

Planning for the Future: Consultation Response

Response from: London First
Middlesex House
34-42 Cleveland Street
London
W1T 4JE

Prepared by: Sarah Bevan
Programme Director for Planning & Development
sbevan@londonfirst.co.uk

Date submitted: 29 October 2020

Introduction

1. London First is a business campaigning group with a mission to make London the best city in the world to do business, for the benefit of the whole UK. We convene and mobilise business leaders to tackle the key challenges facing our capital. We are made up of almost 200 leading employers across a wide range of sectors including strong representation from the development industry.
2. We welcome the opportunity to comment on this 'Planning for the Future' White Paper (PWP) consultation about reform of the planning system in England. Please note we have only responded to the questions that are relevant to the interests of our organisation.
3. We are keen to work with MHCLG to help refine how the ideas in the PWP can be applied to London's unique planning system. We would welcome the opportunity to convene a sounding board of experienced professionals from London's development and business community to explore the practicalities of the proposed reforms. We feel this would be particularly beneficial in respect of the early changes that can be brought forward in advance of primary and secondary legislation.



Summary

4. We agree with the Government's high-level ambitions to reform the planning system in England and standardise processes wherever practicable. To implement these reforms effectively in the capital, there will need to be some bespoke solutions to deal with the unique set of circumstances in London; these being its two-tier planning system, comprising of thirty three local planning authorities and the Greater London Authority, and the level of growth (housing and commercial) it needs to accommodate to meet identified housing need and maintain its competitiveness as the economic engine of the UK. We therefore focus our response on how the reforms should be implemented in London.
5. We support the Government's ambition to increase housebuilding, which is important for both social and economic reasons, particularly in London where supply has failed to keep up with demand. Given the level of housing need identified by the draft new London Plan, and the contribution that meeting the London Plan housebuilding target would make to meeting the Government's target of building 300,000 homes a year, it is vital that the PWP reforms work for both the capital and the rest of England. A new planning system must also support economic growth for the long term. Allocating employment land to support jobs growth is as fundamentally important to creating sustainable communities as the delivery of new homes. Furthermore, it is vital that we plan for the demand generated by new homes for goods and services and how this is supported by the logistics sector. Therefore, national policy must provide clear guidance to authorities on maintaining an appropriate land supply for commercial development to maintain employment growth in line with housing growth and ensure the new homes can be adequately serviced.
6. We support the ambition to streamline Local Plans and to increase the use of design codes. However, there is a risk that the stage between plan making and detailed consent (i.e. the stages of site capacity feasibility assessments, masterplanning and drafting detailed design codes) will be time and resource intensive. It is important to ensure that the delays currently experienced at Local Plan stage do not manifest themselves at this next stage instead. A comprehensive plan to ensure local authority planning departments are adequately resourced will be fundamental to the new system's success. This will inevitably require some additional core funding from Government, but there are also ways that the private sector could inject more resource, for example by allowing authorities to set their own planning application fees and having a more standardised approach to planning performance agreements.
7. Subject to our comments on the scope of the London Plan below, the two-tier planning system in London must remain in place. Under this structure, the capital has benefited from a coordinated pan-London approach that has facilitated both economic and physical growth. London's business community strongly supports the ability for the Mayor – regardless of who they are now and in the future – to set the strategic spatial plan for the capital and have the power to take over the determination of planning applications of strategic importance. These powers are part of what helps to maintain London's global competitiveness and must be maintained as broader reform is undertaken.

8. The principle of simplifying the developer contributions system, through a single tariff that captures value uplift, is attractive in theory, however there are some key implications and practical issues to consider. Most significantly, how we ensure the timely delivery of enabling infrastructure to bring forward a development and mitigate its impact to help gain community support. Also, how moving to a system that removes a proven delivery mechanism for affordable housing – S106 legal agreements – will still effectively deliver the quantum of affordable homes London needs and ensure they are primarily delivered on-site. Therefore, we support the principle of abolishing the Community Infrastructure Levy (CIL) in favour of a simplified infrastructure levy regime, subject to affordable housing being excluded from the levy and a form of S106 legal agreement (albeit based on a standardised proforma) being retained to provide for in-kind delivery of affordable housing and other infrastructure.
9. We also note that the proposed new system set out in the PWP is largely focused on physical design issues and environmental protection. As the detail of the system is progressed, it will be important to ensure that the other pillars of sustainable development – i.e. economic and social issues – are given due weight.
10. Given the level of detail in the PWP and the desire to introduce significant reform, more consultation is needed as the detail of the proposals are developed.

Pillar One: Planning for development

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

11. We support the ambition to simplify Local Plans, so they are more focused on land allocation and local issues.
12. It is not clear whether the intention is that **all** land in England would be designated according to the three categories of Protect, Renewal and Growth. In our view, this is not necessary as there are already well-known designations which would fall into the Protect category such as, Green Belt, Sites of Special Scientific Interest, and Areas of Outstanding Natural Beauty. As the PWP is focused on simplifying the planning system, it is unnecessary to put another Protect layer over these designated areas that are already safeguarded by strong and clear national policy and guidance. Furthermore, it would not be appropriate to categorise protected employment land in the same way as these environmental designations. Local Plans could be made clearer if they simply focused on designating areas where limited, or substantial, growth is needed.
13. Notwithstanding the above, if all land is to be categorised, three categories is unlikely to be sufficient, particularly in complex urban places such as London and other cities in England. It is interesting to note that international planning systems

which follow similar principles to that proposed in the PWP tend to have more than three categories of land¹.

14. By way of example, the PWP suggests that Conservation Areas would fall into the Protect category, thus suggesting that development is discouraged. Yet some town centres (or parts of centres) are designated as Conservation Areas and sympathetic development is allowed, and indeed, encouraged. In London, 76% of the City of Westminster falls within a Conservation Area and yet the City Council has just taken a draft new City Plan through examination that has targets of 20,685 new homes and 63,000 new office jobs for the period 2019 to 2040. If 76% of Westminster were to be designated as Protect, it would be challenging for the City Council to achieve these targets and it would seriously undermine Westminster's contribution to the growth of the national GDP.
15. With regard to the Renewal category, it seems to be trying to cover too much, from the gentle densification of the suburbs to the intensification of higher density town centres and transport interchanges. A fourth category should be introduced, called Transform, that sits between Renewal and Growth. Renewal would cover areas where some controlled growth would be encouraged, such as Conservation Areas and some suburban areas. Transform would encourage more significant growth in areas like town centres, and Growth areas would be where wholesale regeneration is needed, such as the Opportunity Areas already designated in the London Plan.
16. A further category may also be required for essential infrastructure, including for example transport, energy, waste and recycling facilities and logistics.
17. Regardless of the detail of the categorisation of land, an over-arching objective of the new system must be that it still allows sufficient flexibility for windfall opportunities to come forward. There will always be opportunities that, as a result of changes in the market or new technologies, cannot be foreseen and the new planning system must not impede these. To allow adequate flexibility, allocations for Growth and Transform areas will need to be high level rather than granular site allocations.

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?

18. We agree that it would be a positive step forward to have a proportion of development management policies set nationally. There are numerous development management policies, such as heritage and environmental protection, flood risk and protection of pubs and community assets, that are repeated almost verbatim from one Local Plan to the next across the country. Research by Quod² of Local Plans from a sample of authorities across England

¹ [Planning Through Zoning](#) (RTPI, 2020)

² *Planning for the Future Consultation Response* (Quod, October 2020)

has indicated that between 67 and 83 per cent of policies were unnecessary and replicated a national policy approach.

19. To enable this new approach, the status of the NPPF will need to change. Currently guidance in the NPPF is often repeated in Local Plan policy to give it the weight of Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus enhanced legal status in the determination of a planning application. This should be addressed in the new system.
20. Whilst the majority of development management policies could be set nationally, sometimes a bespoke local policy approach is needed. Where there is clear justification for a local policy, this could be delivered through the design code mechanism. In this regard, a design code could cover an authority-wide technical issue, not just a physical street or area. For example, it is often impracticable – and unnecessary – for high density developments in Central London to achieve daylight and sunlight conditions that satisfy the national BRE Guidance as discussed in our report *Guiding Light: Unlocking London's Residential Density*³.
21. In London, there is still an important role for the London Plan (and for other spatial strategies in the other city regions) to deal with strategic issues that cannot be dealt with as effectively on a piecemeal borough-by-borough basis, particularly relating to housing and employment markets which cover larger parts of London and beyond. The protection of industrial capacity in London is a good example where the draft new London Plan has stepped up to provide a clear strategic policy framework for the capital after vast swathes of industrial land had been lost in recent years following a more piecemeal approach by the boroughs. Such a spatial strategy, coupled with a transport strategy, supports an overarching strategic approach to growth. The Greater London Authority has also led the way on policy innovation, e.g. introducing the Threshold Approach for affordable housing, and there should still be scope to allow for this where a London-wide specific policy approach can be robustly justified.
22. However, the London Plan should be a more streamlined plan that focuses on strategic matters. The Greater London Authority Act 1999 paragraph 334 (5) states that, "*The spatial development strategy must deal only with matters which are of strategic importance to Greater London*". Under a reformed planning system, as proposed by the PWP, the London Plan should, as originally intended, return to matters of strategic importance and principle. Government should provide more detailed guidance on the scope and purpose of streamlined plans for each tier of the policy hierarchy.
23. Finally, Opportunity Areas in the London Plan have successfully identified places that can accommodate significant new housing and jobs growth and that require wholesale regeneration. They have proven to be an effective mechanism to bring stakeholders together to focus on a unified vision for growth, particularly when the area straddles borough boundaries, e.g. the Old Kent Road Opportunity Area and Vauxhall Nine Elms Battersea (VNEB) Opportunity Area. Opportunity Area

³ [*Guiding Light: Unlocking London's Residential Density*](#) (London First & GIA, 2017)

Frameworks could create the conditions for granting automatic outline planning consent, like that envisaged for Growth areas in Local Plans.

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?

24. Yes. The existing tests for soundness are cumbersome and difficult to navigate for non-professionals.
25. To encourage wider and deeper engagement with communities at the Local Plan making stage, the test for sustainable development must be judged against a clear set of criteria that are well defined in plain English and without any planning or legalistic jargon. These criteria must also include a form of deliverability test.

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

26. In London (and other city regions), a key benefit of the two-tier system is that the strategic authority can plan for strategic issues and take difficult decisions according to what is best for the region as a whole. It also means that growth can be planned for in parallel with investment decisions on strategic infrastructure. However, the last two London Plan examinations have identified that, despite best efforts from various parties, there is not adequate collaboration between London and the Wider South East. Government intervention is required.
27. The Duty to Cooperate has failed, but this does not mean it should be axed. The Government still needs to ensure that structured discussions take place between authorities and that there is consistency in joint working. Furthermore, there needs to be a process whereby the Government can step in and mediate where such discussions break down. However, unless there is a legally binding process in place, and this is accompanied by a comprehensive national and regional infrastructure strategy, genuine collaboration is unlikely to occur.

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

28. Yes, provided it is a clear and fair system that addresses affordability issues across England whilst reflecting capacity constraints.
29. Historically, the arguments over housing need calculations have wasted significant time and resources in the preparation of Local Plans and excluded non-professionals from engaging in the plan-making process.
30. In London the housing need figure, calculated using the Government’s standard method, should be derived for London as a whole. The Mayor should then plan for housing supply strategically, in consultation with the boroughs, and set

individual borough targets. The Government's standard method for calculating housing need should not generate figures on a borough-by-borough basis.

31. If housing targets are to become mandatory, and authorities penalised because of failure to deliver, there is a risk that planning authorities will prioritise housing delivery over the economy and it will therefore suffer. Employment growth, maintaining an effective economic strategy and servicing the demand created by new homes through the logistics sector must also all be given due weight in the new planning system.

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?

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

32. Yes, we support the proposal in principle and the options set out for each category in the PWP, although the detailed mechanics will be critical to the success of this new approach and we are unable to provide detailed comments until more detail is available.
33. Having the flexibility of a toolkit of options to obtain detailed consent would allow the process to be tailored according to the scheme size and circumstances. Furthermore, we welcome the principle of introducing fast-track options for securing full planning permission provided that the system still allows a speculative planning application to be brought forward for consideration that deviates from the relevant Local Plan or design code. This will ensure that delivery is not constrained when circumstances change and/or a developer identifies a reasonable alternative. Such speculative applications must be able to be considered on their merits, including at appeal.
34. We have some concerns that the simplicity of this approach could be undermined by the extent of work required before automatic consent can be granted for Growth or Renewal areas. The site capacity feasibility assessments, masterplanning and drafting of design codes will be very resource intensive and there is a risk that the delays currently experienced at Local Plan stage instead manifest themselves in this phase of work. It is imperative that the Government provides significant resource investment (both in terms of skills and officer time) for this stage of the process, otherwise applicants will still need to bring forward speculative lengthy planning applications.

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?

35. Yes, a new settlement is of national significance and is likely to affect more than one authority. Bringing one forward through the NSIP regime would help navigate local politics and ensure a joined-up approach with the delivery of strategic infrastructure.
36. Consideration should also be given to bringing forward major regeneration schemes over a specified size threshold through the NSIP regime, not just new settlements.

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

37. We strongly support greater digitalisation of the application process.
38. The auto validation proposals will need to be thoroughly sense checked to prevent overly simplistic invalidation glitches.
39. If the eight-week and thirteen-week application deadlines are to be more strictly enforced, then it is imperative that Government adequately resources local planning authorities to process applications. Otherwise there is a real risk that acceptable applications will be refused simply because they cannot be determined within the statutory timeframe and ultimately this will cause delays rather than speed the process up.

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

40. Yes. Furthermore, the move towards digital forms of engagement is also supported. However, there will need to be a transition phase whereby we use digital methods and some traditional methods in parallel and measures will need to be put in place in the new system to ensure we do not exclude those who lack digital skills or access to digital technology.

Question 12: Do you agree with our proposals for a 30 month statutory timescale for the production of Local Plans?

41. In principle, we support efforts to speed up the plan making system and if authorities are given a target this should be a period of time that is both challenging yet deliverable. The key issue here is what the 30-month target relates to and how the Government intends to enforce the target.
42. If the 30-month timescale relates to the Local Plan stage only, this seems reasonable for the new streamlined plans, although greater clarity is needed on

the early stages of the process, especially around the extent of evidence and assessments needed and the expectations for community engagement.

43. As above, our concerns on timing relate to the stage of the process comprising site capacity feasibility assessments, masterplanning and drafting of design codes for Growth and Renewal areas. Without this stage of work, it will not be possible for any of the automatic consents for Growth and Renewal areas to come into effect. This is likely to be the most resource intensive stage and when delays are most likely to occur. In an ideal world, this work should be progressed in parallel with the Local Plan, but the reality is that resourcing may not allow for this and presumptions should not be made before proper community and developer engagement has been undertaken as part of the Local Plan process.
44. If the PWP proposal intends to include this stage of work as well in the 30-month timeframe, then this would be wholly unrealistic for the first round of plan preparation, although it may be achievable in subsequent reviews when the groundwork has been done and the process is one of reviewing and updating an existing baseline.
45. Finally, due to the extent of resource required to get a Local Plan adopted and have all the necessary design codes in place to allow automatic consents to be granted, this may disincentivise local authorities from allocating Growth areas if there are sanctions in place for not meeting the 30-month target. It may also be the case that only those sites which are heavily promoted by developers who have the resources available to influence the process and provide indicative schemes to inform potential site allocations, are able to secure Growth designations. And if Growth allocations are not optimised, the consequence will be that more sites will seek permission through a normal full planning application.
46. This new form of Local Plan should be updated more frequently than is currently the case and this should be made clear in guidance.

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?

47. Diversification of product (as recommended by the 2018 Letwin review) could be encouraged through national planning policy for Growth areas where larger scale development is coming forward over a specified size threshold. However, this needs to be handled carefully to avoid unintended consequences. Large scale developments being implemented by a wide range of builders can be complex to deliver logistically, they risk compromising the sense of place and therefore can undermine community support. This approach is also not as cost-effective in terms of infrastructure delivery. Therefore, if this approach is taken, delivery in Growth areas should be carefully monitored to inform subsequent plan and policy reviews.

Pillar Two: Planning for beautiful and sustainable places

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

48. In principle, increased use of evidence-based design codes could provide greater clarity in the design assessment of new schemes. However, the wording on this in the PWP is vague and there are references to both 'design guides' and 'design codes'. Further clarity is needed before a true assessment can be made of these proposals.
49. It will be critical to strike a delicate balance between providing enough detail in design guides and design codes so as to allow the automatic consent system to work, but not too much detail so that it stifles design innovation. They must retain some flexibility and not be overly prescriptive. Where viability is marginal, design factors can make or break a project. For these reasons we consider that design codes should provide guidance and not be binding as suggested in the PWP. Design codes cannot fully replace the skill of planning negotiation to strike an appropriate balance between competing needs and achieving the most sustainable planning outcome for a site.
50. Design codes need to be prepared hand in hand with both the development industry and the local community. If they are prepared in the same way as many Supplementary Planning Guidance documents are now, this would risk undermining the process and thus delivery. The development industry will be able to provide vital information about the deliverability of a design code to ensure it supports growth and does not risk sterilising the site/area in question.
51. The key issue in relation to design guides and design codes is skills and the need to ensure that planners are well equipped with the new skills needed to produce them. In particular, local authorities will need the design skills to assess a site's development potential (i.e. its capacity) and ensure that the use of land is optimised relative to that site's opportunities and constraints.
52. It must be acknowledged that many LPAs are under significant resource pressures, in terms of capacity and also experience, having faced substantial financial cuts in core funding in recent years. In addition, LPAs are still unable to set their own planning application fees. Consequently, design personnel have increasingly come to be regarded as a luxury rather than a necessity and this trend will need to be reversed.
53. In this regard, there is a role for greater use of design review panels so that independent design experts can input to local design codes alongside planners and communities.
54. There is also the issue of resource in terms of manpower. As stated above at paragraphs 34 and 43, this stage of the new planning process between Local Plan adoption and automatic consents being granted will be the most resource intensive stage. The preparation of design codes for all Renewal and Growth areas across an authority area will require significant resource input if they are

to properly take account of site constraints and provide sufficient detail to grant an automatic consent. For example, undertaking costly and time-consuming surveys to take into account transport and environmental considerations that will influence a site's capacity for development whilst optimising the use of brownfield land. Design codes will need to be fine grained and produced in vast quantities.

55. We believe that the resource capacity released from nationalising the majority of development management policies will be nowhere near what is required for the post-Local Plan stage of masterplanning and drafting design codes. Local authority planning departments will need to be much better resourced in terms of both skills and headcount to cope with the increased workload.
56. Provided these issues are addressed, there could be clear benefits of a design code led system in which there is increased certainty for developers and landowners and clearer assurances on value when sites are acquired. Even when applicants choose to submit a full planning application that deviates from an adopted design code, there will be a clear baseline already established from which to negotiate.
57. There are many good examples which demonstrate that design codes can deliver higher quality places, but historically in England they have been used on large masterplan sites, such as urban extensions, and either wholly residential or residential led. To be effective, design codes should focus on urban design and built form issues (e.g. maximum building heights) and generally not be so prescriptive as to dictate architectural style. In the same spirit as the reforms for development management policies, clear guidance will be needed to discourage lengthy and generic design code documents, otherwise we will lose the benefits of the new simplified Local Plan system. Design codes should be concise documents with clear metrics and diagrammatic wherever possible. They should not contain lots of words, which are generally more open to interpretation and harder to work with and apply.
58. Guidance will also be needed on the preparation of design codes for non-residential development. Finally, consideration of deliverability will be critical, and design codes will need to retain sufficiently flexibility to respond to unforeseen circumstances and changes in the market and socio-economic conditions.

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?

59. The Government already announced in September a new national advisory body for design.
60. Every authority should have a chief officer for place making. This would not be a new role alongside the chief planner, rather the existing role of a chief planner would be broadened to explicitly cover design and placemaking in a more holistic way. It should be noted that some chief planners are already doing this role; in some instances, it would simply be a point of clarification and consistency.

However, in other authorities, design expertise has been significantly reduced, as explained above in paragraph 52.

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

61. High quality design for all development should be a requirement of the planning system as a matter of course.
62. The use of the term 'beauty' can evoke an emotional response and it will be challenging to find an effective way for the new system to fast track an issue that requires subjective assessment. It will be vital to educate planners and communities alike on the 'beauty' of design for all forms of development, including non-residential development and particularly where there may be a requirement for function over form. For example, what is defined as 'beauty' for industrial and logistics development which have specific operational requirements?
63. It will be critical to avoid an overly prescriptive design code that supports a 'tick box' approach, and which would stifle innovation in design and jeopardise the efficient use of land.

Pillar Three: Planning for infrastructure and connected places

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?

64. The principle of simplifying the developer contributions system, through a single tariff that captures value uplift, is attractive in theory. However, there are some key implications and practical issues to consider and these are explored in the following paragraphs. Most significantly, how we ensure the timely delivery of enabling infrastructure to bring forward a development and mitigate its impact to help gain community support. Also, how moving to a system that removes a proven delivery mechanism for affordable housing – S106 agreements – will still effectively deliver the quantum of affordable homes London needs and ensure they are primarily delivered on-site. Whilst in theory some of the levy could be ringfenced for affordable housing, the reality is that a tradeoff of the new simplified system could be a reduction in the number of affordable homes delivered overall and a complicated process to actually see such homes get built.
65. It is difficult to give a categorical view on the new levy, given the level of detail provided in the PWP about the proposal. It is not clear whether the Government's intention is to introduce a development tax, and therefore consciously move towards a new system in which development mitigation is no longer required, or whether the intention is to capture development value to provide more infrastructure and development mitigation still underpins the approach. As

proposed, the new levy system is trying to meet too many disparate objectives and could easily end up replicating the complexities of the current planning obligations system, or even increasing them.

66. We support the principle of abolishing or significantly reforming CIL in favour of a simplified levy regime, subject to the considerations discussed below and subject to the exclusion of the provision of affordable housing by the levy. CIL has proven to be a complex regime and the various tweaks made to the regulations since they were first introduced have exacerbated its complexity. It needs wholesale reform.
67. Government figures (the MHCLG annual report on developers' contributions 2020) show that CIL accounted for just 12% of all developer contributions in 2018/19, thus demonstrating that there is currently enormous flexibility in the system to maximise contributions whilst adjusting to viability circumstances. If affordable housing were to be included in the new levy regime, there would be no flexibility to maximise affordable housing delivery from the schemes that can provide more, and we predict that overall delivery of affordable housing would decline.
68. We therefore believe that a form of S106 agreement (or similar legal agreement) should be retained to secure the maximum reasonable amount of affordable housing, and to deal with non-financial planning obligations, for example the scope and timing of delivering in-kind infrastructure. There also needs to be an effective mechanism to ensure that there are long term covenants of some form that bind successors in title on issues such as maintenance and management of the public realm. However, the S106 process (or equivalent) could be simplified to a certain extent through consistency of approach and use of a proforma with standardised wording.
69. Whilst a flat rate levy is likely to appeal to SMEs delivering smaller sites, the size or value of a development project are not necessarily determining factors as to the viability of a scheme. Even a high value scheme can be precarious in viability terms. Furthermore, there always remains a risk of unforeseen and abnormal site costs that may undermine a site's delivery, particularly on complex brownfield sites, such as land contamination and heritage assets. For these reasons, there will always need to be some form of discretionary viability tested route, albeit it should become the exception rather than the rule. If the rest of England were to adopt the Threshold Approach for affordable housing, as introduced by the Greater London Authority, this would help to achieve that goal. The Threshold Approach provides a clearer expectation on a developer about the quantum of affordable housing to be delivered, compared to the more common use of a policy target subject to viability considerations. In London, the 35% expectation for the Threshold Approach is now factored into land value at site acquisition stage, but the policy approach still allows for viability testing in exceptional circumstances where abnormal costs arise.
70. In terms of basing the levy calculation on development value (GDV) we see the benefits of taking development costs out of the equation to help simplify matters. Currently a great deal of time is lost negotiating costs during viability discussions

and we are advised by viability experts that this seems to have a disproportionate impact in London. However, the rate should be calculated according to the *increase* in site value rather than simply site value. The new system, as currently proposed, risks incentivising straightforward greenfield sites to come forward over complex brownfield sites and also risks disincentivising the re-use of existing buildings. This would not accord with the Government's sustainability agenda.

71. Basing the calculation on value uplift would also make it easier to deal with projects which are not straightforward redevelopment schemes. For example, when refurbishing and extending an existing building, it would be difficult to separate out the value of the new elements. Calculating by value uplift would make this clearer.
72. Some commentators have argued that the levy should continue to be calculated according to new floorspace created, rather than linked to value, to avoid any valuation discussions. We can see the benefits of this approach in principle, but there will always need to be a form of valuation at some stage of the process and our proposal for value uplift, and having regard to our comments in response to Question 22(b) below, would still provide for a simpler and clearer system than we have now. Taking things a step further, it raises the question of whether final GDV values should in fact be up for negotiation. It may be possible for the levy to adopt a similar approach to loan security valuations – i.e. subject to a duty of care and taken as read – thus simplifying the system even further. The pros and cons of both approaches would need to be explored further, subject to the Government's overarching approach on affordable housing and S106 agreements.
73. In summary, we support the desire to simplify the current developer contributions system, but if we rush to achieve that objective with the current proposal there is a risk that affordable housing delivery would decline. We therefore believe that affordable housing should be excluded, and we need to see more detailed guidance on how the new levy would work in practice before we can offer a definitive view.
74. Finally, it should be noted that if the decision is taken to introduce a new and radically different system, there could be several years when the new system causes a great deal of uncertainty. Clear and effective transitional arrangements will be crucial to minimise potential distortion of the market. As with the new plan system, equipping LPAs with the right skills and increasing resources will be critical.

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?

75. Setting aside our position on affordable housing for the time being and looking specifically at the levy proposal in the PWP, we believe that the idea of a nationally set single rate would be unworkable in practice. Whilst simplification of

the current system is desirable, the existing CIL and S106 regimes are complex for good reasons.

76. In trying to set a single national rate for all types of development, it would be incredibly difficult to finely balance the rate at the right level for the whole country that adequately addresses the variations in housing need and development viability. It would be a near impossible challenge to find a single rate that does not disincentivise development, whilst achieving the goal of recouping enough receipts to deliver all the essential infrastructure needed and while also preventing regional imbalances. There is a real risk that the levy rate would end up at the lowest common denominator so as not to render development unviable in low value areas, but then failing to optimise receipts and thus failing to deliver the infrastructure needed to support growth.
77. We support a regional approach to setting the new levy. In the City Regions this should be led by the relevant strategic authority. For example, in London the Mayor could set a London-specific rate, in consultation with the boroughs, given that it is proposed to retain Mayoral CIL and the fact that this would be intrinsically linked to any other contributions a scheme can viably make. Where there is no strategic authority the Government should use a standardised robust model for calculating a regional levy to avoid lengthy examinations disputing methodology (in a similar fashion to the standard method for calculating housing need).
78. Where robustly justified, there should be an option for a locally set rate that replaces the regional rate for that area. This is because there are examples where a discretionary local approach has been extremely successful. For example, the VNEB Opportunity Area in London relinquished normal levels of affordable housing delivery to increase developer contributions towards the delivery of the Northern Line Extension. Neither the Northern Line Extension, nor the growth it supports, would likely be delivered if the new system were in place with a 'one size fits all' tariff approach. This demonstrates that there will sometimes be unique circumstances to justify a discretionary approach by a local authority (or authorities where cross-boundary) to set a higher rate to achieve a specific infrastructure goal.
79. This discretionary option would be the exception rather than the norm. In London, there would be a more uniform approach dispensing with the need for all thirty-three authorities to adopt their own levy and hold thirty-three examinations. This would be a big step forward in simplification compared to CIL.
80. Another proposal for simplification compared to the existing system would be to have a residential rate and a non-residential rate. We do not support one single rate for all uses as there needs to be allowance for the fact that residential has to deliver significant affordable housing obligations.
81. Finally, the threshold should be set high initially as the development industry adjusts to the new system and then gradually lowered to include more projects.

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?

82. The shift in timing for payment from commencement of development to occupation will benefit a developer's cash flow, and therefore has the potential to increase receipts (albeit subject to any major downturn in the economy).
83. Beyond that, and given the state of the economy, it is our view that this is not the time to be trying to recoup more value from the development process. The economic recovery from the COVID-19 pandemic will be very challenging for some time.

Question 22(d): Should we allow local authorities to borrow against the Infrastructure Levy, to support infrastructure delivery in their area?

84. Yes, in principle this should be allowed. However, it is significant to note that even if S106 were to be retained for some in-kind delivery, it is envisaged that there would be a shift in emphasis from private sector to public sector delivery. This has the potential to place a huge burden of responsibility on local authorities and may be challenging for them to do. It will require a significant step change in culture and local authorities will again need to be equipped with the resources to do this, both in terms of skills and manpower. Otherwise the objective to enable the main development to be delivered faster will not be achieved.
85. Many developers (especially the larger ones) may prefer to deliver site-specific infrastructure themselves. They have the in-house skills and experience and sometimes prefer to be in control of the timing and quality when infrastructure is going to directly impact their development and they have sole control over the land.

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

86. Yes. In principle, this is sensible and overdue, and we are supportive. However, as stated above in connection with existing buildings under Question 22(a), if the levy is calculated simply according to GDV this will not work. The calculation should be based on the value uplift.

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?

Question 24(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?

Question 24(c): If an in-kind delivery approach is taken, should we mitigate against local authority overpayment risk?

Question 24(d): If an in-kind delivery approach is taken, are there additional steps that would need to be taken to support affordable housing quality?

87. As stated above in response to Question 22(a) our position is that affordable housing should be excluded from the Infrastructure Levy and a more standardised form of S106 legal agreements should be retained to provide for in-kind delivery of affordable housing and other infrastructure. Currently, affordable housing is a form of land tax on the value added by the grant of a residential planning permission, therefore if affordable housing delivery were to be subsumed into the flat rate infrastructure levy, opportunities to optimise delivery from each scheme would be lost.
88. In getting a scheme started on site, the benefits of forward-funding from a Registered Provider to support a developer's cash flow (and thus the scheme's viability and its ability to maximise its affordable housing offer) should not be underestimated.
89. If more local authorities in England followed London's Threshold Approach for affordable housing, whereby if a scheme achieves a target percentage of affordable homes, it should proceed through the planning system more quickly, whilst still allowing for viability testing where the target cannot be achieved, then this in itself would provide more clarity and certainty and thus simplify the system.

Question 25: Should local authorities have fewer restrictions over how they spend the Infrastructure Levy?

90. We do not object in principle to local authorities having fewer restrictions on spending, but allowing them to use surplus receipts for spending on any other political priorities, including cross-subsidising council services, risks disincentivising them from delivering infrastructure at a time when the responsibility for delivery would markedly shift from reliance on the private sector to greater emphasis on the public sector.
91. A crucial element of obtaining planning permission in the current system is for a development to demonstrate how it is going to mitigate its impact. Furthermore, public trust in development is low. Research by Grosvenor in 2019⁴ found that,

⁴ *Building Trust* (Grosvenor Britain & Ireland, 2019)

when it comes to planning for large-scale development, just 2% of the public trust developers and only 7% trust local authorities.

92. To gain more support from a local community, it is vital that an application demonstrates how that local community will directly benefit through developer contributions. With the new system it appears as if the Government may be moving away from this approach to a more standardised tax system. If that is the case, there is a risk that it may be difficult to convince a community to accept new development. It would be imperative for an authority to publish detailed annual statements of everything the levy receipts have been spent on to demonstrate the benefits of development to residents.

Q25(a): If yes, should an affordable housing 'ring-fence' be developed?

93. As above, affordable housing should be excluded from the infrastructure levy as a matter of principle to ensure that delivery is not constrained.