

**ENVIRONMENT, PLANNING & TRANSPORT CABINET PANEL
FRIDAY, 11 MAY 2018 AT 10.00AM**

**GOVERNMENT CONSULTATIONS ON CHANGES TO THE NATIONAL
PLANNING POLICY FRAMEWORK AND SUPPORTING DEVELOPMENT
THROUGH DEVELOPER CONTRIBUTIONS**

Report of the Chief Executive

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1. Purpose of report

1.1 To inform Panel of the contents of, and the County Council's response to, consultations by Government in relation to revisions to the National Planning Policy Framework (NNPPF) and proposals to support development through developer contributions and to seek Panel's views on the potential implications for Hertfordshire and the County Council.

2. Summary

2.1 The Government's housing White Paper *Fixing our broken housing market* set out a comprehensive strategy to tackle all aspects of the housing market, planning for the right homes in the right places, building homes faster, diversifying the market and so on. The Government has recently consulted on further proposals to implement its housing strategy comprising:

- a draft new National Planning Policy Framework (the Framework) and draft updates to national planning guidance; and
- proposals for reforming developer contributions.

2.2 The consultation runs until 10 May 2018. Copies of the County Council's responses by the Chief Executive in consultation with the Executive Member for Environment, Planning and Transport will be available at Panel. At the time of writing, the broad approach to drafting these responses is summarised in paragraphs 5.23, 5.24 and 6.11. The potential implications of the proposals for Hertfordshire and the County Council are rehearsed in sections 7 and 8.

3. Recommendation

- 3.1 That the Panel notes the content of the consultations and the County Council's approach to responding to these and comments on the potential implications for Hertfordshire and the County Council.

4. Background

- 4.1 The Government's housing White Paper *Fixing our broken housing market* set out a comprehensive strategy to tackle all aspects of the housing market - planning for the right homes in the right places, building homes faster, diversifying the market and so on. Further detail on a number of these reforms was set out in *Planning for the right homes in the right places* in September 2017. The Community Infrastructure Levy (CIL) Review, published February 2017, also assessed the current s106 and CIL mechanisms and offered options for improvements to the developer contributions system.
- 4.2 Budget 2017 included additional proposals to change planning policy and legislation to bring forward more land in the right places, invest in infrastructure (including investment from the Housing Infrastructure Fund) and a more active Homes England to diversify the market, commitment to capture increases in land value and reinvest that in local infrastructure, essential services and further housing.
- 4.3 The Government is consulting on further proposals to implement its housing strategy comprising:
- a draft new National Planning Policy Framework (the Framework) and draft updates to national planning guidance; and
 - proposals for reforming developer contributions.

5. National Planning Policy Framework (and accompanying Planning Practice Guidance)

The Proposed Changes

- 5.1 The proposed changes to the NPPF having greatest significance are as follows.

Objectively Assessed Needs/standard methodology for assessing housing need

- 5.2 Amendments are proposed to strengthen the Government's commitment that '*objectively assessed housing needs*' will be met '*unless there are strong reasons not to*' and '*including any unmet needs from neighbouring areas*'.

The quantum and distribution of development needing to be accommodated would be established through a new requirement to produce statements of common ground between local authorities.

- 5.3 A standard methodology for assessing housing need is set nationally to determine the minimum number of homes needed in strategic plans *'unless there are exceptional circumstances that justify an alternative approach which also reflects current and future demographic trends and market signals'*.

Statements of Common Ground

- 5.4 In order to demonstrate effective and on-going joint working, strategic plan-making authorities should prepare and maintain one or more statements of common ground, documenting the cross boundary matters being addressed and progress in cooperating to address these. Statements document where effective co-operation is and is not happening, and is a way of demonstrating at examination that plans are deliverable over the plan period, and based on effective joint working across local authority boundaries. Amongst other matters they set out the key strategic matters being addressed (including the local housing need for the area); Governance arrangements for the cooperation process, including how the statement will be maintained and kept up to date; If applicable, the housing requirements in any adopted and (if known) emerging development plan documents within the area covered by the statement; Distribution of housing need in the area as agreed through the plan-making process and/or the process for agreeing the distribution of housing need (including unmet need) across the area; a record of where agreements have (or have not) been reached on key strategic matters.

Policies for restricting development

- 5.5 Policies providing a specific reason for restricting development, such as Green Belt and National Parks, are set out as a defined list rather than as examples, as in the present framework. The new list includes ancient woodland and aged or veteran trees as well as Green Belt, local green spaces and Areas of Outstanding Natural Beauty.

Presumption in favour of sustainable development

- 5.6 The presumption would be triggered where a council cannot demonstrate a five-year housing supply *'or where the housing delivery test indicates that delivery of housing has been substantially below the housing requirement over the previous three years'*.

Local Plan soundness

- 5.7 Local plans will be considered sound if, as a minimum, they meet as much as possible of an area's objectively assessed needs, particularly for housing. To meet the test, the local plan strategy will need to be *'informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving*

sustainable development'. Plans will need to show that they propose *'an appropriate strategy'*, compared with the current requirement for them to constitute *'the most appropriate strategy'* for the area. Plan reviews will be required every five years. The previous expectation that each local authority will be covered by a single local plan is to be dropped. Councils should consider reallocating land where there is no reasonable prospect of an application coming forward for the allocated use and set out how alternative uses should be considered ahead of a plan review.

A housing delivery test

- 5.8 Sanctions will be imposed on councils failing to meet housebuilding targets in their local plans. From 2020, the presumption in favour of sustainable development will apply where delivery is below 75 per cent of the authority's housing requirement. Councils may consider imposing planning conditions requiring development to be brought forward within two years, unless this could hinder viability or deliverability. Local planning authorities are encouraged to consider why major sites have not been built out when considering subsequent planning applications.

Green Belt

- 5.9 Planning authorities must fully examine *'all other reasonable options'* for meeting their identified development needs before releasing Green Belt. To justify green belt boundary changes in their strategies, strategic plan-making authorities will need to show that they have made *'as much use as possible'* of suitable brownfield sites and underutilised land and have *'optimised'* the density of development, *'including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport'*. Proposals for Green Belt releases would also need to be *'informed by discussions with neighbouring authorities'* about whether they could accommodate some of the identified need for development. Councils are also advised to set out ways in which the impact of removing land from the green belt can be offset through compensatory improvements to the environmental quality and accessibility of remaining green belt land.

Housing requirements for designated neighbourhood areas

- 5.10 Strategic plans should set out a housing requirement figure for designated neighbourhood areas and this should not need retesting at neighbourhood plan examinations.
- 5.11 Where a neighbourhood plan contains policies and allocations to meet its identified housing requirement, *'the adverse impact of allowing development that conflicts with it is likely to significantly and demonstrably outweigh the benefits'* in cases where the local planning authority has at least a three-year supply of deliverable housing sites *'and its housing delivery is at least 45 per cent of that required over the previous three years'*.

Ensuring the vitality of town centres

- 5.12 The sequential approach to town centre uses is amended to make clear that out-of-centre sites should be considered only if suitable town centre or edge-of-centre sites are unavailable or not expected to become available within a reasonable period – i.e. town or edge sites do not have to be available immediately. Such sites do not have to be available immediately, in order to avoid prejudicing town centre or edge of centre sites that are in the pipeline. It removes the expectation that office developments over a certain floorspace threshold outside town centres are subject to an impact assessment.

Well-designed places

- 5.13 Enhancement of expectations in relation to improving the design of development - plans must set out a clear design vision and expectations, supported by visual tools such as design guides and codes, the use of widely accepted assessment frameworks and the importance of pre-application discussions.

Making effective use of land

- 5.14 Plans must have a clear strategy for using land, make more intensive use of existing land and buildings, avoid building homes at low densities in areas of high demand and pursue higher density housing in accessible locations, take a flexible approach to policies or guidance that might inhibit making effective use of a site. Specific reference is made to making more effective use of empty space above shops, reallocating land where there is no reasonable prospect of an application coming forward, making it easier to convert retail and employment land to housing, expecting minimum density standards to be used in town and city centres and around transport hubs.
- 5.15 A future consultation is promised to seek views on a possible permitted development right for upwards extensions to create new homes.

Testing viability at plan-making stage

- 5.16 Where policy requirements have been tested for viability at the plan-making stage, such issues should not usually need to be visited again at the planning application stage. The proposed new policy expects all viability assessments to reflect a recommended approach to be set in revised national planning guidance and says all viability assessments should be made publicly available. Plans can set out when and how review mechanisms may be used to amend developer contributions to help account for significant changes in costs and values, and how any significant increase in overall value should be apportioned between the local authority and the developer.

Small sites

- 5.17 Government has said that it remains ‘*open to views*’ over its proposals to require councils to ensure that one-fifth of their housing supply pipeline involved small sites of under half a hectare.

Meeting the challenge of climate change, flooding and coastal change

- 5.18 Changes which clarify that plans should have regard to the cumulative impacts of flood risk rather than individual development sites, clarification on the exception tests that may need to be applied when considering development in locations at risk of flooding, reference to the risk of overheating from rising temperatures and that policies should support measures to ensure resilience of communities and infrastructure to climate change.

Promoting sustainable transport

- 5.19 Revisions which make it clear the variety of ways in which transport should be considered as part of the planning process, so that transport issues are recognised and addressed as fully as possible.
- 5.20 Authorities are expected to identify additional development opportunities arising from strategic infrastructure investment.
- 5.21 Changes are made to amend the assessment of transport impact of proposals to refer to highway safety as well as capacity and congestion.

New settlements/large scale development

- 5.22 The draft NPPF reconfirms the potentially significant role that large scale development, such as new settlements or large scale extensions, can make to significantly increasing housing supply. The NPPF adds to this by highlighting the opportunities for such development presented by existing or planned infrastructure investment.

The County Council’s response

- 5.23 The County Council’s response to the consultation is broadly supportive of the changes to the NPPF. Some key themes of the response include welcoming:
- strengthening of a sub-regional approach to planning.
 - requirements to produce Statements of Common Ground between local authorities setting out how they are to work together on key cross-boundary strategic issues.
 - further strengthening of the importance of infrastructure provision, the need to twin-track growth and infrastructure provision and front-load process so there is much more clarity on infrastructure requirements at Examination stage and to place the emphasis on demonstrating viability of development at Examination stage.

- recognition of the importance of transport issues in the planning process and further promotion of sustainable travel.
- recognition of the role that planning can play in promoting social interaction and healthy lifestyles.
- the expectation that authorities should be expected to identify additional development opportunities arising from strategic infrastructure investment (though only in appropriate circumstances).
- proposals relating to natural and historic environment.

5.24 There are a range of areas where the County Council will be making detailed comments on specific wording. These relate largely to seeking to improve or add clarity.

6. Developer Contributions

The Proposals

6.1 The proposed changes to the developer contributions system having greatest significance are as follows.

Reducing complexity and increasing certainty

6.2 For the development of a CIL, the proposals remove the two defined stages of public consultation and replace them with a requirement for an engagement '*statement*'. There are also proposals to align infrastructure evidence from the local plan with CIL.

6.3 Amendments address the long-standing ambition of most authorities, to ensure that viability is completed on an '*open-book*' basis. Viability testing is also due to be presented in a simple format with standardised definitions.

6.4 There are proposals to remove the S106 pooling restriction in certain circumstances, including where: the LPA has an adopted CIL; CIL is unfeasible; or development is being delivered on several large strategic sites.

Increasing Market responsiveness

6.5 There are amendments to allow CIL rates to be based on the existing use of land but these are only likely to be adopted in a small portion of cases. This would provide an authority with an option to charge differential CIL rates depending on the majority use of a site.

6.6 The consultation reviews how indexation for CIL is calculated, with proposals to move from the current annual Build Costs Index to the House Prices Index (issued monthly). The latter would enable an authority to adjust indexation more regularly. For non-residential development, proposals consider the use of the Consumer Price Index.

- 6.7 There are proposals to amend various Regulations affecting the operation of CIL by a charging authority. These include commencement notification periods and abatement provisions.

Improving transparency and increasing accountability

- 6.8 Amendments propose a shift from the publication of a Regulation 123 List. This is the list of infrastructure a CIL charging authority is currently required to publish which outlines those items expected to be wholly or partly funded by CIL.
- 6.9 To improve transparency, the review considers the more substantial publication of an annual Infrastructure Funding Statement and the consultation provides an opportunity to comment on the format and content of such a Statement.

A Strategic Infrastructure Tariff (SIT)

- 6.10 A key recommendation of the CIL Review was that Combined Authorities should be enabled to set up an additional Mayoral type Strategic Infrastructure Tariff (SIT). Government considers this would apply to strategic infrastructure offering multiple benefits that have a direct impact on all the local areas across which the SIT is charged. For example, this might be a major road improvement which has impacts across administrative boundaries.

The County Council's response

- 6.11 The County Council is broadly supportive of the proposed amendments, but there are some aspects of the consultation which could address the more comprehensive proposals put forward by the CIL Review Panel¹.
- removing defined stages of public consultation (for the implementation of a CIL) will assist authorities in adopting and revising their CIL schedules much more quickly. The proposal that consultation is intended to be '*proportionate*' to the scale of any change is a concern as there is no indication as to how that should be assessed. In the absence of guidance LPAs may feel obliged to undertake a wide-ranging consultation to reduce the risk of challenge.
 - aligning evidence with Local Plans and CIL will assist authorities in reducing the burden on LPAs for the production of evidence.
 - the '*open book*' assessment of viability is to be welcomed and encouraged to improve trust in the development industry.
 - viability testing to be presented in a simple format with standardised definitions is also welcomed. This will make the decision making process for the LPAs easier, and much more accessible to members of the public.

¹ Community Infrastructure Review: Report to Government, February 2017
<https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

- the proposal to remove the pooling restriction does not go far enough.
 - Hertfordshire CIL LPAs would no longer need to be concerned with monitoring the rule of 5. However, for the non-CIL authorities this would continue to be a principal concern. High local values are unlikely to result in CIL not being feasible. Whilst none of the Hertfordshire LPAs currently have plans to rely solely on large strategic sites for housing delivery, further details on how this would be measured are required. The definition of a 'strategic site' also requires further clarification.
 - the pooling restriction is a key hindrance to the County Council being able to secure appropriate mitigation measures from all sites.
 - the County Council does not have the ability to adopt its own CIL, and is required to have a strategy for s106 funding which requires a significant amount of dedicated officer time.
- improving transparency in the system is to be welcomed. Infrastructure statements would provide developers, infrastructure providers and local communities with information on the use of CIL. This is information which, to date, is not published.
- removing the R123 list: the R123 provides an indication of how a CIL authority will use CIL. The introduction of an annual statement could negate the need for the list. However, clarity will be required for infrastructure providers as to whether s106 or CIL is the appropriate mechanism for funding. Currently, this is the key methodology to ensure that developers aren't charged twice for the same item of infrastructure.
- the ability to implement a Strategic Infrastructure Tariff should also apply to county councils.

7. Implications for Hertfordshire

7.1 The issues of probably most significance for Hertfordshire are as follows.

Scale of growth

7.2 The scale of growth entrenched within the NPPF will have significant implications for how Hertfordshire looks/appears/feels – more sustained growth, more sites, more large and very large sites, more greenfield and Green Belt releases, more service and infrastructure implications, and so on. The way in which Hertfordshire approaches this challenge will be fundamental to the future of the County – working jointly across large spatial areas, infrastructure planning, infrastructure-led growth, quality of design. There is a greater emphasis on LPAs being responsible for monitoring development progress, with tools proposed to enable an LPA to deal with non-delivery.

Infrastructure Planning and funding/development viability

7.3 The scale of the future growth, new and emerging sub-regional arrangements, the front-loading of viability assessment at plan-making stage, the preparation

of Infrastructure Funding Statements, the ability to access both local and national funding, securing appropriate contributions to infrastructure from development – these all suggest that Hertfordshire will need to be proactive in its ability to assess and robustly articulate the infrastructure implications of growth in a way that stands up to a high level of scrutiny – at both a strategic level and at individual sites.

- 7.4 At the development management stage, local authorities have been seen as barriers to development as developers with their allocated sites wrestle with policy and viability to reduce the infrastructure *'burden'* on each individual site. This process is often protracted. Time wasted negotiating adopted policy should not be necessary but LPAs are under pressure to deliver housing, to make timely decisions. Shifting the need for detailed viability to the plan-making stage and confirmation that viability risk is to the developer (not the local authority or infrastructure provider) is to be welcomed.
- 7.5 Reforms will assist authorities in adopting and revising CIL schedules more quickly. Clarity and transparency are two key components required in order for local communities to understand the (financial and non-financial) benefits of development. Easy to access information, reporting and monitoring will provide greater understanding and acceptance of development sites.

Joint/Co-ordinated Strategic Plans/Duty to Cooperate/Statements of Common Ground

- 7.6 The greater emphasis of, and proposals to, entrench a sub-regional approach to plan-making and growth delivery will have substantial implications for Hertfordshire. The political landscape in terms of plan-making will need to change and will bring with it issues. Political relationships will need to be forged/move forward significantly compared to historic and current practice; joint/coordination of sub-regional technical work/plan-making/service and infrastructure planning will be required; articulating sub-regional planning to communities, infrastructure and service providers and other key stakeholders will be crucial (some stakeholders, such as infrastructure providers, will welcome a more strategic spatial approach to growth – others, such as communities, may not).

Quality/Design Quality of Development

- 7.7 At least at the anecdotal level, the design and sustainability credentials of development coming forward across Hertfordshire and the contribution it makes to the overall built environment has been a matter of some concern. If Hertfordshire is to embrace development in a way that demonstrably has a positive impact upon the County and is to have community support, there is going to need to be a step-change in how it approaches securing development of a sufficiently high quality.

Infrastructure-led growth

- 7.8 Hertfordshire is a place where historically infrastructure has followed growth and where there is a perception that infrastructure has not and continues to not meet requirements. The inclusion of references within the NPPF to the growth opportunities that might exist from existing or proposed transport infrastructure is not an approach traditionally adopted in the County. Looking forward, Hertfordshire needs to reflect upon whether and how it can use infrastructure opportunities as a catalyst for growth.

8. Implications for the County Council

- 8.1 The main implications for the County Council are both political and technical. The County Council's recent commitment to reformulate the Environment Department into an Environment and Infrastructure Directorate was brought forward in light of the direction of travel of the Government's approach to growth and to help ensure the County Council's interests are properly reflected and accounted for. The new arrangements will be well placed to respond to the issues raised by these consultations.

Political engagement

- 8.2 The County Council's political relationship with local plan-making authorities' plan-making processes will need to change – there is likely to be a shift (at least in terms of perception) from the County Council being one of a number of stakeholders/consultees, to one of partner.

Role in infrastructure planning

- 8.3 The County Council already sees the plan-making process as a key mechanism to assess and articulate to local planning authorities (and developers) its expectations in terms of the implications of growth and individual developments on its services and on the infrastructure it is responsible for providing. The package of measures being introduced and the challenges it raises can only serve to increase the importance of the County Council's role within the service and infrastructure planning process.

Infrastructure funding

- 8.4 Overall, an approach which purports to be more transparent, simple and easy to understand for all must bring clarity to the planning process. Clear and concise assessment at the plan-making stage should bring forward swifter decision making.
- 8.5 The move towards open-book viability is welcomed. A consistent approach should bring viability assessments into the routine of planning decisions and policy making. The promotion of existing land use (plus a premium to the land owner) in valuation is a key part of the consultation. Until now, the preference for a specific methodology for determining benchmark land values has been

widely debated and can be a source of tension and debate in viability discussions. The assumption that land value should be assessed on a yet to be determined allocation or permission could inflate land values and distort viability.

- 8.6 Front loading more detail into the early stages of viability provides the County Council (and others) with an opportunity to outline the full requirements expected to mitigate the impact on the local infrastructure. This will provide more clarity to the County Council as a service provider regarding the sites coming forward and facilitate more effective forward planning of projects. Where there is greater clarity, County Council services can have more certainty on funding mechanisms and could, potentially, seek to forward fund.
- 8.7 The County Council should continue to lobby government to take CIL and s106 reforms further. The pooling restriction for s106 is retained for non-CIL authorities (affecting six authorities in Hertfordshire) and the current proposal for Strategic Infrastructure Tariffs (SIT) is currently only available to Combined Authorities. Current decision makers do not necessarily have statutory responsibility for infrastructure delivery. The ability to adopt a SIT would enable the County Council to have an element of control over future funding and prioritisation of key infrastructure projects.

Joined up growth and transport planning

- 8.8 The relationship between the planning and transportation planning process are significantly reinforced within the draft NPPF. Historically the relationship between the local planning authorities' plan-making processes and the County Council's transportation planning process (e.g. Local Transport Plan, Urban Transport Plans, etc) has not perhaps been as effective as they should have been. The new Local Transport Plan 4 and emerging Growth and Transport Plans are a significant step forward, but a key challenge for the future will be to make this relationship more intimate.

Availability of/promoting County Council's assets

- 8.9 The County Council is proactive, in appropriate circumstances and locations, in making its assets available to local planning authorities to contribute to the delivery of their growth aspirations/requirements. Whilst not a direct consequence of the changes to the NPPF, the standard methodology for assessing housing need coupled with requirements to meet that need, will elevate Hertfordshire growth requirements – probably substantially. It will be important for the County Council to continue to review its assets to establish whether they could play a role in contributing to those requirements. There is an opportunity to bring forward outstanding growth proposals, setting an example to the development industry operating within the County of the sort of development Hertfordshire should be aspiring to bring forward.

Quality of Design

- 8.10 The County Council was instrumental in creating, and manages on behalf of almost all Hertfordshire authorities, the Hertfordshire Building Futures Initiative – seeking to improve the overall quality of design and sustainability of development. The County Council with its partners will need to explore whether the initiative, as currently managed and resourced, is in a position to be as effective as it needs to be to respond to the growth challenges ahead.

9. Financial Implications

- 9.1 There are no financial implications as a direct result of this paper.
- 9.2 Potentially, there may be future implications for the County Council as changes to the S106/CIL mechanisms are implemented.

10. Equality Implications

- 10.1 When considering proposals placed before Members it is important that they are fully aware of, and have themselves rigorously considered the equality implications of the decision that they are making.
- 10.2 Rigorous consideration will ensure proper appreciation of any potential impact of that decision on the County Council's statutory obligations under the Public Sector Equality Duty.
- 10.3 The Equality Act 2010 requires the County Council when exercising its functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics under the Equality Act 2010 are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief, sex and sexual orientation.
- 10.4 There is no EQiA as there are no decisions being made.

Background Information

[National Planning Policy Framework Consultation proposals, March 2018, Ministry of Housing, Communities and Local Government](#)

[Supporting housing delivery through developer contributions, March 2018 Ministry of Housing, Communities and Local Government](#)