



REPORT TO: Planning Portfolio Holder
LEAD OFFICER: Director, Planning and New Communities

10 March 2015

Response to building more homes on brownfield land Government consultation

Purpose

1. To agree the response to the Government's consultation on Building more homes on brownfield land.
2. This not a key decision as it is responding to a consultation. It was first published in the March 2015 Forward Plan.

Recommendations

3. It is recommended that Portfolio Holder agrees the response to questions 1 to 12 of the Government's consultation on Building more homes on brownfield land provided in paragraphs 7 to 35 in the report.

Reasons for Recommendations

4. Measures to deliver development on suitable brownfield land are supported, but the proposals have significant resource implications, and could undermine the ability of the Local Planning Authority to protect important resources such as village employment land. Given the nature of brownfield sites in South Cambridgeshire, with a small number of very large brownfield sites forming the basis of allocations for new settlements, the implications and timing of the proposals could be significant.

Background

5. The Government announced in June 2014 that it expected to see local development orders (LDO) in place for homes on more than 90% of brownfield land suitable for new housing by 2020. The Government wants to see local planning authorities taking a proactive approach to realising the potential of brownfield land to meet housing needs. LDOs would demonstrate local authorities commitment to deliver growth.
6. The Government is now consulting on how this should be applied. This includes the criteria which would be used to identify suitable sites, information that would need to be collected and made available, and measures which would be applied to encourage progress, such as imposing special measures, or policy measures, if targets are not met.

Considerations

7. The Government is proposing the following definition for land suitable for housing that would be required to be identified by Local Planning Authorities:
 - Brownfield Land (as defined by the NPPF Annex 2):

Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes:

- land that is or has been occupied by agricultural or forestry buildings;*
 - land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures;*
 - land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and*
 - land that was previously-developed, but where the remains of the permanent structure have blended into the landscape in the process of time.*
- Deliverable (must be available for development now or in the near future. Could include under utilised land where local authority has evidence that the owner would be willing to make the land or buildings available for new housing, provided planning permission can be obtained)
 - Free of Constraint (exclude any land which is subject to severe physical, environmental or policy constraints, unless the constraints can realistically be mitigated while retaining the viability of redevelopment)
 - Capable of Development (in a condition and location that would make it a genuine option for developers)
 - Capable of supporting five or more dwellings

Question 1: Do you agree with our proposed definition of brownfield land suitable for new housing and the criteria that are applied to define land suitable for new housing?

PROPOSED RESPONSE:

8. *Collecting data on sites with a threshold as low as five dwelling will be onerous on Local Authorities. Guidance in the National Planning Practice Guidance advises that 'Where appropriate, plan makers may wish to consider alternative site size thresholds'. This flexibility would be removed.*
9. *In South Cambridgeshire there are few vacant brownfield sites within settlements. The district has delivered a steady stream of windfall development from previously developed land. Historically the majority of housing on previously developed land has come from intensification of existing uses (such as gardens), which was difficult to identify in advance of site specific proposals, or loss of land from other uses, particularly employment. The Council has strived for many years to protect such sites, to ensure settlements retain a mix of uses. The proposals would therefore push Local Planning Authorities to designate sites for housing even if it was not the most appropriate use, the most appropriate site for development to benefit the wider area.*
10. *The definition assumes that all sites of the necessary scale are suitable for housing. This would appear to further undermine the ability of local authorities to protect land in other uses, particularly employment land. The definition should be made clear that only sites suitable in policy terms, reflecting policies in a local plan, should be required to be identified.*
11. *It is not clear what these would mean for major developments that incorporate previously developed land, such as the new town of Northstowe, or other new settlements proposed in the South Cambridgeshire Local Plan.*

12. *Although the consultation describes how parties could challenge the Councils view of whether a site meets the definition (para 18 of the consultation document), there is no detail about how this would operate if there was disagreement. The definition describes 'severe' constraints as a reason to exclude sites. It is not clear who would determine this if it was disputed.*

Sharing Site Data

13. Local Authorities prepare an objective assessment of housing land availability as part of the local plan evidence base. It is proposed that certain data would be required to be updated and published at least once a year on Council websites in a standardised form. This will allow a broad range of individuals and groups to assess and, if necessary, challenge the inclusion or exclusion of particular sites as brownfield land suitable for housing. It would also allow data to be shared between authorities.

Question 2: Do you agree that local planning authorities should be transparent and publish the small subset of data at source, and update it at least once a year, to a common standard and specification?

Question 3: Do you have views on how this common standard and specification should be developed?

Question 4: Do you agree that local planning authorities should review their baseline and progress regularly, at least annually, to ensure that information about permissions on suitable brownfield land is current, reflecting changes in the availability of suitable housing sites?

PROPOSED RESPONSE:

14. *Publishing data on brownfield land is not a new idea. The National Land Use Database has been running since 2004, collecting data on previously developed land. Councils also maintain Strategic Housing Land Availability Assessments. Annual monitoring reports also highlight the availability of planning permissions annually.*
15. *Having a standard specification may be helpful to developers, and provide an opportunity to highlight development opportunities in a consistent manner across the country. However, the NLUD classification proved complex to use in practice, so it will need to be carefully constructed. There will also be resource implications for local authorities.*

Measures to encourage progress

Designations

16. Under section 62A of the Town and Country Planning Act 1990, local planning authorities can be designated as under-performing where the speed or quality of their decisions has fallen below a prescribed threshold.
17. The Government proposes to extend this measure so that authorities could also be designated as under-performing where they do not meet the objective for bringing forward sufficient coverage of Local Development Orders on brownfield land suitable for new housing, or where authorities have failed to provide sufficient evidence that this objective is being met. Where an authority is designated, applicants would then have a choice of applying directly to the Secretary of State for planning permission. Only applications relating to brownfield land for sites of 5 or more dwellings would be

capable of being submitted to the Secretary of State where an authority is designated.

18. Authorities would be assessed on the extent to which brownfield land suitable for housing identified the previous year was covered by local development orders. At 2020 authorities would be liable for designation where they had not put local development orders in place on 90% of the brownfield land they had identified as suitable for housing in 2019 (and which did not already benefit from planning permission at that date).

Question 5: Do you think that the designation of under-performing planning authorities in the way suggested would provide an effective incentive to bringing forward planning permissions on brownfield land?

Question 6: Do you agree that:

- a) Authorities should be designated from 2020 if they have not met the 90% objective?
b) Performance against the 90% objective should be calculated on the extent to which the brownfield land suitable for housing identified a year earlier is covered by local development orders?

PROPOSED RESPONSE:

19. *If a site was available, deliverable and consistent with policy, the likelihood is it would be allocated in a local plan. This would highlight support of the Local Planning Authority, and its availability for development. In addition, local plans provide policy guidance regarding the suitability of development. This highlights where windfall schemes are likely to be supported.*
20. *An LDO grants permission for the type of development specified by the Order. It removes the need for a planning application to be made by the developer. In doing so it is a way of attracting investors and assisting the delivery of development.*
21. *In order to grant consent for development there are many issues that need to be understood and addressed, including transport, flood risk, heritage, ecology, design, viability, affordable housing, and the outcome of initial local consultations. LDOs for large sites are complex documents, and could take a number of months to prepare. Much of the work that would be undertaken by and paid for by developers seeking planning permission would need to be undertaken by the Local Authority. The developers will be able to count this expenditure as a development expense and recoup it from the profits of the development. This would not be possible for the LPA unless it were to be in relation to a site in its ownership which will be a very small percentage of all brownfield sites requiring LDOs.*
22. *In the case of South Cambridgeshire, the Council is proposing 3 new settlements focused on large areas of previously developed land. Two of these are proposals in a submitted Local Plan currently at Examination (Waterbeach New Town and Bourn Airfield New Village). The third new settlement is Northstowe where planning permission has been granted for phase 1, and an application is being considered for phase 2. These are very considerable developments totalling around 23,000 dwellings in total and planning applications for this type of planning application have to be accompanied by an extensive level of supporting documentation. The Government's proposal would place a very significant burden on the Local Authority to place LDO's on the brownfield elements of these sites by 2020. The Local Plan envisages preparing Area Action Plans for these developments, which include significant greenfield as well as brownfield elements. The Council is*

working constructively with the promoters of the new settlements, which are anticipated to come forward after 2020, in a timely way to ensure proper planning of these developments, and putting in place the key infrastructure to serve them, supported by the Greater Cambridge City Deal.

23. *To impose a requirement for the Local Planning Authority to put in place LDOs for the brownfield elements of large sites is not a reasonable, necessary or effective measure to deliver the sites. A blanket requirement for LDO's regardless of local circumstances is not necessary or appropriate.*
24. *More generally, as well as simply granting consent, an LDO can be specific regarding the uses, and the criteria and conditions that the development must meet. There is still a development management process to be undertaken, so developers can demonstrate conformity with the LDO. If it is not in conformity, a planning application would be required. In which case all the work and expenditure on the LDO by the LPA would have been wasted.*
25. *Clearly planning applications come with a fee commensurate with the scale and type of development. The costs of preparing LDOs would fall on the Local Authority. The Government has made available a £5 million fund to support up to 100 local development orders across the country. However, given the large number of sites of 5 dwellings or more, and with their scale ranging up to sites of up to 10,000 new homes this fund will be inadequate. It also does not reflect the circumstances where several new settlements involving brownfield land are planned. One option that could be considered is to allow an LPA to recoup all of the costs involved in LDO preparation and adoption once development is permitted or takes place in accordance with that LDO.*
26. *LDOs have generally been applied where encouragement has been needed to bring a site forward, or assist in overcoming constraints. It is acknowledged that they can have an important role in this process although take up across the Country has been very limited. The practical benefits and reasons for this low take up must be understood before their preparation is rolled out as a mandatory requirement for all LPAs. In areas of string demand there is little to be gained but significant added work for Local Authorities. Even with an LDO there is no guarantee a site will be developed.*
27. *However, the change to impose them on every suitable site would mean they are applied to sites where this assistance is not needed. It could actually delay development if a developer chose to wait for the Local Authority to prepare an LDO rather than applying for planning permission. It will often be the case that the LDO may differ in important respects such as quantum of development from that which a private developer would actually want to implement. Planning applications are often subject to amendment or resubmission to reflect changing market conditions. It would be very onerous to expect LDOs to be continually updated by LPAs in a similar way.*
28. *There is no Impact Report published with this consultation, therefore it is unclear whether the Government have considered the cost implications for Local Authorities that could result from these requirements at a time of tightening Council budgets.*

Earlier targets

29. The consultation proposes that Local Planning Authorities should work towards an objective of putting local development orders in place on 50% of their brownfield land

suitable for housing by 2017 (where the land does not already benefit from planning permission). Where local planning authorities have not made sufficient progress against the intermediate objective at 2017, they would be designated, meaning that they would be invited to prepare an action plan and offered support to improve, and would be considered for de-designation after 12 months provided their performance then exceeds the 50% objective under which they had been designated.

30. Alternatives include publishing a list of Local Authorities not meeting the objective, but a robust approach is needed to encourage real progress where more needs to be done. After 2020 designations would be reviewed annually each Spring, using consistent criteria. Applications to the Secretary of State would normally involve a public hearing.

Question 7: Do you agree that:

- a) Authorities should be assessed against an intermediate objective in 2017?**
- b) Having local development orders in place on 50% of brownfield land identified as suitable for housing (and which does not already benefit from planning permission) in the preceding year is an appropriate intermediate objective?**

Question 8: Do you agree that authorities should be designated from 2017 if they have failed to make sufficient progress against the intermediate objective?

Question 9: Do you agree:

- a) With our proposed approach to identifying and confirming designations, including the consideration of whether exceptional circumstances apply?**
- b) With our suggested approach to de-designating authorities from 2020?**
- c) That the provisions for handling applications made to the Secretary of State should be the same as where an authority is designated under the existing performance measures?**

PROPOSED RESPONSE:

31. *Implementation of this approach could require numerous LDO to be in place within two years, which could place a significant burden on Local Authorities. In the case of a District like South Cambridgeshire with the majority of brownfield land focused on a few large sites, some large LDOs would be needed in order to cover 50% of brownfield land. Given the local plan process it would be extremely onerous to have LDOs in place by 2017, notwithstanding the comments regarding the suitability of this approach made to previous questions.*

Policy-based incentive

32. A second option would be to amend to NPPF. Local planning authorities that had failed to make sufficient progress against the brownfield objective would be unable to claim the existence of an up-to-date five year housing land supply when considering applications for brownfield development, and therefore the presumption in favour of sustainable development. This measure would take effect fully from 2020, and would apply to any local planning authority that had not met the 90% objective by that date. Intermediate objectives are proposed, starting with 50% in 2017, rising each year to 90% in 2020. The government also proposes automatic designation if data was not published annually as required.

Question 10: Do you:

- a) Think the policy-based approach would provide an effective incentive for authorities to put local development orders in place on suitable brownfield land?**

b) Agree with the proposed thresholds and dates at which this measure would take effect?

Question 11: Do you agree that the measures proposed for failing to publish information on progress are proportionate and effective? If not, what alternative would you propose and why?

PROPOSED RESPONSE:

33. *Implications of this policy approach would also indicate a reduction in the controls a Local Planning Authority would have to control land use. In effect this would mean a Local Planning Authority with a five year land supply would be treated as if it does not have one. Therefore, whilst the Local Authority would not be designated, if it could not show it had met the target for that year, the 5 year land supply criteria would apply, including housing policies being out of date. It appears it would apply specifically to brownfield sites and not greenfield. This should be made more explicit. There is a risk that it would lead to planning by appeal.*

Question 12: Do you have any other suggestions for measures that could help to deliver local development orders on brownfield land suitable for new housing?

34. *To address the resource implications, an alternative would be to allow developers to prepare LDO in conjunction with or for agreement by the LPA – and to allow Councils to recoup their costs from developers. This will target this measure to the most developable sites, and ensure LDO that are in a form that will be deliverable without amendment.*
35. *More appropriate tests and measures need to be considered which reflect the circumstances of individual districts, and the variety of sites which involve brownfield land. The impact of the proposals, including on districts like South Cambridgeshire and its specific circumstances described earlier, need to be considered*

Options

36. Alternative approaches would be not to respond, or to respond differently.

Implications

37. There are no significant implications as a result of responding to the consultation. However, the proposals outlined in the consultation could have financial implications if they were implemented.

Consultation responses (including from the Youth Council)

38. None.

Effect on Strategic Aims

Aim 3 - We will make sure that South Cambridgeshire continues to offer an outstanding quality of life for our residents.

39. The changes proposed in the consultation could help bring forward brownfield sites which could improve the environment and help meet housing needs. However, they could place a significant burden on the Council with little added benefit to housing delivery.

Background Papers

Documents related to the Government consultation can be found here:

<https://www.gov.uk/government/consultations/building-more-homes-on-brownfield-land>

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