.

4. Responses to specific proposals not covered by questions

Proposal 15 sets out the government's intention to amend the National Planning Policy Framework to support a reformed planning system to play a role in mitigating and adapting to climate change. To inform thinking about how climate change needs to be properly embedded at the heart of the planning system we have submitted an additional response to this consultation, which we developed with the Centre for Sustainable Energy (CSE)¹².

In addition to policy change we believe the proposed new planning regime should confirm a clear and specific duty that local planning should address climate change by comprehensively binding together the Town and Country Planning Act and the Climate Change Act. This should build upon the existing legal duty in section 19 of the 2004 Planning Act. The duty should be contained as part of the wider statutory purpose of planning around sustainable development, should apply to both development planning and development management and should include explicit reference to implementing the carbon reduction budgets required by the 2008 Climate Act.

National planning policy must then translate this overall legal duty into clear policy priorities so that action on carbon reduction is the first amongst equals of material considerations in the planning process. National policy should also set out a carbon reductions delivery test to ensure that all local authorities are accountable for any failure to achieve carbon reductions in new development the same way they are accountable for a failure to deliver housing targets.

Amends are also needed to national planning guidance, and specific recommendations about this are made in our joint response with CSE.

¹² See <https://www.cse.org.uk/downloads/reports-and-publications/policy/planning/planning-white-paper-consultation-october-2020.pdf>

Proposal 23 states that the government will develop a comprehensive resources and skills strategy for the planning sector to support the implementation of a reformed system. We agree this is important and it must support planners to be visionary about the quality of new and regenerated places. We believe it should also seek to build planner's confidence.

We are concerned however that the proposal suggests the preparation and review of local plans and design codes and enforcement activities will be funded by development contributions. As set out in our response to question 22(a), development values are not a 'money tree' and there are already numerous demands on that funding in relation to infrastructure, affordable homes and soon, biodiversity net gain. As we also highlighted, the current system yields most in high-demand areas and therefore disadvantages lower-demand places. The proposals for an Infrastructure Levy would not tackle this issue. We are unclear, therefore, how local authority planning departments will be funded in lower-demand places.

5. Conclusion

The TCPA has consistently advocated the need for a reformed planning system but we are concerned that the proposals set out in the White Paper do not provide the right foundation for the efficient and democratic system the nation urgently requires. We have set out an alternative, holistic vision for a principled, practical and measured reform in *Common Ground*¹³, which we are submitting to government alongside this detailed response. We hope the government will see this as a constructive contribution to this important debate.

Annex

Common Ground: a shared vision for planning reform – available at:

<https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=d5f99199-aa48-47d9-8512-5c598d0bdf7>
but also submitted along with this response as a separate PDF.

¹³ Available at <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=d5f99199-aa48-47d9-8512-5c598d0bdf7>