

Consultation response form

This is the response form for the consultation on the draft revised National Planning Policy Framework. If you are responding by email or in writing, please reply using this questionnaire pro-forma, which should be read alongside the consultation document. The comment boxes will expand as you type. Required fields are indicated with an asterisk (*)

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Are the views expressed on this consultation your own personal views or an official response from an organisation you represent?*

Organisational response

If you are responding on behalf of an organisation, please select the option which best describes your organisation. *

Local authority (including National Parks, Broads Authority, the Greater London Authority and London Boroughs)

If you selected other, please state the type of organisation

Click here to enter text.

Please provide the name of the organisation (if applicable)

Greater London Authority

Chapter 1: Introduction

Question 1

Do you have any comments on the text of Chapter 1?

The Mayor supports the recognition that Government statements, including endorsed recommendations of the National Infrastructure Commission (NIC), may be material when preparing plans. Further clarification is required on the status of NIC recommendations made before the publication of the NIC Framework in Jan 2017. The Mayor is particularly interested in the recommendations in 'Transport in a World City' where the benefits of the schemes identified should be recognised.

Chapter 2: Achieving sustainable development

Question 2

Do you agree with the changes to the sustainable development objectives and the presumption in favour of sustainable development?

Not sure

Please enter your comments here

For sustainable development, Government needs to ensure that the policy for housing is embedded in a framework of policy for delivering sustainable communities – which means planning authorities designing in elements that achieve positive public health outcomes, active travel, less car dependence, and good sustainable connections to places of study, work, leisure and health. The Mayor welcomes the overarching economic, social and environmental objectives set out up front and encourages measures that reinforce these throughout the planning framework, particularly showing how they can apply in later chapters that have a strong role in this, such as achieving well-designed places. We suggest that under the economic objectives, 'inclusive' should be inserted between responsive and competitive, and 'reducing car dependency' should be added to the environmental objectives.

The definition of the presumption in favour of sustainable development in paragraph 11 is inconsistent with the broad definition of sustainability given in paragraph 8.

Paragraph 8 sets out three positive objectives that define sustainable development in terms of expected social, economic and environmental gains and protections.

By contrast paragraph 11 sets out only two restrictions to delivering assessed development needs: a strong restriction in the case of the specified list of habitats and a much weaker restriction where development impacts outweigh the benefits

of the proposal when considered against the whole of the NPPF. This does not appear to allow development plans or decisions to be made in a way that positively supports the stated sustainability objectives.

For consistency with the stated aims of the NPPF, and clarity on the status of the overarching sustainability objectives, we would suggest that paragraph 11 could be amended as follows:

b) strategic plans should, as a minimum, *seek to meet the three overarching objectives of sustainable development (as set out in paragraph 8)* and provide for objectively assessed needs for housing and other development, as well as any needs that cannot be met within neighbouring areas, unless:

- i) the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; or
- ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

Question 3

Do you agree that the core principles section should be deleted, given its content has been retained and moved to other appropriate parts of the Framework?

Please select an item from this drop down menu

Please enter your comments here

Click here to enter text.

Question 4

Do you have any other comments on the text of Chapter 2, including the approach to providing additional certainty for neighbourhood plans in some circumstances?

Click here to enter text.

Chapter 3: Plan-making

Question 5

Do you agree with the further changes proposed to the tests of soundness, and to the other changes of policy in this chapter that have not already been consulted on?

No

Please enter your comments here

In paragraph 20, unlike other environmental concerns, such as flood risk and green infrastructure, improving air quality is not listed as a strategic policy despite the fact that improvements in local air quality are most effectively delivered at a strategic level. This is inconsistent with paragraph 179 and the Government's 'Air Quality Strategy for England, Scotland, Wales and Northern Ireland'.

Question 6

Do you have any other comments on the text of chapter 3?

Further clarification about the proposed application of the Statement of Common Ground to the Greater London Authority is needed. The Mayor welcomes its potential use to promote strategic infrastructure requirements, but appropriate geographies for the required Statements need to be identified in the specific London context.

Jointly with strategic partners across the Wider South East, the Mayor has set up arrangements to support collaboration on strategic issues including housing and infrastructure needs. His officials have also had initial discussions with a range of individual authorities / groups of authorities on tailored collaboration opportunities. However, considerations about entering into any Statements are only at an early stage. This will take time and needs to be considered carefully, as there are 130 planning authorities in the Wider South East outside London. Reaching tailored agreements with them separately would be extremely onerous. It may be more appropriate to explore agreeing Statements with groups of authorities or representative strategic bodies, however, these bodies (e.g. East of England LGA and South East England Councils) are currently neither politically legitimised nor sufficiently resourced to perform this role. Under current circumstances and without specific Government incentives, the Mayor's approach to collaboration can only be based on the willing-partners principle set out in draft London Plan Policy SD3.

Regarding the trigger for updating strategic policies, the Mayor considers that major changes in transport investment could also require strategic policies to be updated. This could help meet the transport-related objectives set out in Chapters 9 and 11. A review would also assist viability-testing requirements, in reflecting the uplift in land values that can be attributed to transport investment announcements.

The test of plan viability

The current test for viability within the existing NPPF is that delivery of the plan should not be put at serious risk. The Mayor considers that this current test remains the appropriate test for plan viability because it directly links the viability test to the plan making process. The draft NPPF proposals that 'development should not be made unviable' and that policies should be set at a level that would not require viability testing could have a significant impact on the ability of local planning authorities (LPAs) to plan effectively for sustainable growth.

It is unclear whether the statement that 'policies should not make development unviable' means that any development proposal should remain viable. This could include schemes with exceptionally high abnormal costs, those that would incur significant costs arising from features such as large basements (even where not required by policy), or those which are otherwise not sound commercial proposals.

If this were the case it is likely that it would be argued that plan requirements would need to be set on the basis of the least viable development. Such an approach would not be proportionate or workable. It would forego the level of affordable housing and infrastructure contributions that could viably be provided by the majority of developments. This would result in a lowering of expectations at a time of severe housing need and would severely impair the ability of LPAs to plan effectively for their area. This would put greater pressure on public finances, would impede growth and / or lead to unsustainable development. It would be to the detriment of authorities planning to meet the government's growth agenda, and to local communities, fuelling further mistrust of the planning system and a lack of support for new development.

The Mayor considers that the focus should remain on delivery of the Development Plan rather than any given individual development, which may not be representative of the majority of developments and may not be necessary or consistent with the delivery of the plan.

This is particularly the case when considering spatial development strategies which set the strategic framework for a wider geographical area and will cover multiple forms of development that may come forward, but which will not all be of equal importance for delivery of the plan. Given the resource constraints of LPAs as well as the practical constraints of viability testing across an area, the revised NPPF should continue to specify that plan viability testing should relate to the delivery of the plan as a whole and be based on appropriate available evidence.

Whilst differential targets or rates could be set geographically or according to different land uses this would not overcome the issues raised by the current draft, that rates would be set according to the least viable development in any particular area or for the relevant form of development.

The concerns with viability testing that have been widely identified in reports addressing the role of the planning in delivering sustainable development (as referred to above) have almost exclusively related to viability testing at the application stage. This should be the main focus for revisions within the NPPF and PPG rather than to make significant changes to plan viability testing which is largely fit for purpose. This is considered further under question 8 below.

Site testing

The proposed typology approach to plan testing where sites are grouped by shared characteristics is supported. The draft PPG also states that it is important to consider the specific circumstances of strategic sites. This may be useful in Local Plan viability testing where a small number of individual large sites may account for a large proportion of housing and other employment floorspace

needed to meet local needs. However, within a spatial development strategy the scale of development and geographical area covered is such that individual sites are less significant for the delivery of the plan. Testing the specific circumstances of individual sites serves a less useful purpose in this context, would be unduly resource intensive and would produce site-specific results that would not be helpful for informing the policies of the plan as a whole. As such it is suggested that the PPG should make it clear that a typology approach would be most appropriate when considering the viability of spatial development strategies.

Chapter 4: Decision-making

Question 7

The revised draft Framework expects all viability assessments to be made publicly available. Are there any circumstances where this would be problematic?

Yes

Please enter your comments here

The Mayor supports greater transparency in viability testing. As the Draft PPG recognises, most information within viability assessments is not specific to applicants and is otherwise available in the public domain. As such, the Mayor does not consider that making assessments publicly available would be problematic.

A number of authorities including the Mayor have adopted procedures under which viability assessments are made publicly available which enables greater public participation and understanding of the decision-making process.

There are very few circumstances where information should not be disclosed. This should only be where robustly justified by the applicant and where the authority determines that the public interest of non-disclosure outweighs the benefits of disclosure. This should be determined on a site-specific basis as there are unlikely to be types of information where it would be in the public interest for the information to be withheld from public access in every instance.

As part of measures to promote transparency and better monitoring, the government should also work with authorities to set up procedures for the submission of key elements of viability information in a standardised electronic format by an applicant when a new proposal is submitted. This would promote transparency and enable authorities to better monitor and assess viability without having to devote significant resources towards data entry.

Question 8

Would it be helpful for national planning guidance to go further and set out the circumstances in which viability assessment to accompany planning applications would be acceptable?

Yes

Please enter your comments here:

Under the plan-led system, it is vital that Development Plan policies are taken proper account of when developing proposals and acquiring land. The Mayor supports a scaling back of viability testing within the planning system in a way that supports the delivery of affordable homes and infrastructure to support growth. In high value areas, including much of London, viability testing should not normally need to be undertaken on a site-specific basis and only where there are clear barriers to delivery.

This should help to speed up the planning process and increase certainty for applicants and planning authorities, while supporting the implementation of planning policies and delivery of sustainable development.

The Mayor's threshold approach to viability, which provides a 'Fast Track Route' for applications that meet the threshold level of affordable housing without the need for viability testing, has helped to achieve this. The approach has provided greater certainty, it has sped up the planning process and helped to increase the level of affordable housing provision secured in London. The Draft NPPF and PPG should promote threshold approaches such as this, which provide realistic targets and accelerate the delivery of development of the kind that local communities support.

The NPPF and PPG should make it clear that it is for applicants to justify why a plan policy cannot be met and for LPAs to determine whether a site-specific viability assessment is appropriate. The weight attributed to this should be a matter for LPAs to decide alongside other material considerations as proposed in the Planning for the Right Homes in the Right Places Consultation. Without this, viability assessments will continue to be submitted in many cases where genuine viability constraints do not exist due to the potential increased profitability associated with reducing planning obligations through use of viability arguments.

Circumstances where viability testing may be appropriate are sites with exceptionally high infrastructure requirements, those with abnormal costs or those in exceptionally low value areas, however this should be determined at a local level.

This approach should be considered alongside comments relating to plan viability testing referred to above which does not require significant amendments from the current NPPF and PPG which set out the appropriate basis of determining viability based on delivery of the plan. Without this LPAs may be forced to widen out the scope for viability testing to justify proposed affordable housing targets, rather than reducing the need for site specific viability testing to help ensure that policy targets are embedded in land values.

Rather than scaling back viability testing through requiring applicants to meet policy requirements unless there are genuinely exceptional circumstances, it is likely that the approach in the draft NPPF and PPG would lead to lower policy requirements, continued viability negotiations on many cases and an under-delivery of affordable housing and infrastructure provision.

Question 9

What would be the benefits of going further and mandating the use of review mechanisms to capture increases in the value of a large or multi-phased development?

Please enter your comments below

There are inherent uncertainties when assessing viability at application stage. Review mechanisms are helpful tools which give assurance to authorities and communities that where a scheme is unable to achieve policy compliance at application stage, viability will be re-assessed at a point when more reliable information is available and a greater level of policy compliance will be achieved if viability has improved.

The Mayor supports the use of early stage review mechanisms where a specific level of progress has not been achieved on a scheme within 2 years of the grant of planning consent. This encourages early-delivery of the development and helps to close the gap between permission and delivery. Early reviews result in a re-assessment of viability where delivery is delayed as economic circumstances are likely to change two years following the grant of consent. This also helps to discourage speculative applications with the sole purpose of establishing an asset value.

The Mayor also seeks a viability review at an advanced stage of delivery (late stage review) for schemes that do not meet the threshold level of affordable housing. This provides the most reliable basis for assessing viability for schemes that did not comply with policy requirements at the application stage. It also provides a strong incentive for applicants to follow the Fast Track Route under the threshold approach, avoiding the need for viability testing at application stage and at a late stage. This speeds up the planning process and increases affordable housing delivery.

Under the Mayor's approach additional affordable housing or other obligations are only required where the target level of return has been achieved. A further share of surplus profit is also retained by the applicant in late reviews to ensure that they remain incentivised to maximise the value of the scheme. There may be benefits in this approach being mandated in national policy or guidance.

The basis of viability reviews

For review mechanisms to be effective within the planning system and enable developments to secure planning consent even where they are not meeting the

requirements of the plan, it is standard practice that they should not allow a further reduction in planning obligations after consent has been granted. This is important as it gives assurances that the level of affordable housing and other infrastructure secured through the planning consent will not be reduced at a later date which would undermine the decision-making process.

The draft PPG indicates that for all development where review mechanisms are appropriate they could be used to amend developer contributions to help deliver sites that would otherwise stall. If reviews were entered into on this basis it would raise a significant risk of affordable housing obligations being reduced downwards after planning consent has been granted.

This would be like the S106BA downward review provisions introduced in 2013 but which ceased to operate in 2016. These led to applications for reductions in affordable housing even where economic conditions in London had improved and genuine viability constraints did not exist. Significant resources from authorities were needed to assess such proposals even in cases where a reduction in affordable housing was not required to enable a development to proceed. Mechanisms are already available for changes to planning obligations where there are genuine constraints in delivering a development under S106A of the Town and Country Planning Act 1990 (as amended), through deeds of variation or a revised application where the merits of a scheme can be properly assessed.

Changes in circumstances which adversely affect viability are part of developer risk for which they are rewarded through the levels of target return assumed in viability assessments, which are high when compared with other forms of investment. An approach that allowed a reduction in planning obligations after consent would also fundamentally change the risk profile of development and would warrant much lower levels of target profit in viability assessments.

The proposal that review mechanisms would allow for a reduction in planning obligations, is a fundamental change that would discourage authorities from granting permission for schemes that do not comply with adopted plan policies. Allowing downward reviews would undermine support for development, the decision-making process and the delivery of sustainable development as requirements that are necessary to make a development acceptable in planning terms could subsequently be reduced or removed.

This approach would also encourage applicants to submit viability assessments knowing that they would have a second opportunity to reduce affordable housing later down the line. This would be particularly inappropriate in London where property prices remain high compared with other parts of the country. This part of the guidance should be revised in line with current practice that reviews should not result in a less policy compliant scenario. As noted above there are already safeguards in place in the approach taken by the Mayor and LPAs to ensure that a developer achieves a competitive return before any additional obligations are required.

The guidance also seems to limit upward reviews to assessing increases in values rather than being able to test whether actual costs are lower than originally stated.

This may encourage an approach which overstates costs at application stage in the knowledge that these cannot be reassessed as a part of the review process. Upward reviews should assess changes in build costs as well as changes in development values.

Viability Review Mechanisms - phased / non-phased schemes

It is also important that reviews can be applied on non-phased as well as longer-term schemes which has become established practice in London and elsewhere. Non-phased schemes do not have to be implemented for three years following the grant of planning consent and can then take several years to develop. As such the true viability of a scheme may not be determined until five or more years after an application stage viability assessment by which time viability circumstances may be very different and the development may be fully capable of achieving policy requirements. For this reason, the use of reviews on non-phased schemes has been supported in a number of appeal decisions and should apply for these schemes as well as for longer term or phased proposals.

Whilst it is accepted that it would not be appropriate to apply reviews to minor development, reviews should not apply to major non-phased schemes. The GLA has developed standardised review clauses which assess changes in development values and build costs. This is a simplified approach which focuses on the key inputs that are likely to be subject to change. It is quicker and less resource intensive than a full residual appraisal and can be easily applied on non-phased schemes as well as longer-term schemes.

If PPG were to indicate that viability reviews were not capable of being secured on non-phased schemes this would disincentive authorities and communities from supporting non-phased development that did not meet the requirements of the plan as there would be no means of reassessing viability later. In the absence of an early review there would be no additional incentive for applicants to progress with a scheme promptly. Without a late review the applicants would be disincentivised from following the Fast Track Route under the Mayor's threshold approach, and would be more likely to submit viability evidence at application stage to reduce planning obligations, knowing that viability would not be reassessed later.

The significant need for affordable housing in London and the provisions for a developer to achieve the target profit in review mechanisms justify their continued application on non-phased schemes.

Question 10

Do you have any comments on the text of Chapter 4?

Engagement

The NPPF and PPG emphasise the need to engage with land owners, developers, infrastructure providers and affordable housing providers to provide evidence on costs and values to inform viability testing. Whilst information from such sources

may be useful, the guidance should recognise that appropriate evidence is likely to be available from a range of sources such as the land registry, market reports, BCIS and previous viability assessments. It is important that authorities can make independent judgements regarding the most appropriate evidence to use considering that land owners, developers and other providers are likely to engage in the viability testing process and make information available to the extent that it supports their interests. For this the reason, the guidance should not give undue weight to the need to base plan viability testing on information from parties who would stand to gain from reductions in the level of planning obligations that are necessary to make development acceptable in planning terms.

Application Stage Viability Assessments

When a viability assessment is submitted, PPG states that this should be based upon and refer to the viability assessment that informed the plan and the applicant should provide evidence of what has changed since then. The Mayor supports the principle that a site-specific viability assessment should focus on the elements that have changed since the Development Plan was adopted. However, the Mayor has significant concerns with aspects of the methodology set out in PPG, particularly in relation to land value and profit, for the reasons set out below. As currently drafted, the Mayor considers that this may unintentionally restrict the ability of LPAs to plan effectively for sustainable growth and does not agree that this should form the basis of undertaking plan or application specific viability testing.

Values and costs

The definition of costs in PPG includes project management and organisational overheads. It is standard practice that these are accounted for in developer's profit and so their inclusion as an additional development cost item would result in higher costs assumptions which will have a negative impact on the outcome of a viability assessment. This aspect of the guidance should be revised to remove the reference to project management and organisational overheads.

Land value

The Mayor strongly supports the following aspects of PPG relating to land values:

- It is important that developers and other parties have regard to all planning policies when purchasing land and the price paid for land is not a relevant justification for failing to meet plan policies.
- Developers should consider abnormal, infrastructure costs and planning requirements when defining benchmark land value (BLV).
- Benchmark land value should be based on Existing Use Value (EUV) plus a land owner premium.
- Existing use value is not the price paid and should disregard hope value.
- Regard should not be given to other possible uses that require planning consent, technical consent or unrealistic permitted development.

The guidance states that market transactions used to inform the assessment process should be based on current uses (rather than the proposed use) which is supported. The guidance also states that any transactions must be based on

policy compliant development and that previous prices based on non-policy compliant developments are not used to inflate values over time. This is supported; however it is noted that the reference to policy compliant development appears to contradict the previous sentence that market transactions should be based on current uses only. The guidance would be clearer if it specified that land value should not be based on transactions that relate to the proposed development and that land transactions should not be relied on as evidence to inflate benchmark land values and reduce policy compliance. The reasons for this are discussed further below.

Existing Use Value

The proposed approach that the BLV should be determined on the basis of EUV without regard to other possible uses that require planning consent, technical consent or unrealistic permitted development, is supported. However, the Mayor is concerned that this approach could be undermined by the proposed definition of EUV which includes 'the right to implement any development for which there are extant planning consents, including realistic deemed consents'.

The GLA is aware of applications where a range of consents have been secured across the site as a means of asset management to justify a higher benchmark land value and reduce policy compliance for a subsequent application. The process of gaining consent for a scheme which the applicant does not intend to implement diverts limited resources of LPAs for no planning benefit. As such it is recommended that the guidance specifies that EUV should not reflect extant consents or deemed consents that are not policy compliant and that do not meet the relevant affordable housing target or where there is little commercial prospect of this being delivered.

The guidance should also clarify that a premium should not be applied above the value of a site if this is based on an extant planning consent or deemed consent. This would already include a premium over and above the value of the land in its current use. As such a further premium is not necessary to encourage release of the site and this would undermine the delivery of plan policies.

Landowner premium

The guidance indicates that a premium over EUV should be established by assessing the difference between purchase prices and the EUV of comparable sites that have recently been granted planning consent in accordance with relevant policies. The evidence of the price paid should then be used to inform a judgement on an appropriate premium to the landowner.

It is standard practice when undertaking viability assessments to disregard the specific circumstances of individual developers. The reason for this is that planning consents run with the land and may not be built out by the applicant. In contrast, land transactions are based on assumptions that are specific to individual developers and are different (and typically more optimistic) than the assumptions used in planning viability assessments.

Despite other elements of the guidance being clear that benchmark land values should be based on existing use value and should exclude hope value, this aspect of the guidance aligns the premium (and therefore the overall BLV) to market transactions which in many cases will be significantly higher than BLVs applied in standardised planning viability assessments.

The requirement to rely on comparable sites that have recently been granted consent and that meet relevant policies may help to address the issue that has arisen in recent years of transactions being based on assumptions of low levels of affordable housing, which are inflated as a result, and used to justify higher BLVs and lower levels of affordable housing. However it should be noted that the term 'policy compliant' has been interpreted by the RICS and others to mean 'any development that has received planning consent', including those, which for site specific reasons, were unable to provide the plan target or threshold level of affordable housing. This approach has been applied on applications where land transactions for sites delivering low levels of affordable housing have been used to justify higher benchmark land values for schemes that do not share the same site constraints that led to a lower level of affordable housing being granted on the transacted site. As such, the guidance should make it clear that only schemes that have been granted planning consent at the relevant plan target level of affordable housing should be used for this purpose. Without this the circularity issue arising from the market value approach to benchmark land values will remain unaddressed.

A range of other significant issues with the use of land transactions in the context of planning viability assessments are summarised below:

- The approach is internally inconsistent - market land transactions reflect the specific circumstances of developers in contrast to the standardised approach to undertaking planning viability assessments as required by the guidance. As such land transactions reflect a wholly different set of inputs which may include the approach to: profit (20% profit is the default for plan testing (see below) but a winning bidder of land may assume a lower level of profit), build costs (cost efficiencies), growth in values, finance costs, professional fees etc.
- Land transactions reflect the successful (typically the highest) bid for land and are likely to be based on a more optimistic set of assumptions than those of competitors. A standardised approach to viability testing applies typical assumptions of cost, value and profit inputs which are by their nature mid-range / more pessimistic and which cumulatively have a negative impact on the outcome of the appraisal.
- As such using land transactions to inform BLVs within a standardised planning viability assessment mixes methodologies and is likely to distort the outcome.
- Land transactions may reflect assumptions regarding a different form of development with enhanced values (e.g. higher densities, different mix of uses/ units etc) to the one permitted. This is particularly the case if a new purchaser is seeking to extract additional value from a site that has been granted permission.
- Purchase prices may not realistically reflect the value of the land or proposed development.

- As such, the price paid for land is typically significantly higher than BLVs deemed to be appropriate in the context of planning viability assessments.
- Information is in many cases not available regarding the EUV of policy compliant sites which are not required to provide viability information.
- Sufficient comparable and recent land transactions may not be available and those that are available may require adjustment to ensure to comparability which is likely to be a subjective and resource intensive process.

It is also worth noting that while the price paid for a development is likely to be the highest bid (or based on the best terms), regardless of whether this is consistent with the guidance. Using land transactions to determine benchmark land values is likely to result in the same circularity seen in recent years where applicants are driven to increase bids for land knowing that transactions will be used to determine benchmark land value and will drive down planning obligations.

The recent High Court Judgement at Parkhurst Road, Islington highlights the very significant difficulties that have arisen for LPAs in trying to implement Plan policies when national or industry guidance, in particular RICS Financial Viability In Planning, gives rise to methodological inconsistencies and scope for misapplication. The case is a stark reminder of the potential for the underprovision of affordable housing and long running disputes where the approach set out in guidance is not firmly aligned with the legal framework for planning through the operation of the plan led system.

The GLA has applied the approach set out in the draft PPG to 40 sites with recent planning applications to assess how this would work in practice. Of these recent transaction information was only available for a quarter of the sites. Only two of the sites that has recently transacted were policy compliant (see above for commentary on the impact of viability testing on the level of affordable housing secured through the planning system), and EUV information was only available for one of these. As such, from a review of 40 sites, up to date information could only have been drawn from one site to inform the approach to the landowner premium. The transaction price for this site was significantly higher than the benchmark land value that was applied within the viability assessment undertaken for the site. Had the transaction been used to inform the premium in that case it is likely that a lower level of affordable housing would have been provided. This demonstrates the range of practical difficulties that would arise in implementing this approach, together with methodological issues outlined above.

For these reasons, we would strongly recommend revising the proposed approach to indicate that the level of premium should be determined on a site-specific basis having regard to the circumstances that apply, as is currently the case with developer's profit. The level of premium can be informed by benchmark land values that have been accepted for planning purposes on other comparable sites where determined on a basis that complies with the guidance. This approach would ensure a more consistent methodology between determining the BLV and other inputs within the appraisal.

Further guidance on determining an appropriate level of premium is set out in the Mayor's Affordable Housing and Viability Guidance which draws on earlier

Mayoral guidance and the London Borough Viability Protocol. This has been applied in London over a number of years, it has not prevented sites coming forward for redevelopment and is the most appropriate approach in the context of standardised approach to assessing viability in the planning system.

Developer return

The draft PPG states that a profit level of 20% on gross development value (GDV) (excluding BtR and affordable housing) should be applied in plan viability assessments unless evidence can be provided to justify a different level of profit.

It is a well established principle (as set out in current PPG and other viability guidance) that profit is a factor of risk and it will vary according to different market and development circumstance. It is unprecedented for national guidance to specify a particular level of profit that must be achieved for a scheme to be deemed viable.

A 20% target profit on GDV is a high level of developer return and in many instances is not required for schemes to come forward for development. Within London, the Mayor's Development Appraisal Toolkit previously adopted a default profit of 15% and this was only increased to 17% and 20% following the financial crisis of 2008/9. It is now ten years since this time and market conditions, the availability of credit and development risk in the London market have changed significantly since then.

The PPG states that plan makers may assume different levels of profit where there is evidence to support this. This places the burden of proof on authorities to justify a departure from a 20% figure. There are limited sources of independent evidence on appropriate target returns and in many cases this is likely to result in profit levels of 20% being adopted regardless of market conditions or site circumstances. This will have a detrimental impact on the delivery of planning objectives and sustainable development and undermine support for new development.

Notwithstanding the difficulties in analysing land transactions in the context of planning viability assessments (as referred to above) a review of the price paid for sites indicates that profit is likely to be one area where lower targets are being assumed when determining a purchase price compared with those adopted in planning viability assessments. This use of land transaction data to sense check the cost and value inputs applied to determine a residual land value as opposed to the benchmark land value is a more appropriate use of transactional data and is a well established approach as set out in RICS Valuation Information Paper 12.

If specific profit rates are included in the PPG it is recommended that a range is referred to of 15 to 20% and that it is for the plan maker to determine whether this is calculated as a percentage of values or costs. This range is more reflective of the variation in actual returns that are sought and would provide a more effective basis for determining an appropriate level of profit taking account of risk, market conditions (which vary geographically as well as over time) and site circumstances.

PPG acknowledges that lower returns may be applied for build to rent development and affordable housing. This reflects the different levels of risk associated with these types of development and is supported. However it should be noted that a 20% profit return in viability testing for build for sale development which results in lower affordable housing requirements, will, together with other approaches set out in draft PPG ultimately increase the amount that build for sale developers are able to pay for land. This is likely to have a detrimental impact on other sectors including build to rent development and is a further reason for avoiding specific profit targets for build for sale or at the very least including a range as referred to above.

The guidance should also specify that different returns may be appropriate for commercial uses. These are rarely built on a speculative basis, but with units pre-let to future tenants which reduces risks, warranting lower target returns. Returns for commercial uses are normally applied as a percentage of costs rather than value. A typical return applied in viability assessments is 15% on cost although as referred to above this will vary according to site circumstances.

Monitoring

The draft PPG recommends the use of executive summaries in S106 agreements to set out key details of the development and each planning obligation. It would be helpful to clarify the legal status of such summaries. If they are a formal part of the agreement it is possible that their inclusion could add to the time taken to negotiate s106 agreements. It is noted that planning reports normally set out heads of terms of S106 agreements so that the decision maker is informed of the key obligations that will be entered into. These summarise the main obligations and could be made greater use of to ensure that s106 agreements are more widely understood without extending the process for negotiating agreements.

The guidance recommends that authorities prepare an infrastructure funding statement setting out infrastructure requirements for CIL and S106, anticipated funding from developer contributions and the choices made about how these will be used. The guidance states that information in the statement should feed back into reviews of plans to ensure that policy requirements for development contributions remain realistic. This appears to indicate that further review of infrastructure requirements should be based on previous levels of contributions regardless of the level of infrastructure necessary to support development and changes in market conditions. This would constrain the ability of planning authorities to plan effectively for sustainable growth and should be removed.

Conclusion

The Mayor is supportive of elements of the draft NPPF and PPG in relation to development viability, the focus on transparency and measures which seek to address issues of circularity that have arisen within the testing process associated with the market value approach to land value. However, the Mayor is concerned

that elements of the guidance may unintentionally significantly reduce the delivery of affordable homes and infrastructure needed to support new development.

The viability methodology and approach to review mechanisms in draft PPG is likely to encourage, not restrain, the use of viability assessments at application stage. It also introduces the potential for planning obligations to be reduced after planning consent has been granted. This is likely to undermine support for new development and confidence in the planning system.

Chapter 5: Delivering a wide choice of high quality homes

Question 11

What are your views on the most appropriate combination of policy requirements to ensure that a suitable proportion of land for homes comes forward as small or medium sized sites?

Please enter your comments here

The Mayor welcomes the recognition of the need to have more varied sources of housing supply and specific promotion of small sites. A number of specific proposals in the draft NPPF are well aligned with the draft London Plan, including the requirement for LPAs to support windfall development through policies and decisions and use area-wide design assessments and LDOs to bring small sites forwards. Whilst many sites within London would be under half a hectare (which would not normally be considered 'small'), the requirement that at least 20% of housing sites should be under this threshold is welcomed.

The shortage of suitable undeveloped land in London, the complexity of London's highly pressurised land market and its reliance on recycled brownfield sites in other active land uses means that the capital has a greater reliance on windfall sites than in other areas. In response to paragraph 71, we would emphasise that where a step change in delivery on windfall sites is being planned for through the introduction of effective policy changes, historic trends will inherently be a less reliable guide to their potential for providing new homes, just as past rates of housing completions on large sites should not form the basis of estimating future levels of housing delivery.

Question 12

Do you agree with the application of the presumption in favour of sustainable development where delivery is below 75% of the housing required from 2020?

No

Please enter your comments here

The Mayor believes that the NPPF should recognise London's distinct land market and the total reliance on recycled brownfield sites in meeting London's housing needs. Within London there is planning permission for over 275,000 homes and the focus should be on how the Government can support measures to remove the barriers to delivering these homes. The Mayor would welcome the opportunity to discuss with Government a bespoke delivery test for London.

Question 13

Do you agree with the new policy on exception sites for entry-level homes?

No

Please enter your comments here

The Mayor would not support this policy where it would result in the loss of Green Belt or Metropolitan Open Land.

Question 14

Do you have any other comments on the text of Chapter 5?

The Mayor supports the overall objective of significantly boosting the supply of homes set out in paragraph 60. He also supports the principles that flow out of it – i.e. ensuring that a sufficient amount and variety of land comes forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with planning permission is brought forward without unnecessary delay. The Mayor's new draft London Plan and draft London Housing Strategy together set out a comprehensive strategic planning, investment and housing policy framework for meeting these objectives in London's unique circumstances.

Paragraph 61 states that the proposed standard method of local housing need assessment should be used unless exceptional circumstances justify an alternative approach. The GLA's 2017 Strategic Housing Market Assessment (SHMA) provides robust evidence of London's current and future housing requirements, and was prepared before the government's proposed new standard method was first published for consultation in September 2017. The estimates of housing requirements set out in the 2017 SHMA take into account evidence of household growth, affordability, market signals and existing shortages, disaggregated by tenure and size, and include detail on the needs of particular sub-groups of the population such as students, families and older people.

The 2017 SHMA assesses the housing needs of London as a whole, because of London's status as a unified housing market area and the unavailability of key data sources (notably the English Housing Survey) at sub-regional level. The new draft London Plan then sets borough-level housing provision targets on the basis of the detailed assessment of potential housing capacity set out in the 2017 Strategic Housing Land Availability Assessment (SHLAA). Ensuring that each London borough makes as full as possible a contribution to meeting London's housing

needs (wherever those needs arise) is a critically important feature of London's planning system. Consideration of unmet needs should therefore not be limited simply to 'neighbouring area' as suggested in paragraph 61, but should extend to all areas within the relevant housing market area or (as appropriate) area of strategic planning. There is no evidence to support taking the needs of only contiguous areas into account when many local authorities have strong housing market links to non-contiguous areas.

The procedure for setting the number of homes required in an area set out in the 'Housing Delivery Test Draft Measurement Rule Book' is unclear, but our interpretation is that the borough-level housing provision targets set out in the current London Plan comprise the housing requirement figure against which housing delivery should currently be measured. If and when the draft London Plan is adopted, its housing provision targets (calculated on the basis of the evidence set out in the 2017 SHLAA) will become part of each London borough's development plan and should be the figure that their supply performance is assessed against. This should be made clear in the final version of the Rule Book.

Paragraph 62 sets out a list of groups that planning authorities should assess the "size, type and tenure of homes" for, but the relevant section of the draft PPG (titled "Identifying the need for different types of housing") simply lists potential data sources (some of which are not available or not robust at local level, such as the English Housing Survey) without providing any guidance on how they should be analysed or integrated with the proposed standard method. There is therefore no 'standard method' (or any suggested method at all) for assessing the needs of these groups. Improved guidance is clearly required, without which local authorities are likely to continue producing time-consuming but inconsistent local assessments.

The draft PPG also introduces a new category of households considered to be in affordable housing need, namely "households which can afford to rent in the private rental market, but cannot afford to buy despite a preference for owning their own home". The guidance on assessing affordable housing need that follows has not however been substantially altered, and continues to recommend using data that local authorities do not readily have access to, notably "the proportion of newly forming households unable to buy or rent in the market area". Using a 'net stock approach' that makes efficient use of available data the 2017 London SHMA sets out a method for calculating the needs of all households in need of affordable housing, including those that can afford market rents but are not satisfied with their current tenure and who expect to eventually buy their own home.

The expectation in paragraph 63 that affordable housing should be provided on-site unless off-site provision or financial contributions are robustly justified and contribute to mixed and balanced communities is welcomed and is broadly aligned with the draft London Plan, which states that off-site provision should only be in exceptional circumstances and on small sites (see below).

In relation to paragraph 64, the draft London Plan encourages London boroughs to require affordable contributions on small sites (those of less than 10 units) in the form of financial contributions only (payable on completion), in recognition of

London's acute need for affordable housing and the residential values that can be achieved in many locations in London on small sites, but also being mindful of the objective of increasing planning certainty and housing delivery on small sites.

The draft London Plan states that it is not normally appropriate to apply the vacant building credit in London, except in very limited circumstances, due to its potential for undermining the delivery of the affordable housing required to meet needs.

The Mayor welcomes the provision in paragraph 65 that the expectation for 10% of homes to be available for home ownership should not significantly prejudice meeting the affordable housing needs of specific groups, many of whom in London have a particular requirement for low-cost rent.

Benchmarking for Build to Rent affordable housing requirements

The guidance states that 20% will generally be a suitable benchmark for the proportion of a scheme which is provided as affordable private rent (as defined in the NPPF). The guidance goes on to note national affordable housing policy requires a minimum discount of 20% for affordable rented homes relative to local market rents.

The Mayor welcomes the certainty provided through a benchmark approach and this is consistent with the approach in the draft London Plan. There will be significant differences in the level of affordable housing that can be viably supported on Built to Rent developments in different housing market areas. It is important that Build to Rent affordable housing requirements are set at a local level having regard to local affordable housing needs and the viability of bringing forward Build to Rent schemes in the relevant area. This will ensure that affordable housing contributions from Build to Rent schemes are maximised and reasonable and it will ensure they compete on a level playing field against conventional built for sale development.

Furthermore, the proposed guideline benchmark serves no purpose in the absence of a proposed level of discount on the affordable private rented homes. The reference in the draft guidance to the minimum discount that must be applied to affordable private rented homes to qualify as an affordable product, 20%, suggests that the guideline benchmark should be interpreted as 20% of homes provided at a 20% discount. The appropriate benchmark level of affordable housing and depth of the discount is a factor of viability and the PPG should recognise this should be determined locally. It should be noted that in some parts of London developers have been able to achieve at least 35% of homes as affordable market rent on Build to Rent schemes and the average level of discount has been considerably below 20% of market value. It is recommended the indicative benchmarks are removed from the final guidance.

Where the viability of an individual development proposal is a relevant consideration meaning local affordable housing benchmark requirements cannot be met then the planning authority should determine whether to prioritise a higher proportion of affordable homes but at shallower discounts or whether to prioritise the depth of discount whilst accepting a lower overall proportion of affordable

homes. In such circumstances planning permission should be conditional on a viability review to determine whether the affordable housing contribution can be improved if the viability of the scheme has improved between the grant of planning permission and the point of the review. The Mayor's Affordable Housing and Viability SPG (2017) sets out his preferred approach to viability reviews on Build to Rent development.

Regarding rental increases for the affordable private rent homes, the draft guidance states that the rents charged on affordable private rent homes should increase on the same basis as rent increases for the market tenancies within the development. It is important to clarify that all affordable homes should remain affordable in perpetuity and that rental increases should be capped at a level which remains affordable to the occupants. If this were not the case, affordable products could gradually become unaffordable in circumstances where housing cost inflation outpaced household income growth.

Fixing the proportion of affordable private rent and level of discount

The guidance notes that the proportion of affordable private rent units, and discount offered on them, can be varied across a development over time. It is understood that the purpose of this provision is to allow flexibility so that the overall scheme discount can be reapportioned to benefit more households with a relatively shallower discount or fewer households with a relatively deeper discount to reflect changes in affordable housing needs.

Whilst the policy objective is supported in principle it should be noted that the current operation of CIL relief may frustrate this objective as affordable units must be fixed to a floorplan to benefit from CIL relief.

What happens if homes within a Build to Rent scheme are sold off into separate ownership? And How should the clawback arrangements be structured?

We welcome the strong presumption in the draft guidance that any affordable units provided as part of a Build to Rent scheme should remain affordable in perpetuity, including in circumstances where the private rented units are sold into owner-occupation or to multiple landlords. However, there may be exceptional circumstances where it is not practical or feasible to retain the affordable units as affordable private rent. In such circumstances the affordable private rent units should be replaced on a like-for-like basis or alternative affordable housing provision of equivalent value should be provided in compensation. In very exception circumstances a cash in lieu payment towards alternative affordable housing provision may be an appropriate method of compensation. The guidance should refer to such obligations as 'alternative affordable housing provision' or 'equivalent affordable housing provision'. This is because the use of the term 'clawback' has an established and understood meaning in London which is distinctly different.

The GLA require all schemes which are permitted as Build to Rent to be subject to a covenant which disincentivises the break-up of the private rented element. This is because we want to encourage genuinely high-quality, professionally managed

private rented accommodation to improve the rental opportunities of those who need to or choose to rent. Purpose-built private rented accommodation is considered a benefit in and of itself and it should be secured for the longer term. It is also considered that a long-term commitment from the provider is a reasonable quid pro quo for boroughs which have applied their affordable housing requirements flexibly to assist the Build to Rent model. All Build to Rent schemes permitted in London should only be permitted subject to a covenant of at least 15 years. The GLA uses the term 'clawback' to refer to the payment that must be made to the borough in the event a covenant is broken early. The affordable housing obligations discussed above apply in perpetuity and in addition to the clawback.

Without proper provision of clawback for market and affordable units a covenant would be ineffective. The proposed formula to determine the affordable housing payment set out in the draft guidance would generate a figure which does not reflect the value to the developer of selling the units. As such, there may be a financial incentive to do so. The Mayor's SPG sets out a detailed approach to structuring clawback mechanisms which avoid this by maintaining a financially neutral position. The national guidance should reflect this important principle and encourage planning authorities to consider the use of covenants on Build to Rent development to ensure they remain committed to the rental market for a minimum period.

Assessment of rental market housing needs

The PPG states that LPAs should 'take into account the need for a range of housing types and tenures in their area including provisions for those who wish to rent', but does not provide sufficient guidance to enable local or strategic planning authorities to assess this need. It references a number of data sources (the English Housing Survey, and ONS data on tenure private rents) which are only available at regional level and which reflect only historical trends. But the recent rapid growth of the private rented sector shows that these past trends are a poor guide to future shifts in demand for different tenures, and the guidance provides no advice for overcoming this problem or for interpreting the data sources. A much more comprehensive and clear guide to assessing demand (as opposed to need) for different tenures at local and strategic levels should be provided.

The draft guidance states that where need is identified LPAs should positively plan for Build to Rent, including by setting out locations where Build to Rent should be provided. It should be noted that several investors considering Build to Rent currently seek covenants restricting their development to the private rental market to be limited to a fixed period of no more than 15 years. This is to satisfy lenders' requirements by providing an exit route. If Build to Rent is considered to meet an objectively assessed housing need it is likely that LPAs will consider any such covenant should be lengthened or be required in perpetuity. This may deter investment in the Build to Rent market.

Chapter 6: Building a strong, competitive economy

Question 15

Do you agree with the policy changes on supporting business growth and productivity, including the approach to accommodating local business and community needs in rural areas?

Yes

Please enter your comments here

The Mayor strongly supports new paragraph 82, which requires significant weight to be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

However, other parts of the revised NPPF – specifically paragraph 120 – have the potential to undermine economic growth and productivity through the loss of sites that are designated for economic and other uses. See comments in response to Question 25.

Question 16

Do you have any other comments on the text of chapter 6?

[Click here to enter text.](#)

Chapter 7: Ensuring the vitality of town centres

Question 17

Do you agree with the policy changes on planning for identified retail needs and considering planning applications for town centre uses?

Yes

Please enter your comments here

The Mayor broadly agrees with the policy changes on planning for identified retail needs and considering planning applications for town centre uses. The text in paragraph 87 relating to sites becoming available within a reasonable period is a sensible addition.

The additional text in paragraph 88 that seeks opportunities to fully explore suitable town centre or edge of centre sites provides welcome clarification; however, there remain concerns about varied interpretations of how much flexibility is to be shown. Decisions in recent years have tended to require very

limited flexibility to be shown by applicants, particularly regarding disaggregation of uses, which has the potential to divert economic development away from town centres. Given the challenges faced by many town centres, the Mayor believes that there may be situations where disaggregation of town centre uses is justified. This could helpfully be explored further in revised Planning Practice Guidance

Question 18

Do you have any other comments on the text of Chapter 7?

Paragraphs 87 and 88 both contain restrictive clauses (para 87: “Local planning authorities should apply a sequential test to planning applications for main town centre uses ~~that~~ *which* are ...”; para 88: “...preference should be given to accessible sites ~~that~~ *which* are...”). The wording of these has been altered from “that” to “which”. This is grammatically incorrect and effectively means that the second clause of these sentences is no longer restrictive. This could lead to misinterpretation, so the language should revert to “that are...”.

Chapter 8: Promoting healthy and safe communities

Question 19

Do you have any comments on the new policies in Chapter 8 that have not already been consulted on?

Para 92

The statement “Planning policies and decisions should aim to achieve healthy, inclusive and safe places...” should be strengthened to read:

“Planning policies and decisions should *support the creation of* ~~aim to achieve~~ healthy, inclusive and safe places...”

part c) should include additional wording to refer to the need to avoid over-concentration of particular uses which can have a negative impact on health, for example:

“c) enable and support healthy lifestyles, especially where this would address identified local health and wellbeing needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling, *and avoiding overconcentration of particular uses which can have a negative impact on health.*”

Para 92 – This should include a mention of street trees and other green infrastructure under the heading of aiming “to achieve healthy, inclusive and safe places” – this would reflect the fact that green infrastructure is a critical component of Healthy Streets.

Question 20

Do you have any other comments on the text of Chapter 8?

It is important that health infrastructure is provided to meet the health and care needs of communities. Therefore, there should be reference to policies and decisions having to plan for health infrastructure and encouragement to work with relevant health organisations to reflect integrated and appropriate models of healthcare provision.

Para 97 – Street trees and other green infrastructure should be listed alongside open spaces – proximity to good-quality green infrastructure of any kind is important, not just ‘open spaces’.

Chapter 9: Promoting sustainable transport

Question 21

Do you agree with the changes to the transport chapter that point to the way that all aspects of transport should be considered, both in planning for transport and assessing transport impacts?

Yes

Please enter your comments here

Para 103 – The requirement for local authorities to recognise and plan positively for opportunities from existing or proposed transport infrastructure is supported. Within this context, the need for local authorities to work alongside transport providers to ensure that the planned transport investment and spatial development strategies are aligned is strongly supported. It will be important that such engagement is not simply reactive, but takes place as early as possible. This will allow emerging local plans not only to respond to planned investment, but can also helpfully make the case for investment, as well as potentially helping to secure funding for future schemes. Greater recognition of this within the framework would be helpful.

This will support local authorities in planning for and delivering high density development at an appropriate scale in areas that are well-connected by public transport and active travel modes. It will allow local authorities to plan for growth opportunities that are unlocked by the provision of transport infrastructure improvements. Generally, this supports the approach taken in the new draft London Plan, particularly in respect of maximising densities and development opportunities along major new transport corridors e.g. Crossrail 2 and Bakerloo line extension. It is also useful from the project development perspective, further strengthening the case for investment in infrastructure to support growth.

Para 105(c) – Recognising the need for local authorities to identify and protect sites associated with infrastructure routes is welcome. However, the current

wording restricts the requirements to plan-making only, meaning that in the absence of formal safeguarding there are limited opportunities to protect routes or sites required for the construction of schemes unless adopted local plans with relevant policies prepared in accordance with Para 105(c) are in place. The Mayor is concerned that in the absence of formal safeguarding there could be a delay between routes or sites required for infrastructure development being identified and appropriate protections being put in place through Local Plan reviews. The Mayor has previously proposed that he be given the power to issue safeguarding directions in specified circumstances, such as wharves and transport schemes promoted by TfL. In the absence of this power, it is therefore suggested that Government consider how protection for sites can be applied to the decision-making process. This would ensure sites or routes can be protected from potential conflicting development where appropriate. It is recognised that robust evidence is required to prevent such protections becoming planning blight.

Para 106 – The Mayor welcomes the need to consider a wide number of issues when setting parking standards, noting that the relative influence of these will vary across different planning authorities. London’s unique circumstances require TfL, as the strategic transport authority, to actively manage parking and streets in London to ensure the continued success of the economy. The new draft London Plan parking standards include requirements for infrastructure to support ultra-low emission vehicles to be provided within new development.

Para 110 – The Mayor welcomes the prioritisation of active travel and public transport in considering applications for development. This supports the approach taken in the new draft London Plan.

Question 22

Do you agree with the policy change that recognises the importance of general aviation facilities?

Yes

Please enter your comments here

Para 105(f) – The Mayor welcomes the introduction of recognising the importance of maintaining a national network of general aviation facilities providing this would not lead to additional environmental harm or impact on scheduled flight operations

Question 23

Do you have any other comments on the text of Chapter 9?

Para 107 – The draft NPPF incorporates the Written Ministerial Statement from March 2015, which states that maximum car parking standards can only be set where it can be justified as necessary for managing the local road network. The Mayor’s Transport Strategy and new draft London Plan both recognise that cars are a space-inefficient mode of transport and that reliance on cars has made London’s streets some of the most congested in the world. This costs the capital an estimated £5bn per year, rising to as much as £9.3 billion by 2030. Given the

challenge of accommodating London's growth, and limited opportunities to markedly increase the capacity of the road network, the Mayor has proposed continuing the implementation of maximum standards across London. This will help alleviate issues directly associated with TfL's duty to manage the road network under the Greater London Authority Act 1999.

The proposed wording refers to 'managing the **local** road network'. This should be changed to 'managing the **local or strategic** road network' due to the nature of managing the road network in cities.

Chapter 10: Supporting high quality communications

Question 24

Do you have any comments on the text of Chapter 10?

The proposed changes are welcome and support London's global competitiveness. The Mayor welcomes in particular the emphasis on full fibre connections.

The changes are compatible with the draft London Plan Policy SI6 on Digital Connectivity Infrastructure.

Chapter 11: Making effective use of land

Question 25

Do you agree with the proposed approaches to under-utilised land, reallocating land for other uses and making it easier to convert land which is in existing use?

Yes

Please enter your comments here

The Mayor welcomes the statement in **paragraph 117** that "Strategic plans should contain a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land". This is precisely the approach adopted in the Mayor's draft London Plan.

Consistent with **paragraph 118**, policies in the draft Plan give substantial weight to the value of using suitable brownfield land within settlements for homes, promote the development of under-used land and buildings for new homes, and support opportunities to use the airspace above existing buildings for new homes. To be most effective in meeting the need for new homes, such airspace development should prioritise the provision of additional homes rather than the extension of

existing ones, and should encompass development above the prevailing heights of neighbouring properties or the overall street scene where this development is well designed and appropriately protects the amenity and light of nearby properties.

The Mayor is concerned that paragraph 120 may have the potential to undermine economic growth and productivity through the loss of sites that are designated for economic and other uses.

As currently drafted, paragraph 120 is ambiguous as it is unclear whether “the use allocated in a plan” relates solely to specific site allocations or would also include sites that are designated in a Development Plan for a particular use or protected by a Development Plan policy for that use. If it has this wider meaning, this could undermine a common situation where the Development Plan expects the site to continue in its current use, as that use is strategically important to ensure continued economic success or the functioning of the area. This could include a broad range of sites, for example waste uses, protected wharves or transport infrastructure, strategically significant industrial sites, social infrastructure uses, cultural institutions, etc. For such sites there may be no expectation that an application would come forward as the designation or policy protects the current use rather than allocates it for an alternative use. The draft wording of paragraph 120 could therefore undermine these important designations and – directly or indirectly – economic growth and productivity.

Paragraph 121: The Mayor agree that use of retail and employment land for homes should not undermine key economic sectors. The draft Plan sets out a balanced approach to bringing many more homes forward on brownfield land while putting in place protections for economically significant reservoirs of strategic industrial land, as well as promoting co-location and mixed use where appropriate

Question 26

Do you agree with the proposed approach to employing minimum density standards where there is a shortage of land for meeting identified housing needs?

Yes

Please enter your comments here

The new draft London Plan does not set a minimum density standard for London as a whole, as conditions vary too much across London for a single standard to be effective everywhere. However, the draft Plan does make it clear that accommodating London’s growth requires development to make the most efficient use of land and be developed at the optimum density, which will mean developing at densities above those of the surrounding area on many sites.

Question 27

Do you have any other comments on the text of Chapter 11?

Paragraph 118 a) should also reference water management as one of the multiple benefits, through the following edit to Chapter 11: 118(a) ‘encourage multiple benefits from both urban and rural land...such as through developments that

would enable new habitat creation, or improve public access *or take an integrated approach to water management.*

Chapter 12 : Achieving well-designed places

Question 28

Do you have any comments on the changes of policy in Chapter 12 that have not already been consulted on?

It is essential to mention trees in the context of 'achieving well-designed places'.

Question 29

Do you have any other comments on the text of Chapter 12?

The Framework should refer to the need for development to provide sufficient space for recycling facilities. The Mayor supports efforts to increase recycling rates. Providing sufficient space, particularly in densely populated urban areas, is one way to do this as well as setting ambitious national recycling targets as the Mayor has done for London in the new draft London Plan.

The Framework should ensure that developments create places that promote health and wellbeing.

The NPPF should be specific about the importance of requiring measures such as green infrastructure, sustainable drainage, sustainable water and power supplies, in order to ensure delivery of sustainable development elements. The policy framework should strengthen the requirement for green infrastructure, which brings multiple benefits (flood and temperature resilience, air quality improvement, environmental net gain).

Chapter 13: Protecting the Green Belt

Question 30

Do you agree with the proposed changes to enable greater use of brownfield land for housing in the Green Belt, and to provide for the other forms of development that are 'not inappropriate' in the Green Belt?

No

Please enter your comments here

The Mayor supports stronger protection for the Green Belt and Metropolitan Open Land and wants to see the enhancement of the Green Belt to provide appropriate multi-functional uses for Londoners. Although enabling greater use of brownfield land in the Green Belt provides a potential mechanism for its enhancement, the Mayor believes the proposed relaxation of Green Belt policy is too high a price to pay.

Question 31

Do you have any other comments on the text of Chapter 13?

[Click here to enter text.](#)

Chapter 14: Meeting the challenge of climate change, flooding and coastal change

Question 32

Do you have any comments on the text of Chapter 14?

The proposed changes related to **flooding** are welcome, as they provide clarification of existing NPPF policy aspects and increase emphasis on sustainable drainage, which is particularly important for London's highly urban environment. The changes are compatible with the new draft London Plan Policies SI12 Flood Risk Management and SI13 Sustainable Drainage.

The Mayor also supports the need to consider cumulative impacts of flood risk, and not just from a single development being considered. There should be early engagement between local plan makers and prospective flood defence partners in the area, such as the Environment Agency and infrastructure operators. There will be benefits in early, joint plan development to identify long-term cumulative impacts of multiple development plans and combined partnership funding opportunities.

Paragraph 163 should be amended to apply to all sizes of applications as SuDS should be incorporated in all development proposals. Reference should also be made to the benefits of promoting SuDS outside areas of flood risk.

The Mayor strongly supports the need to design in resilience to a range of issues associated with climate change, including temperature, flooding, wind and drought.

Paragraph 148 references the need to consider water supply when mitigating and adapting to climate change. While optional **water efficiency** requirements are covered by National Technical Standards the Mayor has chosen to mandate them in the new draft London Plan policy. There would be benefit to doing so at a national level through the Framework which the National Technical Standards stem from.

Paragraphs 149 and 150 should ensure new development minimises internal heat gain and the impacts of the **urban heat island** through design, layout, orientation and materials. The Framework should recognise that overheating in new buildings is a risk that should be mitigated early on in the design of a development to reduce the health risks and impact on vulnerable occupants that can arise from an overheated building.

Question 33

Does paragraph 149b need any further amendment to reflect the ambitions in the Clean Growth Strategy to reduce emissions from building?

Yes

Through the London Plan, London has already introduced a zero-carbon policy for major residential developments, and the Mayor has proposed to extend this to major non-domestic development through the new draft London Plan. Developers and boroughs have responded positively to the domestic policy, with new development in 2016, on average, exceeding the target of a 35 per cent carbon emission reduction beyond current Building Regulations. Where emissions reductions cannot be achieved on site they can be offset with a contribution paid into boroughs' offsetting funds. The new draft London Plan also introduces energy efficiency targets for new development to ensure that reducing energy demand is considered early on when designing a new development. GLA analysis has demonstrated that buildings are able to go considerably further than current Building Regulations, particularly most types of non-domestic development.

There are therefore significant carbon and economic benefits from zero carbon new development, and London has proved that higher standards are achievable. To maximise these benefits UK-wide and ensure that the UK does not 'build in' emissions to new developments for decades to come, the Government should introduce new policy that sets net zero emission development standards for new homes and non-domestic properties, and update building regulations accordingly. This would help to resolve the current uncertainty in the housing industry and, provided there is a clear focus on reducing energy demand, ensure the planning system is contributing to radical reductions in greenhouse gas emissions as set out in paragraph 147.

Alongside this the Government must also update the grid emission factors in Building Regulations to put new development on a zero-carbon pathway. Current Building Regulations do not reflect the lower carbon intensity of the grid in recent years and may therefore be driving developers to install higher carbon technologies. The Government should set clear dates for the consultation on Building Regulations in 2018, including updates to grid emission factors, and also consider providing projections of future grid factors to ensure that developers can select the lowest carbon technologies over the longer term, rather than selecting potentially high-carbon technologies based on short-term emission factors

Heat networks are a clear part of the government's plan to reduce carbon and cut heating bills for customers. However, there is no specific reference to heat

networks in the draft NPPF. The Framework should promote use of waste heat from existing buildings and infrastructure to heat new homes via heat networks, as well as the use of low/zero-carbon technologies in heat networks. It should also promote measuring embodied carbon from construction which will represent an increasing proportion of a building's carbon footprint as its on-site carbon emissions are reduced through passive design.

Chapter 15: Conserving and enhancing the natural environment

Question 34

Do you agree with the approach to clarifying and strengthening protection for areas of particular environmental importance in the context of the 25 Year Environment Plan and national infrastructure requirements, including the level of protection for ancient woodland and aged or veteran trees?

Not sure

Please enter your comments here

The Mayor welcomes protection of areas of particular environmental importance. Policy measures to strengthen existing networks of habitats should encourage recognition of the fact that incorporating green infrastructure into housing development can contribute to this strengthening, through providing small stepping stones or corridor/link extensions.

The policy framework should be stronger, clearer and more consistent about the imperative to achieve net gain. Currently there are references to net gain for biodiversity, net gain for environment and proposals to look for opportunities. This should tie in more strongly with Defra and Natural England policy on net gain for environmental benefits.

The Mayor believes that stronger protection for Sites of Importance for Nature Conservation (aka Local Wildlife Sites) and trees in the urban environment is essential. As well as ensuring the conservation of our most valuable natural assets it is necessary to increase the amount of green cover in the urban environment to increase the benefits this provides – especially in relation to health and well-being – and make these available to all those living in urban areas.

In London, ancient woodland is protected through the land use planning process as all areas of ancient woodland fall within the boundaries of a Metropolitan or Borough Site of Importance for Nature Conservation – areas which receive strong protection through London Plan policy.

Question 35

Do you have any other comments on the text of Chapter 15?

The Mayor is concerned that paragraph 179 constrains consideration of air quality to the plan-making stage and specifically limits reconsideration in determining individual applications. This provides insufficient assurance that individual developments are not harmful to their users, residents and neighbours through increased emissions or exposure to pollution. It is also not consistent with the aspirations of paragraph 168 which states that 'Development should, wherever possible, help to improve local environmental conditions such as air quality'. This restriction will limit the requirement to provide 'air quality assessments' for individual developments where opportunities to improve air quality and design out or mitigate air quality impacts are identified.

The Mayor welcomes the inclusion of the agent of change principle (paragraph 180). It would be useful if the NPPF were to also mention the importance of good design and layout in preventing potential conflicts from arising in this context.

Para 168 – The Mayor welcomes the inclusion of trees and green infrastructure in the text, however there is no mention of the natural environment in urban areas, which is just as important as that in rural areas.

Para 173c – The Mayor welcome the emphasis on protecting veteran trees but there is a strong argument that this protection should be extended to all trees with value in terms of amenity, biodiversity, ecosystem service benefits, historic, community and cultural interest. The text should therefore be amended to read:

Where development would involve the loss of trees of recognised value (including amenity, biodiversity, ecosystem services benefits and historic, cultural and community interest,) that lie outside ancient woodland, it should be refused unless the need for, and benefits of, development in that location would clearly outweigh the loss.

To better align NPPF with the vision and objectives of the 25 Year Environment Plan it would be more helpful to use terms such as: 'protect' (the core network of sites), 'conserve' (the diversity of habitats and species) and 'restore' (the ecological functions of the wider landscape, including the urban environment): furthermore, the focus of policy should be on securing net gain rather than on mitigating impact.

Consequently, it is suggested that the title and opening paragraph of Chapter 15 should be amended to:

15. Protecting, conserving and restoring the natural environment

168. Planning policies and decisions should contribute to building natural capital and improving the natural and local environment by:

- a) protecting and conserving valued landscapes, nature conservation sites, geological conservation interests and soils (in a manner commensurate with their statutory status or identified quality);
- b) restoring and enhancing ecological networks that are more resilient to current and future pressures and can maintain and create the natural capital that provides wider economic and environmental benefits
- c) providing net gains in biodiversity and minimising impacts on biodiversity where adverse impact is unavoidable
- d) recognising the intrinsic character and beauty of the natural environment and countryside
- e) preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability. Development should wherever possible help to improve local environmental conditions such as air and water quality
- f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land and soils, where appropriate.

Chapter 16: Conserving and enhancing the historic environment

Question 36

Do you have any comments on the text of Chapter 16?

[Click here to enter text.](#)

Chapter 17: Facilitating the sustainable use of minerals

Question 37

Do you have any comments on the changes of policy in Chapter 17, or on any other aspects of the text in this chapter?

Para 199 - The word 'essential' should be reinstated from the introductory paragraph, as both housing and infrastructure development require aggregates. The NPPF needs to reflect their importance.

Para 200 –

- a) The text refers to minerals of local and national importance, and these should be defined in the glossary.
- b) The requirements for Mineral Consultation Areas should be reinstated with clarification about their different role from mineral safeguarding areas.
- c) The current NPPF lists different types of infrastructure such as rail heads and wharves that should be safeguarded. This should be reinstated.

Para 200 should also be strengthened to say that substitute, or secondary and recycled materials should be sourced as a first priority. This will support the acceleration to a circular economy, drive materials innovation to design waste out of products and keep them in use for longer, and support growth in reuse and remanufacturing. To promote circular economy outcomes the Mayor's new draft London Plan will require strategic planning applications to aim to be net zero-waste. This will save resources, increase the resource efficiency of London's businesses, reduce carbon emissions and reduce the volume of waste that London produces and has to manage. Reducing the environmental impact of how the UK, and London, manage waste is important if we are to meet regional and national greenhouse gas emission reduction targets.

Para 202 – should refer to maintenance of landbanks not just their provision.

Para 204 – supports the provision of on shore oil and gas exploration, including hydraulic fracturing. The Mayor is opposed to hydraulic fracturing in London and as shale gas is restricted to a few locations in the UK, this advice should not be in a national document but located in an appendix for those parts of the country which are geologically suitable for hydraulic fracturing.

Question 38

Do you think that planning policy in minerals would be better contained in a separate document?

No

Please enter your comments here

A steady and adequate supply of aggregates is essential for delivery of the housing and infrastructure the nation needs. Removing planning policy for aggregates from the NPPF into a separate document could reduce certainty and the benefits of an integrated approach to planning for growth. This could lead to minerals issues not being given appropriate weight in considering planning applications.

Question 39

Do you have any views on the utility of national and sub-national guidelines on future aggregates provision?

Yes

Please enter your comments here

Aggregate Working Parties assess aggregates delivery against the national and sub-national guidelines. They help the development industry judge the reasonableness or not of local plan proposals. In order for the guidelines to be useful it is important that central Government keeps the guidance up to date.

Transitional arrangements and consequential changes

Question 40

Do you agree with the proposed transitional arrangements?

No

Please enter your comments here

The Mayor is very concerned at the implications of these arrangements for his new draft London Plan, and it is unclear how the proposed transitional arrangements will work in practice. Footnote 58 appears to make the London Plan subject to a transitional arrangement which is very different to that which would apply to any other development plan. This will add delay to making the policy changes through the draft London Plan which are needed to deliver more of the homes Londoners need. For Local Plans, submission occurs following public consultation and before an Examination is held. For the London Plan, Regulation 9(2) of the 2000 Order effectively requires the Plan to be sent to the Secretary of State *after* the Examination has taken place and the Panel report received. The Mayor strongly suggests that the point at which, following public consultation, he submits the consultation responses, and his suggested changes, to the Panel is a more reasonable and workable analogy to Local Plan submission. The time between this point and the start of the Examination hearings at around 4 months is similar to the average time local plans in London have taken between submission and examination. The Mayor is confident that his new draft London Plan meets the housing and development needs of Londoners in a sustainable and inclusive way, and needs to be in place as soon as possible. Given the advanced stage of the London Plan, with an examination scheduled before the end of the year, it will be very challenging to make significant changes, should the Mayor be agreeable, that would result from a requirement to comply with the revised NPPF. Such a process would add considerable delay to publishing a plan that sets a target for 65,000 new homes a year; a significant uplift on the current Plan target of 42,000 which would remain part of the Development Plan for London until the new plan is published.

Question 41

Do you think that any changes should be made to the Planning Policy for Traveller Sites as a result of the proposed changes to the Framework set out in the consultation document? If so, what changes should be made?

Yes

Please enter your comments here

Through the draft London Plan the Mayor has adopted a new definition for Gypsies and Travellers to recognise those who have ceased to travel permanently for example, because of a lack of available permanent pitches, transit sites or stopping places; frequent enforcement action (evictions); or lack of opportunities and barriers to work. This is a more comprehensive and inclusive definition that recognises people who culturally identify as Gypsies and Travellers. The Planning Policy for Traveller Sites should be amended to reflect the Mayor's definition.

Question 42

Do you think that any changes should be made to the Planning Policy for Waste as a result of the proposed changes to the Framework set out in the consultation document? If so, what changes should be made?

Yes

Please enter your comments here

It is not clear why this revision of the NPPF has not been updated to include waste planning policies and principles, so that all planning issues are considered in the Framework. Waste policies are currently located in a PPG document separately to other land uses that are set out in both the NPPF and PPG. This could weaken the planning policies for waste against other land uses. Planning for waste is an essential, but controversial, activity and there is a need for clear guidance in the NPPF

Glossary

Question 43

Do you have any comments on the glossary?

Pollution

The current NPPF includes a definition of 'pollution' that is missing from the draft and should be reinstated: **Pollution:** Anything that affects the quality of land, air, water or soils, which might lead to an adverse impact on human health, the natural environment or general amenity. Pollution can arise from a range of emissions, including smoke, fumes, gases, dust, steam, odour, noise and light."

Affordable Housing

The draft NPPF includes a new glossary definition of affordable housing. Some of the proposed changes reflect the outcomes of previous Government consultations but others appear to be entirely new. Taken as a whole, the Mayor is very concerned that the new glossary definition will support a further weakening of the meaning of affordable housing and will make it more difficult for communities and local planning authorities to secure housing that is genuinely affordable to those who need it.

Meaning of affordable housing

The proposed definition introduces a new form of affordable housing (Starter Homes) and enshrines the principle that discounts for affordable housing should be at least 20%. The Mayor opposes Starter Homes on the basis that they are unlikely to be genuinely affordable to Londoners on low or middle incomes and they undermine one of the key principles of affordable housing, which is that affordable homes should remain affordable in perpetuity. He has argued for local flexibility to determine, amongst other things, the size of the discount. Given that Government has now moved away from promoting Starter Homes as a preferred affordable housing tenure, and that a statutory definition already exists, it is unclear why Starter Homes needs to be defined again in the draft NPPF.

The Mayor also believes that Affordable Rent at 80% of market rents is unaffordable to its target group in most parts of London. Through his Affordable Homes Programme, and his draft London Plan, he is promoting a form of Affordable Rent based on social rent levels. 'London Affordable Rent' enshrines a substantially larger discount than 20% and reflects the significant affordability challenges faced by Londoners on low incomes. Given the Mayor's devolved housing responsibilities, and the unique housing challenges London faces, he will continue to use his statutory powers to promote affordable housing that is genuinely affordable to Londoners. It is regrettable that the proposed definition does not clarify the flexibility that does exist to determine what is appropriate in local areas based on evidence of affordability and need.

Of particular concern is the risk posed by the proposed definition of opening the door to cheap market housing being counted as affordable housing. The definition of 'affordable housing for rent' and of 'discounted market sales housing' refers to the discount being compared with 'local market' rents or values. Experience from London suggests this is very difficult to define in practice. More importantly, defining the discount in this way invites claims that lower cost housing (which can be provided by compromising on quality and space) could be offered in place of affordable housing (which must be provided at a sub-market cost). In addition, it is regrettable that the final sentence of the current NPPF definition ("homes... such as low cost market housing may not be considered as affordable housing for planning purposes") is not included in the proposed definition. This unequivocal statement in a national planning document helped to ensure that all forms of affordable housing were genuinely sub-market. Its removal will be interpreted as a signal that this is no longer Government's position. Finally, the definition of 'other affordable routes to home ownership' is too vague: it includes anything that 'provides a route to ownership for those who could not achieve home ownership through the market' and also 'other low cost homes for sale and rent to buy'. This gives further weight to the impression that Government is not committed to affordable housing being sub-market in all cases.

The definition should be amended to:

- **remove the specific reference to Starter Homes and include it as a sub-category within 'affordable homes for sale', as well as providing local planning authorities flexibility to vary the discount in light of local circumstances**

- **include an explicit acknowledgement that 80% of market rents is a maximum that may not be appropriate in all areas, with a clear role for elected Mayors to provide more detailed guidance in planning policy**
- **be clear that all forms of affordable housing must be sub-market, i.e. any discount should be compared with the market rents or value of the unit itself rather than the local market**
- **reinstate the paragraph from the current NPPF which deals with ‘low cost market housing’**
- **state that a discount should be ‘at least [X]% of its market rent/value’.**

Clarity of the definition

Given the Prime Minister’s renewed focus on social rented housing and Government’s ongoing commitment to fund Affordable Rent housing, it is surprising that the proposed official Government definition does not include a single reference to, let alone specific definition of, either of these types of affordable housing. This makes the definition difficult to use for planning authorities and fails to promote public understanding of the meaning of affordable housing. More importantly, it suggests that these are not Government priorities.

The definition also fails to distinguish between regulated ‘general needs’ housing and unregulated ‘intermediate’ housing. A particularly confusing aspect of the definition is Government’s decision to include a specific reference to ‘affordable private rent’. This is a type of intermediate housing, but because of its name and the lack of references to other types of affordable housing, it is likely to be confused with Affordable Rent, which is supposed to serve an entirely different group.

By combining all types of rented affordable housing under one definition, the expectation for rent levels for each individual type of affordable housing is not clear. For example, the definition says that the “rent is set in accordance with the Government’s rent policy or is at least 20% below local market rents”. The precise Government policy this is referring to is not specified. We suggest reference is made to the Social Housing Regulator’s rent standard guidance, which covers the rules for social rent and Affordable Rent. In addition, the lack of any reference to general needs or intermediate categories of affordable housing means that, for example, affordable housing could be called social rent but be charged at 80% of market rents and still meet the planning definition. This is extremely unhelpful in a context where Government is seeking to introduce new types of affordable housing and where there is already a deep public distrust about the meaning of ‘affordable’.

The definition should be amended to

- **include clear definitions of each type of affordable housing and to specify whether each type is for general needs or for the intermediate market**
- **clarify that ‘affordable private rent’ is similar to intermediate market rent or discounted market rent and not the same as Affordable Rent**
- **include more precise references to the rents that should be charged for each type of affordable housing for rent.**

Perpetuity and recycling subsidy

The current NPPF enshrines the principle that affordable housing should remain affordable in perpetuity or that any subsidy should be recycled. In addition to promoting Starter Homes, the proposed definition undermines this principle by introducing a new sentence that requires that subsidy for low cost home ownership affordable housing only needs to be recycled where public grant funding is provided. This risks a situation where a local planning authority is unable to secure low cost home ownership subsidised through planning gain in perpetuity. Notably, the proposed definition does not seek to apply the same principle to other types of affordable housing.

The definition should be amended to remove this new sentence and be clear that the principle of perpetuity or recycling of subsidy applies to all forms of affordable housing.

Sustainable transport/travel modes

Both 'sustainable transport modes' and 'sustainable travel modes' are used in the document. Clarification of their meanings would be useful.