

LOCAL PLAN SUB COMMITTEE - 23 SEPTEMBER 2020

PART I – NOT DELEGATED

6. PLANNING FOR THE FUTURE WHITE PAPER (AUGUST 2020) – PROPOSED CONSULTATION RESPONSE (DCES)

1 Summary

1.1 On 6 August 2020 the Government issued the Planning for the future White Paper which covers a package of proposals for reform of the planning system in England, covering plan-making, development management, development contributions, and other related policy proposals

1.2 A report to the Local Plan Sub Committee on 27 August 2020 provided a summary of the proposed changes.

2 Details

2.1 The questions from the consultation and the proposed responses are set out under the three pillars of the paper in boxes in this report. It is proposed that these responses are sent to the Government in response to the consultation.

2.2 Questions 1- 4 ask about how people get involved in planning, how they would like to find out more about it and what priorities for planning they have. It is recommended that no response is given to these questions.

2.3 Pillar One – Planning for development

2.4 Proposal 1: The role of land use plans should be simplified. We propose that Local Plans should identify three types of land – Growth areas suitable for substantial development, Renewal areas suitable for development, and areas that are Protected.

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

We have concerns about whether the proposals will result in a simplified process for Local Plans for the following reasons:

Growth Areas: it is proposed that outline permission is approved on adoption of a local plan. In order for this to be possible substantially more detail will be required at the early stages of plan making particularly around infrastructure delivery, design requirements and ensuring that the necessary legal requirements are in place. Given the complexity involved the proposals are likely to slow down the plan making process.

In addition, the replacement of the majority of planning applications with Permission in Principle or with Prior Approval applications could also greatly reduce the role of our elected members in the decision making process. A better solution would be to have a mandatory pre-application process in place which is managed by the Council. This would provide communities a better opportunity to shape development as it comes forward.

Renewal Areas: These would essentially cover the majority of the settlements in the District and it is here that the Government's proposals will fail to deliver its intentions. For Three Rivers the majority of sites that come forward in these areas are 'windfall sites'. The majority of these windfalls will require full planning applications but will lack detailed site brief or design codes. The only tools available under this new system will be generic nationally set Development Management policies.

Clarification is required for what the Government term as “infill of residential areas” or “gentle densification” as this is open to interpretation by developers, landowners and the local community.

Protected Areas: We welcome the ability to designate “protection” areas and the explicit recognition that these areas must be subject to more stringent development controls. We also welcome the recognition that conservation areas are likely to form a component of these protection areas. However, we would caution against the reliance of design patterns to determine proposals in these areas. By their very nature they will require a detailed and bespoke approach if we are to ensure development reflects the special character of an area.

It is not clear whether in Protected Areas no new development would be allowed. Under the current system it is possible to secure some development in some of the designations listed, even in the Green Belt.

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

Q6. Do you agree with our proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally? [Yes / No / Not sure. Please provide supporting statement.]

No. The principle of the production of more concise Local Plans is welcomed and there is no need to repeat national policies. However, local authorities should be able to include a limited suite of development management policies that reflect their own circumstances where these do not duplicate national policy.

Local development management policies can provide the detailed criteria against which an application can be assessed, offering certainty to developers as to what may or may not be acceptable. By the same token this also reduces the number of appeals and the resources needed to determine them.

This will be of particular relevance with the “protection areas”, and those parts of the renewal areas where there will be a reliance on windfall sites and no development briefs or design codes.

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

Q7 (a). Do you agree with our proposals to replace existing legal and policy tests for Local Plans with a consolidated test of “sustainable development”, which would include consideration of environmental impact? [Yes / No / Not sure. Please provide supporting statement.]

The aim of simplifying the tests that a local plan must pass at examination in public is welcomed, provided changes demonstrably speed up and reduce risk in plan making. Duty to Co-operate requirements have proved difficult to satisfy for a number of local planning authorities recently resulting in the failure or withdrawal of local plans. Removal of the Duty to Cooperate test which has largely failed to deliver required outcomes is welcomed however, there is still a need to ensure that cross boundary concerns are addressed and it is unclear how those would be dealt with under a new regime.

<p>However, defining what constitutes “sustainable development” is unlikely to be a simple task and arguably the role of Sustainability Appraisals may increase rather than being abolished as proposed.</p>
<p>7(b). How could strategic, cross-boundary issues be best planned for in the absence of a formal Duty to Cooperate?</p>
<p>We recognise the importance of working closely with neighbouring authorities and infrastructure providers to ensure that cross boundary issues can be addressed. This can continue without it being a statutory duty – it’s just good planning.</p>

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

<p>8(a). Do you agree that a standard method for establishing housing requirements (that takes into account constraints) should be introduced? [Yes / No / Not sure. Please provide supporting statement.]</p>
<p>The Council is deeply concerned with the standardised method for establishing housing requirement figures. We support the alternative option to leave the calculation of how much land to include in each category as a local decision.</p> <p>We do not agree with the methodology that expects areas with the worst affordability to release the most land. As a result this should be capped as per the current method. It is not the planning regime that is responsible for the issues of affordability in these areas, but the basic economic concept of supply and demand, with land that is heavily constrained in the first place impacting on supply. The White Paper says that the standard method would enable “the least affordable places where historic under-supply has been most chronic take a greater share of future development”. Three Rivers is one of the least affordable places in the country based on the affordability ratio which stands at 14.</p> <p>76% of the District is Green Belt and although the wording of the consultation document states that It is proposed that the standard method would be a means of distributing the national housebuilding target of 300,000 new homes annually, and one million homes by the end of the Parliament, having regard to (amongst other things): <i>the extent of land constraints in an area to ensure that the requirement figure takes into account the practical limitations that some areas might face, including the presence of designated areas of environmental and heritage value, the Green Belt and flood risk.</i></p> <p>At first glance this implies that local authority areas such as Three Rivers where the majority of land is in the Green Belt that the new standard method will take this into account and gives the impression that building in the Green Belt will no longer take place. However, on further reading, it is clear that there is no intention of changing the current Green Belt policies in the NPPF which require LPAs to review their Green Belt boundaries and where exceptional circumstances exist allow changes to the Green Belt to accommodate housing targets. This needs to be clarified.</p>
<p>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? [Yes / No / Not sure. Please provide supporting statement.]</p>
<p>No. We do not agree on affordability being the overriding factor in increasing housing targets due to the reasons set out in our response to 8(a) above.</p>

2.8 Proposal 5: Areas identified as Growth areas (suitable for substantial development) would automatically be granted outline planning permission for the principle of

development, while automatic approvals would also be available for pre-established development types in other areas suitable for building.

<p>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? [Yes / No / Not sure. Please provide supporting statement.]</p>
<p>No. Granting an automatic outline planning permission provides similar benefits to the current site allocations process. Where sites are allocated in local plans there is already a presumption that they will come forward for development, with land uses and the principle of development outlined. There is some evidential requirement at this stage, which can be not insignificant, but it is typically less than that associated with preparing an outline planning application. Under the proposals, site promoters will likely need outline planning application-equivalent detail to inform plan makers.</p> <p>We are concerned that the proposals will distance local people and other local stakeholders from the decision-making process. Whilst residents are encouraged to be involved in the plan making process it is unlikely, even given the proposed future use of digitalised consultation methods that residents will get involved unless proposals affect them directly.</p> <p>Trying to front load all of this in the Local Plan will dilute the involvement of communities which may make them feel more distanced from the Planning process.</p>
<p>9(b). Do you agree with our proposals above for the consent arrangements for Renewal and Protected areas? [Yes / No / Not sure. Please provide supporting statement.]</p>
<p>No.</p> <p>We welcome the confirmation that any decisions relating to proposals within the Renewal Areas should remain “Plan Led” and recognise the role that a new style Local Plan can have in shaping the nature of development in an area. However, further explanation is required as the White Paper also states that there will be a general presumption in favour of development established in legislation. We consider renewal areas to be the most problematic as there are no safeguards to ensure high quality development in the absence of local Development Management policies, design codes and design briefs on windfall sites.</p> <p>Prior approval. This appears to be referring to the enhanced system of prior approval intended to ease demolition and the creation of additional storeys as set out in part 20 of the GPDO. An LPA can only consider a defined set of issues, which may not be those which concern nearby residents.</p> <p>Protected areas. We welcome the ability to define those areas which should be protected. However, it is essential that applications should be determined in accordance with both the policies within the NPPF and a smaller set of locally distinct Development Management policies within the Local Plan.</p>
<p>9(c). Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime? [Yes / No / Not sure. Please provide supporting statement.] –</p>
<p>Not applicable in Three Rivers as the largest sites are too small for a new settlement of scale envisaged here.</p>

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

Q10. Do you agree with our proposals to make decision-making faster and more certain? [Yes / No / Not sure. Please provide supporting statement.]

As a general principle, making decision making faster and more certain is supported. This Council fully supports the digitisation of the planning system and would urge government support in properly funding and investing in the modernising of planning.

The delegation of detailed planning decisions to planning officers has the potential to undermine the democratic process and it should remain a local decision to set schemes of delegation.

Introducing measures to incentivise decisions within statutory timeframes, such as fee refunds or automatic permission, are unlikely to speed up the process. Delays to decisions are normally due to lack of quality or missing information but also through negotiations and discussions between the applicant and local authority.

An automatic rebate on planning application fees if decisions are allowed on appeal is not supported. If an appeal is allowed it does not mean the local authority decision was wrong as a matter of fact. The existing system allows applicants to apply for costs to cover the appeal process where they consider the local authority to have acted unreasonably.

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

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

Yes. We are very supportive of proposals for accessible and web-based Local Plans.

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

Q12. Do you agree with our proposals for a 30 month statutory timescale for the production of Local Plans? [Yes / No / Not sure. Please provide supporting statement.]

No. We have reservations about whether a 30 month Plan making window is feasible particularly given that Design Codes for all growth areas will need to be in place prior to adoption; these will have their own processes, including community engagement. In addition, given that Local Plans will provide outline planning consent this will significantly increase the amount of information that is needed at the Plan Making stage.

The Council supports a more streamlined and flexible examination process which may enable examination in-person, by video and the right to heard at the Inspector's discretion. The Council also supports the alternative option that some non-controversial examinations may be dealt with via written representations.

2.12 Proposal 9: Neighbourhood Plans should be retained as an important means of community input, and we will support communities to make better use of digital tools.

13(a). Do you agree that Neighbourhood Plans should be retained in the reformed planning system? [Yes / No / Not sure. Please provide supporting statement.]
Yes. However it is unclear they will contain given that it is proposed that development management policies will be set out in the NPPF. It cannot be that neighbourhood plans can set out detailed development management policies where LPAs can't. That would lead to a situation where a proposal covered by a neighbourhood plan could be assessed against local policies whilst proposals on a neighbouring area not covered by a neighbourhood plan wouldn't be.
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?
It is likely that specialist skills required to develop a neighbourhood plan are not available and that more pressure and resources will be required from the Local Authority to assist. Consideration should be given to increase funding to neighbourhood forums and parishes to enable them to secure specialist consultants and to LPAs to provide resources to assist them.

2.13 Proposal 10: A stronger emphasis on build out through planning.

Q14. Do you agree there should be a stronger emphasis on the build out of developments? And if so, what further measures would you support? [Yes / No / Not sure. Please provide supporting statement.]
Yes. We are of the opinion that the so called housing shortage is a result of developers not building out permissions granted and that developers and landowners should be penalised where development is not built out within a certain time limit.. We are also of the opinion that the housing delivery test should be based on planning permissions granted as LPAs have no control over developers build out rates.

3 Pillar Two – Planning for beautiful and sustainable places

Q15. What do you think about the design of new development that has happened recently in your area? [Not sure or indifferent / Beautiful and/or well-designed / Ugly and/ or poorly-designed / There hasn't been any / Other – please specify]
Generally well designed.
Q16. Sustainability is at the heart of our proposals. What is your priority for sustainability in your area? [Less reliance on cars / More green and open spaces / Energy efficiency of new buildings / More trees / Other – please specify] Only one box can be selected.
Other – all of the above.

3.1 Proposal 11: To make design expectations more visual and predictable, we will expect design guidance and codes to be prepared locally with community

involvement, and ensure that codes are more binding on decisions about development.

Q17. Do you agree with our proposals for improving the production and use of design guides and codes? [Yes / No / Not sure. Please provide supporting statement.]

Yes. It is an effective way to set out the expectations for high quality development. However, it should be recognised that design codes are technical documents that need to take account of the sites layout, physical and environmental constraints as well as issues such as viability and infrastructure requirements.

Whilst developers and promoters of sites are likely to have the resources to properly prepare design codes and masterplans, many LPAs do not have these resources. Government should recognise and address these resource issues.

- 3.2 Proposal 12: To support the transition to a planning system which is more visual and rooted in local preferences and character, we will set up a body to support the delivery of provably locally-popular design codes, and propose that each authority should have a chief officer for design and place-making.

Q18. Do you agree that we should establish a new body to support design coding and building better places, and that each authority should have a chief officer for design and place-making? [Yes / No / Not sure. Please provide supporting statement.]

Yes. A new national body to support the design coding and better places would be useful although this should not come at the expense of having experienced design staff in-house. A Chief Officer for Design and Placemaking or similarly titled senior role is supported although it must be recognised that there will be additional costs to the LPAs for this role which funding should be provided for.

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

Q19. Do you agree with our proposal to consider how design might be given greater emphasis in the strategic objectives for Homes England? [Yes / No / Not sure. Please provide supporting statement.]

Not sure

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

Q20. Do you agree with our proposals for implementing a fast-track for beauty? [Yes / No / Not sure. Please provide supporting statement.]

No. Good design covers issues such as strong and inclusive communities, making the best use of land, active and healthy lifestyles, delivering the right kind of homes, infrastructure and employment all contribute to design – it's not just about beauty.

3.5 There are no questions relating to Proposals 15, 16, 17 and 18.

4 Pillar Three – Planning for infrastructure and connected places

Q21. When new development happens in your area, what is your priority for what comes with it? [More affordable housing / More or better infrastructure (such as transport, schools, health provision) / Design of new buildings / More shops and/or employment space / Green space / Don't know / Other – please specify] Only one box can be selected.

Affordable Housing

4.1 Proposal 19: The Community Infrastructure Levy should be reformed to be charged as a fixed proportion of the development value above a threshold, with a mandatory nationally-set rate or rates and the current system of planning obligations abolished.

Q22 (a). Should the Government replace the Community Infrastructure Levy and Section 106 planning obligations with a new consolidated Infrastructure Levy, which is charged as a fixed proportion of development value above a set threshold? [Yes / No / Not sure. Please provide supporting statement.]

Not sure. If the levy is set at an insufficient level then we will be in the same position as we are now where decisions will have to be made as to whether monies should be spent on much needed affordable housing or infrastructure. There seems to be an assumption that the new infrastructure levy will deliver both.

It is proposed that the new infrastructure levy will be paid on completion rather than becoming due on permission and that it will be based on the value of development when occupied. This will result in uncertainty on the amount of monies to be received and when they will be received, which may hinder LPAs ability to deliver infrastructure..

Q22 (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]

Area specific rate/ locally.

The rates should be set at either nationally at an area specific rate or locally set. Land values differ greatly across the country, therefore it is extremely important that this is taken into consideration when setting rates. Failure to do this could result in builders being deterred in building if the cost was too high or potential over development if the rate was set too low. Also if the rate is set too low it would not provide the required funds for the cost of infrastructure within that area.

Q22 (c). Should the Infrastructure Levy aim to capture the same amount of value overall, or more value, to support greater investment in infrastructure, affordable housing and local communities? [Same amount overall / More value / Less value / Not sure. Please provide supporting statement.]

More Value as the infrastructure levy will have to cover the costs of affordable housing and infrastructure costs else LPAs will still find themselves unable to deliver the affordable housing and infrastructure required. The proposal is that proportion of the income from the new infrastructure levy should be earmarked to cover LPAs overall planning costs, including the preparation and review of Local Plans and design codes and enforcement activities. The infrastructure levy will need to capture substantially more value to be able to do this.

Q22 (d). Should we allow local authorities to borrow against the Infrastructure Levy, to support infrastructure delivery in their area? [Yes / No / Not sure. Please provide supporting statement.]

Yes. We support the ability to borrow against Infrastructure Levy but there will be a need to mitigate the risk with both timing and value of final payment. These risks may limit the Council's ability to borrow against the Infrastructure Levy to forward fund infrastructure.

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

Q23. Do you agree that the scope of the reformed Infrastructure Levy should capture changes of use through permitted development rights? [Yes / No / Not sure. Please provide supporting statement.]

Yes as LPAs will be able to capture more developer contributions to support the provision of affordable homes and infrastructure.

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

Q 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 / No / Not sure. Please provide supporting statement.]

No – more affordable housing needs to be secured than previously delivered under the current system where developers continue to deliver less than policy requirements. Affordable housing is desperately needed in Three Rivers.

Q24 (b). Should affordable housing be secured as in-kind payment towards the Infrastructure Levy, or as a 'right to purchase' at discounted rates for local authorities? [Yes / No / Not sure. Please provide supporting statement.]

Not sure. Delivery of affordable housing should be on-site as this will have the most positive impact on provision. Only in exceptional circumstances should in-kind payments be considered at the discretion of the LPA.

Q24(c). If an in-kind delivery approach is taken, should we mitigate against local authority overpayment risk? [Yes / No / Not sure. Please provide supporting statement.]

Not sure. It is understood that under the in-kind delivery proposal, homes will be sold to local authorities or registered providers at a discount and the difference in value between the price sold to the provider and the market value of the unit would be offset against the Infrastructure Levy liability.

The Council supports the proposal that if the value of in-kind units is greater than the final levy liability, then the developer has no right to reclaim overpayments.

We are concerned with the proposal that if the value of in-kind is not sufficient to cover the levy liability then a proportion of affordable housing units could be allowed to revert back to market units and sold by the developer. This does not provide certainty of delivery of affordable housing.

Q24 (d). If an in-kind delivery approach is taken, are there additional steps that would need to be taken to support affordable housing quality? [Yes / No / Not sure. Please provide supporting statement.]

As the Government is proposing that local policies cannot be set in local plans then NPPF development management policies will need to set design principles and or the Government should produce affordable housing standards.

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

Q25. Should local authorities have fewer restrictions over how they spend the Infrastructure Levy? [Yes / No / Not sure. Please provide supporting statement.]

Yes. Flexibility to spend the infrastructure levy on other Council services is welcomed however this may result in less money being available to pay for the much needed infrastructure and affordable housing in the District. It is therefore essential that the infrastructure levy rate is set at a much higher rate than currently.

Q25 (a). If yes, should an affordable housing 'ring-fence' be developed? [Yes / No / Not sure. Please provide supporting statement.]

Yes. Infrastructure levy monies for affordable housing should be ring fenced to ensure delivery of affordable housing in the District.

4.5 There were no questions for Proposals 23 and 24.

4.6 Equalities

Q26: In light of the proposals set out in this consultation, are there any direct or indirect impacts in terms of eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations on people who share characteristics protected under the Public Sector Equality Duty?

If so, please specify the proposal and explain the impact. If there is an impact – are there any actions which the department could take to mitigate that impact?

None.

5 Policy/Budget Reference and Implications

5.1 The recommendations in this report are within the Council's agreed policy and budgets.

6 Financial, Legal, Equal Opportunities, Staffing, Environmental, Community Safety, Public Health, Customer Services Centre, Communications & Website, Risk Management and Health & Safety Implications

6.1 None specific.

7 Risk and Health & Safety Implications

7.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.

7.2 The subject of this report is covered by the Economic and Sustainable Development and Development management Service Plans. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this/these plan(s).

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(tolerate, treat, terminate, transfer)</i>	Risk Rating <i>(combination of likelihood and impact)</i>
The Council does not respond to the consultation	Government do not take account of the Council's views	Respond to the consultation	Tolerate	2

7.3 The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

Very Likely ----- Likelihood ----- ▼ Remote	Low	High	Very High	Very High
	4	8	12	16
	Low	Medium	High	Very High
	3	6	9	12
	Low	Low	Medium	High
	2	4	6	8
	Low	Low	Low	Low
	1	2	3	4
	Impact			
	Low	-----▶		Unacceptable

Impact Score

4 (Catastrophic)

Likelihood Score

4 (Very Likely (≥80%))

3 (Critical)	3 (Likely (21-79%))
2 (Significant)	2 (Unlikely (6-20%))
1 (Marginal)	1 (Remote (≤5%))

7.4 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of the management of operational risks is reviewed by the Audit Committee annually.

8 Recommendation

8.1 That the Local Plan Sub Committee:

- note the report and proposed responses to the consultation.
- Propose any suggested changes to the proposed responses
- Recommend to the Policy & Resources Committee the proposed responses to the consultation

Report prepared by: Claire May, Head of Planning Policy & Projects

Background Papers

Local Plan Sub Committee Report 27 August 2020

<https://www.threerivers.gov.uk/meeting/local-plan-sub-committee-27-august-2020-7pm>

Planning for the future (Aug 2020) (MHCLG)

<https://www.gov.uk/government/consultations/planning-for-the-future>

APPENDICES

None