

MAYOR OF LONDON

The Rt Hon Michael Gove MP
Secretary of State
Department for Levelling Up, Housing and
Communities
2 Marsham Street
London
SW1P 4DF

Date: 2 March 2023

Dear Secretary of State,

National Planning Policy Framework Consultation – December 2022

Thank you for the opportunity to respond to your proposed amendments to the National Planning Policy Framework. We welcome your ambition to deliver homes in the right places alongside infrastructure, whilst protecting the environment and giving local people a greater say. This aligns with the Mayor's Good Growth objectives set out in the London Plan 2021. However, we are very concerned that many of the changes will undermine that ambition in practice.

This response represents the views of the Mayor of London on behalf of the Greater London Authority, Transport for London, Old Oak and Park Royal Development Corporation and London Legacy Development Corporation.

Housing

Recognition that authorities have relatively little direct control over housing delivery is welcomed, as are the discussions at all levels of our organisations about how to boost housing supply. However, sustained growth in London's housing supply over the past two decades will be stymied by these proposals. London's ability to respond effectively to the challenges it faces relies on planned change to local character in some locations, matching development capacity with transport infrastructure accessibility. This is vital to achieve low-carbon, sustainable neighbourhoods, respond to the housing crisis, balance competing needs for land and secure the viability of ongoing infrastructure investment dependent on achieving good levels of patronage.

The proposals will drive down housing delivery and make it very difficult for ambitious authorities (including the Greater London Authority) to get plans through examination. They fail to respond to the Letwin Review or the findings of the London Housing Delivery Recovery Plan¹ and therefore, do not tackle the barriers to increasing housing supply. Given the economic challenges we face, housing policy must also be rebalanced with meeting the country's economic needs. Embedding the flawed 35% 'cities and urban uplift' into policy risks further undermining public

¹ London's Covid-19 Housing Delivery Recovery Plan July 2020

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confidence and engagement in the planning system. The Standard Method is arbitrary, undeliverable and not fit for purpose.

National Development Management Policies

As previously set out, changes are needed to the Levelling Up and Regeneration Bill to address concerns relating to National Development Management Policies (NDMPs). These must be subject to minimum standards of scrutiny, consultation and criteria to ensure their scope and application are appropriate, they do not undermine current best practice and they are workable in practice. There are numerous amendments to the Bill which we support and consider would address these significant concerns. This should not be left to the NPPF.

London is unique. In order to safeguard its success as a global city, maintain delivery and ambition and sustain the outcomes that are being delivered for Londoners and which benefit the whole of the UK, it needs a framework that recognises its complexity and differences. Pioneering policy positions in the London Plan such as energy efficiency, fire safety, air quality, biodiversity, sustainable transport and affordable housing delivery must be safeguarded. The centralising and standardising intentions for NDMPs do not engage with the role that SDSs have in realising the aims of devolution. They also impractically assume a perfect jigsaw fit between different tiers of policy and ignore the important 'story telling role' of individual plans that clearly show how policies in the round deliver on vision and objectives.

With further changes to the planning system, the government risks huge harm to our development industry and confidence of local communities who need a stable policy framework of the type presented by the Mayor's London Plan. We welcome opportunities to improve our planning system and acknowledge the role of the NPPF as part of this, but the current approach introduces further contradictions and ambiguity.

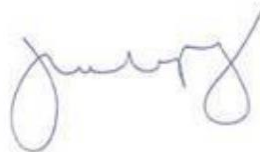
It is hoped we can continue to engage positively on these areas of concern.

Yours sincerely,



Jules Pipe

Deputy Mayor for Planning, Regeneration and Skills



Tom Copley

Deputy Mayor for Housing

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ANNEX 1: Full response to the consultation questions

1 Do you agree that local planning authorities should not have to continually demonstrate a deliverable 5-year housing land supply (5YHLS) as long as the housing requirement set out in its strategic policies is less than 5 years old?

Yes

Notwithstanding concerns about how the Housing Delivery Test (HDT) is used, it is a better way to measure the sufficiency of ongoing housing supply during the plan period (as delivery is slowed if there isn't sufficient supply 'headroom'). However, this would need to be made fit for purpose as it applies to London, with clear and separate provision for Mayoral Development Corporations and use of any up to date Spatial Development Strategy (SDS) housing targets rather than the borough ones.

Not having to demonstrate a 5 year supply at a S78 appeal within the first 5 years of plan adoption would be positive, allowing for focus on other matters within the planning balance to be explored, e.g. design matters, and maintaining strategic control in this crucial early implementation period. It would likewise release resource within plan-making authorities to more positive planning matters.

It is crucial to ensure any new arrangements do not compromise the proactive monitoring and management of housing delivery, even within the first five years of the plan.

2 Do you agree that buffers should not be required as part of 5YHLS calculations (this includes the 20% buffer as applied by the Housing Delivery Test)?

Yes

Any land available as a buffer implies either: the land is made available earlier unexpectedly by an extraordinary mechanism, (e.g. funding of land acquisition) or that it is 'over-allocated' by the plan in the first place.

If a target is capacity driven - as it is in London where affordability issues are acute and housing need is high – this may mean or require that the target/housing requirement is artificially lowered to create capacity for the 20% buffer. As such, buffers are not particularly constructive.

Instead, the flexibility of supply and robustness of delivery should be properly explored at the point of a Local Plan Examination and monitored through Authorities' Monitoring Reports.

3 Should an oversupply of homes early in a plan period be taken into consideration when calculating a 5YHLS later on or is there an alternative approach that is preferable?

Yes, it should be taken into consideration.

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Both an over-supply and under-supply during the first 5 years of the plan period would be expected to be taken into account in a 5YHLS prepared after this period but before a new plan is adopted.

Consideration should be given to how this would apply where there is a 'stepped trajectory' or where the housing requirement does not meet need and the plan seeks to exceed the housing requirement for this reason.

This is distinct from a situation where a plan review, including the housing requirement, occurs at the 5 year point, where need (including market signals reflecting supply relative to need) should be re-assessed before the housing requirement is re-set.

4 What should any planning guidance dealing with oversupply and undersupply say?

Guidance should clearly distinguish between inclusion of over-supply when calculating a 5YHLS for plan periods Years 5+ as set out in paragraph 75 and inclusion of over-delivery when establishing housing requirements in plan-making as set out in paragraph 11 (if this is retained – see Q9(c) below).

It also needs to be clear about how the terms over-supply and over-delivery are used, and the relevant benchmark (need or requirement/target). Over-supply might be referring to permitted, deliverable housing (a forward look) as per proposed paragraph 75 (and the glossary) in the NPPF, whilst over-delivery would more accurately refer to completions (looking back). However, they appear to be used interchangeably in this consultation.

In general, stepped trajectories with varying rates of delivery (and hence annual targets) should be expected to be fairly normal elements of managing land supply, particularly in areas that rely on large sites dependent on plan allocation to progress them and guidance relating to both the HDT and 5YHLS should acknowledge this, as well as encouraging strategic policies to set out trajectories in this form.

Under-supply (and delivery) monitoring and penalties/interventions need to be more cognisant of national macro-economic factors outside of Local Planning Authorities' (LPAs) control that may take national intervention (e.g. increased affordable housing grant) to resolve, rather than being allowed to result in speculative development that undermines the realisation of Good Growth through the weakening of planning. The government should also clarify through guidance whether the 'Liverpool' or 'Sedgefield' method of reallocating any housing delivery shortfall is preferred in monitoring – i.e. equally across the remainder of the plan period or within the next five years – when this is not anticipated by a stepped trajectory.

5 Do you have any views about the potential changes to paragraph 14 of the existing Framework and increasing the protection given to neighbourhood plans?

Support

Given the resources required to prepare and adopt Neighbourhood Plans as part of the development plan, the extension to their 'life' is welcomed. Communities do not have the

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resources to renew plans every two years. Removal of reference to matters which lie solely within the power of the local planning authority is also welcomed.

6 Do you agree that the opening chapters of the Framework should be revised to be clearer about the importance of planning for the homes and other development our communities need?

Yes

Whilst amendments to improve clarity are supported in principle by the Mayor, the objective is diluted by the amendments, which are likely to reduce rather than increase the delivery of housing overall, as set out in this response.

Amendments to paragraph 1 are supported, including the support for up-to-date plans.

Amendments to paragraph 7 are not supported as they dilute meaning and do not add value to the approach to sustainable development as currently set out in this paragraph and paragraph 8 of the NPPF. These changes also fail to recognise that sustainable development is not about the narrow definition of 'development' in planning legislation. It embraces reversing environmental degradation, protection of natural assets and other restrictions on growth and change. The insertion of the revised text which is specifically focussed on 'building things' does not sit well within this definition.

If the amendment must be retained, it is strongly suggested that it is revised to encompass this wider meaning of development, for example:

"The purpose of the planning system is to contribute to the achievement of sustainable development: including where the provision of homes and other forms of development, including supporting infrastructure can be achieved in a sustainable manner alongside other measures to achieve sustainable development such as environmental protection, enhancement and recovery".

Moreover, the Mayor contends that it would be helpful to take this one step further and clarify that fundamentally integration between transport and land use planning is at the heart of sustainable development. A national statement of spatial strategy that recognises this not only in terms of 'brownfield first' but also ensuring that development and density is linked to public transport access would have a powerful impact at this point in the document.

7 What are your views on the implications these changes may have on plan-making and housing supply?

Negative

Whilst the intention is to support plan-making and housing supply, the overall impact of the NPPF changes disincentivise or undermine housing supply ambition by providing significantly increased opportunities to set much lower targets during the plan-making and examination process.

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In terms of plan-making, the proposals also create further change in a system already beset by a lack of clarity, stability and direction. In the longer term, there may be more of an incentive to produce up to date plans, but for the reasons set out above they are unlikely to have the ambition needed to tackle the housing crisis. This is set out in more detail in response to Q9 below.

8 Do you agree that policy and guidance should be clearer on what may constitute an exceptional circumstance for the use of an alternative approach for assessing local housing needs? Are there other issues we should consider alongside those set out above?

Yes

The Mayor notes that exceptional circumstances shouldn't, by definition, necessarily be describable upfront, though some examples may help authorities with their deliberations.

Moreover, devolution (to London and Combined Authorities (CAs)) recognises the value of strategic planning to best define and meet housing needs, and this more local knowledge should be used to judge whether an alternative methodology might be more appropriate. The NPPF should explicitly acknowledge that where an SDS is in place, the housing need assessment in turn cascades to plan-making authorities below through associated capacity-related apportionment work (expressed as local housing requirements/targets in the SDS) rather than such authorities needing to produce their own assessments. This additional clarity could be set out in a footnote to paragraph 61. Overall, the government should commit that any alternative approach will be subject to scrutiny through the examination process alongside the rest of the plan.

More fundamentally, the Standard Method as currently designed, is not fit for its purpose and is unresponsive to London's complex housing needs. As set out in detail in the response to the 2020 consultation on 'Changes to the current planning system' (appended for convenience at Annex 2) the credibility of the Standard Method is questionable due to the use of outdated statistical projections that have consistently been revised downwards since, the arbitrary application of the 35% uplift in some areas, and by failing to provide a more sophisticated formula that uses other affordability markers (e.g. private rents).

Furthermore, it does not provide any tangible conclusions as to what should be built or where. Without evidence of the need for affordable housing or for housing of different types and sizes, planning authorities - that will often require this kind of evidence - have no choice but to use alternative approaches to properly understand need.

9 [a] Do you agree that national policy should make clear that Green Belt does not need to be reviewed or altered when making plans?

No

The Mayor notes that a review is not the same as an alteration, and an alteration is not the only outcome of a review. The Mayor wholeheartedly supports a brownfield first approach and the

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London Plan exemplifies this. Throughout the preparation of the last London Plan, the Mayor was very clear on his view of the importance of protecting the Green Belt. However, Green Belt reviews also enable planners to better understand the strengths and weaknesses of Green Belt performance in relation to its objectives in different places, and opportunities to enhance its role in responding to climate change and biodiversity loss. This information can inform design codes and other policies (e.g. relating to multi-benefit green infrastructure enhancement) and response to other challenges (e.g. the design of essential nationally significant infrastructure). This is an important part of positive planning through plan-making.

9 [b] Do you agree that national policy should make clear that building at densities significantly out of character with an existing area may be considered in assessing whether housing need can be met?

No

Existing character and a clear understanding of its strengths and weaknesses, opportunities and threats to it, is at the heart of plan-making. As the London Plan and associated guidance recognises, this is an essential part of maintaining an area's vitality, meeting need and making the best use of land.

In some cases, this process will identify areas which have the scope to accommodate significant change, often due to infrastructure investment or changing demand or function of an area which creates opportunities for area renewal.

Building in carefully selected places at densities that are significantly 'out of character' with an existing area, particularly in response to transport investment (and to help make such investment viable) has been fundamental to optimising the use of brownfield land through successive London Plans since 2004. It underpins its recent record housing delivery, alongside investment in Crossrail and other transport improvements. Examples in London include some of the country's largest and most heralded regeneration schemes such as the Olympic Legacy and King's Cross. If these schemes had simply maintained densities and heights comparable to the existing character, they would either have been undeliverable or would have delivered a small fraction of economic, social and environmental benefits that were in fact realised.

The London Plan recognises that the evolving character of a city is a fundamental part of its attraction and vitality, presenting the opportunity to improve places with poor stock and brownfield opportunities and future proof for a changing climate, healthy and active lifestyle, and increase the supply of homes. This supports the provision of infrastructure and services which require population catchments sufficient to make them viable.

Whilst the reference to being out of character could charitably be taken as a reference to protected or highly valued characteristics of a place, there are other mechanisms such as heritage protection and good design that are better tools to ensure good planning decisions that account for this. Any strategic decisions relating to character however will need to balance the potential for this to result in an inequitable distribution of growth due to an approach in some places that seeks to limit the introduction of new typologies due to the perceived qualities of existing character, with the corollary being that other places must experience more wholesale

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change despite nonetheless having valued features. The responsibility for accommodating growth and meeting needs is city-wide and part of living in a city, and the Mayor has reflected this in his London Plan strategy along the lines described above.

It is noted that there is an absence of evidence alongside this consultation to demonstrate that the perceived negative impacts of ‘significantly out of character’ development outweigh the harm of not meeting needs and ensuring sustainable development. Yet it is almost inevitable that the proposed amendments will result in Local Plans and subsequent planning decisions taking a (potentially significantly) less ambitious approach to intensification of existing neighbourhoods and adjoining sites. This would reduce brownfield delivery and the ability to meet housing needs, particularly the level of affordable housing. In addition, the consequences of the proposed amendments could also have wider strategic implications, meaning more people are likely to need to move beyond the Green Belt and/or to more dispersed places to meet their housing needs. This in turn is likely to result in increased car-dependency with associated air quality and other issues (for example in outer London), and difficulty in proactively planning for infrastructure sufficiency (e.g. bus routes, schools) undermining the ability to deliver the Mayor’s ‘Good Growth’ objectives.

The Mayor contends therefore, that the current proposed position should be replaced with more nuanced references to successful evolution of places, optimising the use of brownfield land in well-connected urban areas and delivering the homes that people need in the right locations. This should also be clear that development should not be at lower densities than the existing prevailing character, for example to provide car parking, unless there are clear heritage reasons for this.

However, if this reference, in whatever form, is retained it does not properly sit in paragraph 11bii. . It is one of a number of considerations to which paragraph 11 part (b)(ii) applies as part of the reference to the ‘NPPF policies ...as a whole’, and of those policies, it shouldn’t be singled out.

It is also noted that footnote 8 does not make sense in this context: design codes would need to follow the strategic policies in the plan particularly if they were supplementary planning guidance. As such, it is difficult to see how a design code which promotes densities significantly out of character could justify failing to comply with 11 part (b)(ii) when such guidance or codes should only be adopted where they are consistent with the overall strategic policies.

9 [c] Do you agree that national policy should make clear that past over-supply may be taken into account?

No

Determining objectively assessed housing need relies on analysing complex (and not necessarily related) inputs. If housing delivery within a plan period is significant enough, and the local housing market has not seen a commensurate increase in need due to other factors (such as more people coming into the area due to the greater availability of supply), this will be reflected in a reduced figure for the calculation of need for the area’s next plan (reflecting an actual reduction in local housing need). Looking backwards and further deducting for past periods of ‘over-delivery’ (the term used in paragraph 11, rather than ‘over-supply’ which appears in the

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question) results in double-counting a reduction already accounted for if this has *actually* reduced need. This is the case whether using the Standard Method or alternative methods are used.

The inclusion of this proposal further highlights the significant shortcomings of the Standard Method as a means of understanding housing need. The Method's over reliance on two inappropriate metrics results in a volatility that makes it unsuitable for determining a reasonable needs figure (see Annex 2) and rather than introducing another flawed step the Government should revisit this method and make it fit for purpose.

If a housing target has been set below need, as currently is the case for London and many other authorities, over-delivery should be welcomed in principle, if it meets the relevant development plan read as a whole. However, it is noted that the benchmark for determining over-delivery in paragraph 11 is the housing requirement of the existing plan (presumably that which is extant rather than the one in preparation) not housing need. It is considered that the housing *need* established in the existing (extant) plan should be used to measure over-delivery so any shortfall in capacity at the time of that plan's preparation can be recouped over the plan period rather than further accounted for going forward.

Past 'over-delivery' relative to the housing target however may also demonstrate the ability to 'step up' delivery in future. In some cases, over-delivery may also indicate that the housing target was set too low (particularly where it is less than need), so positively endorsing it as a capacity consideration may create a perverse incentive to 'race to the bottom' in terms of housing targets in successive plans under the façade of good levels of delivery. [Conversely, extended periods of 'under-delivery' should also be carefully considered for what they can tell plan-makers about market capacity and other constraints that may still be relevant going forward if not addressed].

It is also acknowledged however that the ability to carefully manage the housing supply has been eroded in recent years by the proliferation of Permitted Development Rights, so the *nature* of such 'over-delivery' may be a relevant consideration in capacity and [qualitative] needs assessment going forward. It may for instance justify a higher target going forward to provide for affordable housing that has been foregone.

Therefore, the Mayor contends that the proposed amendments take an over-simplistic approach and should be removed. Should the government wish to pursue this amendment, then it should be accompanied by comprehensive PPG that takes into account these points and doesn't disincentivise supply in the context of a national housing crisis.

10 Do you have views on what evidence local planning authorities should be expected to provide when making the case that need could only be met by building at densities significantly out of character with the existing area?

Yes

Notwithstanding the Mayor's objection in principle to this proposed amendment (including its location in the NPPF) and the ambiguity it injects given different perceptions of 'character' and

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‘significance’, if the amendment prevails it should be subject to rigorous evidence to support the approach. This evidence should include:

- evaluation of the impacts of not meeting need, including affordable housing need, or of meeting it without recourse to intensification; this should also recognise the positive benefits of intensification such as economic vitality in high streets and town centres and more sustainable travel;

a character assessment that considers how accessibility affects character, including negative as well as positive aspects to character, with an understanding of how development may bring opportunities to enhance character

Impacts considered should include the impacts of higher rents on groups that have lower rates of homeownership for example.

It should also be clarified that significant (but well managed) changes in character should be expected in some areas where there are significant changes to infrastructure and/or land use planned, including as part of plan-led regeneration or renewal opportunities. Whilst arguably local planning authorities are free to pursue such growth, the wording in the NPPF will create a public perception that development at densities significantly out of character with the existing area are not appropriate or acceptable. Instead, this could be managed positively through design codes and similar mechanisms, with characterisation assessments/studies scoped to positively identify locations where higher densities and taller buildings are considered to have a positive impact on the character and liveability of the place, in addition to contributing to meeting housing need.

11 Do you agree with removing the explicit requirement for plans to be ‘justified’, on the basis of delivering a more proportionate approach to examination?

No

The soundness test of being justified relates to both taking into account reasonable alternatives and being based on a proportionate evidence base.

The test’s reference to reasonable alternatives is currently linked to extant legal Strategic Environmental Assessment requirements, the principles of which seek to practically embed the promotion of environmental improvement and sustainable development in plan-making. Whilst it is understood that the government wishes to amend this legislation, the recently enacted Environment Act might also be expected to have similar needs to find a route to the practical realisation of its aims. There is still likely to be value in something that prompts decision-makers to stop and think about whether there are alternative routes to achieving objectives that are better for the environment as a whole.

However, any such requirements should be limited to articulating how any alternatives were taken into consideration during the plan-making stage. The need to alight on and assess artificial, manufactured ‘straw models’ is unhelpful and slows down plan making. As such, there should continue to be a process where options that were given specific consideration were

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discounted or modified can be explained, potentially through the Sustainability Appraisal (or Integrated Impact Assessment) and its successor. This may include explaining why there are no real alternatives to the strategy proposed.

The Mayor recognises that evidence base production including stakeholder and community input, and discussion of any alternatives, is an important part of engagement on plan-making. This helps to establish the key issues to focus on and the appropriate means to address them. The Mayor is concerned that the corollary of removing the test, that plans will therefore be ‘unjustified’, presents considerable problems for legitimacy and transparency of such important documents. It makes the adoption of a plan – any plan – a higher priority than achieving the objectives of sustainable development and the NPPF when taken as a whole. It may also result in increased legal challenge to plans in the absence of a clear decision-making audit trail and testing of this at Examination.

Rather than removing this soundness test, a review of the evidence required to support plan-making should be considered, including requirements around the audit trail of reasonable alternatives. Plans should be supported by a nationally defined set of nationally and publicly available data. Plan-making should provide a strategy that responds to this body of evidence alongside the evidence derived from local engagement. This body of evidence should be sufficient to underpin any plan (including during the examination process), and further evidence or requests for further evidence should be restricted to very limited circumstances. In this way, local planning authorities and communities are clear from the outset about the scope of the examination and can direct resources accordingly. It would also significantly speed up plan-making as a significant burden of resource and time are expended on answering specific questions for which data needs to be specifically created. Where a local authority chooses to go beyond the agreed body of evidence to justify a particular approach, this should be subject to wider scrutiny through the plan-making process as is currently the case with evidence. We would be happy to engage further with officials on this.

12 Do you agree with our proposal to not apply revised tests of soundness to plans at more advanced stages of preparation? If no, which if any, plans should the revised tests apply to?

Yes, the Mayor is of the view that transitional arrangements to prevent delay to plans that have a significant level of advancement already, are generally helpful.

13 Do you agree that we should make a change to the Framework on the application of the urban uplift?

No

The Mayor is supportive of the principle of directing growth to existing urban areas where it is more feasible and cost effective to achieve infrastructure sufficiency, making best use of existing infrastructure and planned investment.

However, as with the Standard Method as a whole, the 35% uplift is not fit for purpose (see Q8 and Annex 2). As such, there are significant concerns about it being elevated into policy. There is

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no evidence for its robustness as an appropriate method to derive housing need or the ability of affected cities to practically achieve its aim at this scale, or acknowledgement of the government support that might be needed, for instance to enable continued infrastructure development. It is further noted that brownfield land supply is ultimately finite (and in London, particularly limited), subject to multiple demands, varied in accessibility and wider infrastructure sufficiency, or that it is often more challenging to develop. Amendments encouraging planning authorities to avoid increasing densities will make achievement of such an uplift in a sustainable way even more difficult, given the concerns set out above (see Q9[b]).

There is also no recognition of authority/plan-making boundaries and hence the capacity to meet need sustainably being poorly aligned with actual urban extents.

14 What, if any, additional policy or guidance could the department provide which could help support authorities plan for more homes in urban areas where the uplift applies?

Notwithstanding the position that the uplift should be removed alongside other elements of the Standard Method (set out in Q8 and Annex 2), the Mayor is strongly of the view that government will need to significantly modify or delete the proposed amendments relating to densities 'significantly out of character'. It should be clarified that urban uplift relies on significant plan-led intensification in some locations, and positively managing change, to carefully distribute and manage this across an area. There should moreover be a clear expectation to best realise the value of infrastructure investment and optimise the efficient use of land. This is partly in footnote 30 (although it only refers to existing infrastructure and only relates to those areas subject to the 35% uplift despite the fact that it should be a more universal principle) but contradicts changes proposed at 11(ii).

It would also be appropriate for the government to acknowledge that with this 'responsibility' for meeting a significant proportion of national housing need should come devolved resource to help do so, addressing authority and wider sector capacity and skills issues and viability challenges, and recognising the role of enabling investment in strategic infrastructure (which is difficult, if not impossible, for authorities to fund on their own).

Finally, the guidance should specifically acknowledge the role of SDSs in apportioning housing requirements to planning authorities through the setting of housing targets, and in such circumstances, local planning authorities do not set their own housing targets. These arrangements typically account for the extent of the urban area over which it is appropriate to plan for urban intensification rather than single central urban authorities.

15 How, if at all, should neighbouring authorities consider the urban uplift applying, where part of those neighbouring authorities also functions as part of the wider economic, transport or housing market for the core town/city?

The Mayor contends that it makes sense for the government to recognise that ultimately all urban areas need to intensify in appropriate ways, not just those that are subject to the 35% uplift. In addition, it is irrational for the intensification necessary to help address the 35% uplift to 'fall off a cliff edge' at the administrative edge of the area to which the 35% uplift applies. For example, where major transport investment extends well beyond the boundary of the urban

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area, all areas that benefit should optimise the use of land in proximity to stations for the improved services. The model in successive London Plans that aligns growth and accessibility should be applied nationally instead of the approach suggesting that densities of places should not change. Cross boundary planning mechanisms such as design codes could be expected to help address this and ensure that the opportunity of infrastructure (and investment in this) is appropriately realised.

16 Do you agree with the proposed 4-year rolling land supply requirement for emerging plans, where work is needed to revise the plan to take account of revised national policy on addressing constraints and reflecting any past over-supply? If no, what approach should be taken, if any?

17 Do you consider that the additional guidance on constraints should apply to plans continuing to be prepared under the transitional arrangements set out in the existing Framework paragraph 220?

Yes, the Mayor considers the transitional arrangements to be appropriate.

However, the Mayor is concerned that transitional arrangements are a distraction from the wider issue of plans being delayed to fundamentally re-visit (and in many cases reduce) their level of ambition vis a vis the housing crisis. The intention of transitional arrangements should be to avoid delays to ensure the benefits of certainty provided to the housing market by newly adopted plans are realised as quickly as possible. However, these proposals actively encourage delays (even though there has always been the ability to account for constraints in paragraph 11b) and at the same time, loosens the forward look authorities should be maintaining to enable a robust supply pipeline.

18 Do you support adding an additional permissions-based test that will ‘switch off’ the application of the presumption in favour of sustainable development where an authority can demonstrate sufficient permissions to meet its housing requirement?

Yes

The principle of recognising that authorities have relatively little direct control over delivery is welcomed. However, the Mayor also notes that the wider need for active monitoring and market engagement should not be neglected. This is partially recognised by reference to the ongoing need for an action plan [though this is not clarified in relation to the proposed the new footnote 49] where delivery rates are below need, but the efficacy of this mechanism also needs exploring.

19 Do you consider that the 115% ‘switch-off’ figure (required to turn off the presumption in favour of sustainable development Housing Delivery Test consequence) is appropriate?

Yes

The principle of recognising that authorities have relatively little direct control over delivery is welcomed. However, the Mayor also notes in addition to the point above that this does not substitute for more nuanced active monitoring that also accounts for subsets of need and

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ensuring the pipeline is sufficiently resilient. In particular, consideration should also be given to the proportion of affordable housing represented in that 115% pipeline or to the proportion of affordable housing provided in the proposal subject to consideration.

20 Do you have views on a robust method for counting deliverable homes permitted for these purposes?

Yes

This should be limited to a) the net additional homes (i.e. accounting for revision or superseding of any previous permissions) with full planning permissions granted which have not lapsed, been superseded or completed and recorded in the national returns, plus b) the net additional homes with permitted development rights approved which have not lapsed, been superseded or completed and recorded in the national returns.

21 What are your views on the right approach to applying Housing Delivery Test consequences pending the 2022 results?

Whilst the Mayor has no specific views on transitional arrangements, it is worth noting that there are other issues with the HDT that make it not fit for purpose. In London particularly, there is the issue that the housing target benchmark is taken from the Local Plan rather than the Spatial Development Strategy (SDS) which sets London's housing targets as part of the statutory Development Plan. This makes understanding the potential outcome of the test more difficult and makes housing monitoring generally more complex as 5YHLS are measured against the SDS. This may act as a disincentive for boroughs to update their plans where an older local plan has a lower housing target than an updated SDS (which they must deliver against). If both the HDT and 5YHLS regimes are to prevail, it would also make sense for timescales to be aligned (i.e. so the HDT covers a 5 year period which is more likely to full reflect and capture 'lumpy delivery'). Finally, paragraph 78 would be a more appropriate addition to the HDT rulebook which describes the nuances of the test, as opposed to the NPPF.

22 Do you agree that the government should revise national planning policy to attach more weight to Social Rent in planning policies and decisions? If yes, do you have any specific suggestions on the best mechanisms for doing this?

Yes, and we have specific suggestions.

The Mayor strongly supports the intention to strengthen national policy support for social rent. This can be achieved in part by requiring a minimum level of Social Rent in each scheme (for example, 10 per cent as with affordable home ownership) - and related amendments suggested to small sites and exceptions policies (see Q24/Q25). However, this will not achieve many social rented homes in those local areas that build very little housing in the first place. To address this problem, government should specifically require every local authority to grow its stock of social rented housing over time to reach a minimum percentage of the total housing stock and provide additional affordable housing grant and / or the reallocation of grant to prioritise Social Rent to support this.

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However, the Mayor is concerned that both the Infrastructure Levy (IL) and Building Safety Levy (BSL)) will put this ambition at risk (further details are provided at Annexes 3 and 4). Local and regional authorities should be given the choice of whether to introduce the IL if this would be more effective in meeting the need for social rented housing, or should be able to continue to secure this through S106. It is also vital that the delivery of onsite affordable housing is safeguarded and that IL receipts are used to fund the homes and infrastructure that is needed to ensure that development is sustainable.

Funding for building safety measures should be provided through alternative measures to BSL such as the Residential Property Developer Tax or Developer's pledge. If the BSL is implemented, government should specify in national policy that the BSL cannot be included as a development cost in area-wide or site-specific viability assessments which would result in a reduction in affordable housing delivery.

23 Do you agree that we should amend existing paragraph 62 of the Framework to support the supply of specialist older people's housing?

Yes

The delivery of specialist older persons housing (in relation to local need) is an essential part of delivering sustainable and inclusive environments and specific reference at the national level to the need to account for older persons housing with an element of care provision is welcome. However, it would also be pertinent to provide more detailed guidance on establishing all the needs referenced within this paragraph – including how they relate to the Standard Method – which fails to account for need in relation to housing type, size and tenure (see response to Q8 and Annex 2).

24 Do you have views on the effectiveness of the existing small sites policy in the National Planning Policy Framework (set out in paragraph 69 of the existing Framework)?

25 How, if at all, do you think the policy could be strengthened to encourage greater use of small sites, especially those that will deliver high levels of affordable housing?

Yes

The Mayor supports the policy's intention but is of the view that it could be strengthened, particularly by linking it to affordable housing. This could be through the addition of an affordable housing exceptions mechanism, similar to that in rural areas, but relating to housing for which there is a demonstrable need in the area. This may in part be addressed by adding reference to affordable housing in paragraph 73, (previously 72) and more clearly stating its relevance in urban areas, particularly in and around accessible locations and town centres. It may also be helpful to amend para 70(c) (which is currently focused on rural settlements with defined 'limits') to refer to these urban opportunities. In some cases, such sub-division of larger sites could also be more of a requirement rather than a 'nice to have' as implied by the current wording in para 70(d). This requirement should however ensure that the design, development and viability of sites across the wider development area continues to be optimised. Additionally, the use of area-wide design codes (in addition to design assessments and Local Development Orders) could be acknowledged and encouraged in para 70b.

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Efficacy could further be improved by complementary mechanisms outside of planning, such as additional support for SME growth and industry diversification. These could recognise for instance, that small sites often have relatively high on-site infrastructure burdens and other viability challenges, while also being more typically brought forward by SME developers, and SME developers are not necessarily on many local development [procurement] frameworks linked to the development of public sector land.

In some authorities, small windfall sites will form a significant component of supply, and guidance should ensure that this, and the impact of policies to encourage them, should be robustly accounted for in SHLAA/HELAA processes.

26 Should the definition of “affordable housing for rent” in the Framework glossary be amended to make it easier for organisations that are not Registered Providers – in particular, community-led developers and almshouses – to develop new affordable homes?

Yes

The Mayor would welcome this, subject to clear definitions that ensure appropriate accountability of such bodies, and the securing of the affordable housing in perpetuity. Ultimately whether a group meet the definition may be a matter for local discretion and oversight (by the LPA and in London with advice from the GLA in fulfilling the Mayor’s statutory housing functions).

In addition, the proposed definition of ‘Community Led Housing’ should be amended as follows, recognising the importance of ‘not for profit’ status and community control relating to a clearly specified community:

“Community-led developments are those that are driven by not-for non-profit organisations that are ~~owned~~ controlled by and accountable to their specified community, ~~members. The community group or where such~~ organisations owns, manages or stewards the homes and other assets in a manner of their choosing. ~~, and this may be done through a mutually supported arrangement with a Registered Provider that owns the freehold or leasehold for the property).~~ The benefits to the specified community are clearly defined and legally protected in perpetuity. Community led development is capable of providing affordable housing and can qualify as a group or association of individuals for the purposes of self and custom build housing.”

27 Are there any changes that could be made to exception site policy that would make it easier for community groups to bring forward affordable housing?

28 Is there anything else that you think would help community groups in delivering affordable housing on exception sites?

Yes, as well as amending glossary definitions which makes the link to affordable housing, the ‘urban exceptions’ mechanisms discussed in Q24 and Q25 above could be helpful.

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29 Is there anything else national planning policy could do to support community-led developments?

It is noted that 'community-led initiatives' for supporting renewable energy are given explicit consideration and support via an expansive exceptions position in NPPF paragraph 156; and as such the Mayor contends that it would make sense to give equivalent support to community-led housing in Chapter 5. Moreover, in line with the intent of proposed reforms to leasehold provisions, wording in paragraph 74(c) could also be amended to ensure that management bodies levying charges are accountable to those paying the charges as follows:

"set clear expectations for the quality of the places to be created and how this can be maintained (such as by following Garden City principles); ensure that management bodies levying charges for residents and commercial users are accountable to those paying the charges; and ensure that appropriate tools such as masterplans and design guides or codes are used to secure a variety of well-designed and beautiful homes to meet the needs of different groups in the community;"

30 Do you agree in principle that an applicant's past behaviour should be taken into account into decision making?

31 Of the two options above, what would be the most effective mechanism? Are there any alternative mechanisms?

No, we do not agree and neither option would be effective.

The Mayor believes that there are various practical and principled problems with this, (not least that sites often change hands at different points in the planning process) and rather than encouraging positive planning it will just increase antagonism in the planning process.

Whilst the Mayor would support the principle of holding developers' poor behaviour to account, he has concerns with the measures proposed. Both options appear to be focused on preventing planning permission being granted to developers based on either previous irresponsible behaviour or where they have been slow in building out sites. These measures would effectively prevent any development from coming forward as no planning permission would be in place for the land. This would severely limit any opportunity for the land to change hands to allow another developer to be able to take a site forward in a proper manner. It also does not acknowledge or tackle slow build out for legitimate reasons such as unanticipated/unusual contingencies relating to brownfield remediation or sub-ground conditions, or wider infrastructure schemes outside of the developer's control. If developers alone are failing to deliver on commitments, it would be preferable that local authorities were provided with additional resources to be able to effectively monitor s106 agreements and pursue any enforcement action in the courts. This may include being able to make use of CPO powers (eg. at set cost level).

32 Do you agree that the 3 build out policy measures that we propose to introduce through policy will help incentivise developers to build out more quickly? Do you have any comments on the design of these policy measures?

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The Mayor supports the desire to pursue build out of permissions given this is what ultimately addresses housing needs and is meaningful for communities. However, whilst more data to help inform the planning of the housing supply pipeline is to be welcomed, the proposals at (c) could provide a perverse incentive to state overly ambitious delivery rates, which in turn could cause issues when managing and monitoring supply. Though presumably intended to work in tandem with the proposals above re past behaviour, as stated above, these are not thought to be workable. Measure (b) is the most appropriate measure and should also be linked to requirements to sub-divide large sites.

33 Do you agree with making changes to emphasise the role of beauty and placemaking in strategic policies and to further encourage well-designed and beautiful development?

34 Do you agree to the proposed changes to the title of Chapter 12, existing paragraphs 84a and 124c to include the word 'beautiful' when referring to 'well-designed places' to further encourage well-designed and beautiful development?

Yes, but not as proposed.

Whilst quality place-making is a vital aspect of the Mayor's 'Good Growth' objectives, the proposed addition in Chapter 3 adds no value to existing text and arguably makes it harder to read. Placemaking is already covered by reference to design quality of places. It would be clearer to insert reference to beauty alongside or as a footnote to text in para 20(d) which references objectives relating to conservation and enhancement of the built and natural environment. However, clarity of definition will also be needed to be provided in form that makes it useable in plan- and decision-making, to ensure there remains sufficient encouragement of innovation.

The Mayor also emphasises that design quality is more than beauty, and aesthetics per se should not be elevated to be a primary concern in the acceptability of design, (as appears to be implied by many of the insertions). Design must also achieve inclusivity, functionality and optimal use of land, flexibility, sustainability and viability, amongst other objectives specific to the site context in question. Indeed, it is noted that the 'Building Better, Building Beautiful' commission recommendations covered a much wider range of issues than aesthetics. Many of these less subjective, more tangible dimensions are covered in the London Plan as part of the policies which express Good Growth objectives (e.g. sustainable settlement patterns, urban greening, clear air, support for active and sustainable travel modes, resilience to the effects of climate change such as over-heating, and fire safety) and the Mayor would encourage their wider rollout through an inclusive definition of beauty or use of a more inclusive term in the first instance. In the absence of a clear definition encompassing a more balanced perspective, there is concern that the amendments will slow down the planning process, create ambiguity and potentially an increase in challenge to plans and decisions.

In Chapter 8, the proposed amendments further highlight the inappropriateness of health, safety and inclusivity issues being separated from the wider place-making chapter, (12) with the wording in para 94 suggesting only buildings should be beautiful (not wider places) and that they don't need to be safe and inclusive. Indeed, the Mayor is concerned that there is a missed opportunity, in considering ways to improve design, to include more policy on safety, including

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fire safety and the role of the HSE/Building Safety Regulator as statutory consultee. It is suggested an amendment could be made to para (97 – proposed to be para 99 as follows:

“Planning policies and decisions should promote public and building safety and take into account wider security and defence requirements by:”

[add new point a)]

a) ensuring fire safety matters related to land use planning are incorporated at the planning stage for relevant schemes¹ and statutory consultees, such as the Building Safety Regulator, engaged in a timely manner;”

[¹ Footnote or glossary to define 'relevant schemes'.]

Consideration could also be given here to the impact of Martyn’s Law and its impact on design both from the outset and to retrofit for existing premises.

A general observation would also be that a more effective way to achieve design quality (and beauty as part of this) is through the provision of local, clearly defined design standards and complementary guidance and oversight processes including [community] design review panels. This approach, deployed in London, has produced the highest standards of design in the country and contributed to Londoners having higher levels of support for new housing than the rest of the country².

35 Do you agree visual clarity on design requirements set out in planning conditions should be encouraged to support effective enforcement action?

Yes, the Mayor supports this and notes the parity between this proposal and London Plan Policy D(4)(F2). In terms of practicalities, it may be appropriate for guidance to clarify that the format of drawings should prioritise functionality for assessment by planners, and clearly illustrate construction methods to ensure that LPAs aren’t signing off materials/landscape/sections that can’t actually be built.

36 Do you agree that a specific reference to mansard roofs in relation to upward extensions in Chapter 11, paragraph 122e of the existing framework is helpful in encouraging LPAs to consider these as a means of increasing densification/creation of new homes? If no, how else might we achieve this objective?

No, this is a detailed matter that should be addressed through Permitted Development Rights. If this is retained, clarification in relation to Listed Buildings is needed.

37 How do you think national policy on small scale nature interventions could be strengthened? For example, in relation to the use of artificial grass by developers in new development?

Yes

² See the [Research National Housing Audit | Place Alliance](#)

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The Mayor is clear about the strategic nature of the cumulative impact of smaller scale changes - and therefore a range of London Plan policies seek to manage them for this reason in order to achieve objectives of strategic importance, for example through the Urban Greening Factor approach. As such, in implementing Biodiversity Net Gain (BNG) requirements, it will be important to ensure that there is a balance between on and off-site delivery, given the former may do more for wider green infrastructure (e.g. climate resilience) objectives, whilst the latter, at scale, may be more beneficial for species themselves. It is agreed that the cumulative impact of artificial grass installation, and impermeable surfaces more generally is of concern.

However, while the importance of small scale changes is not disputed, this should not detract from the importance of ensuring larger scale mechanisms are also working to best effect. Nationally, the BNG requirement and new Sustainable Urban Drainage Systems (SUDS) requirements are likely to have the most significant strategic impact for nature. As such, amendments should focus on ensuring these are appropriately embedded in the NPPF and sufficient attention should be applied to ensuring that there is enough detailed implementation guidance to accompany new statutory requirements. In some cases, this may also require the ability to rapidly review initial guidance to resolve any unanticipated issues.

38 Do you agree that this is the right approach making sure that the food production value of high value farm land is adequately weighted in the planning process, in addition to current references in the Framework on best most versatile agricultural land?

No comment

39 What method or measure could provide a proportionate and effective means of undertaking a carbon impact assessment that would incorporate all measurable carbon demand created from plan-making and planning decisions?

The Mayor wholly supports the inclusion of a holistic carbon impact assessment in the planning process. This is likely to help support the type of development promoted by London Plan policies. However, he does not yet have a specific assessment methodology to suggest.

40 Do you have any views on how planning policy could support climate change adaptation further, specifically through the use of nature-based solutions that provide multi-functional benefits?

Yes, see response to Q37. In addition, the Mayor is of the view more could be said around planning to reduce over-heating risk which is becoming a more prevalent concern given last year's drought and heatwaves.

41 Do you agree with the changes proposed to Paragraph 155 of the existing National Planning Policy Framework?

42 Do you agree with the changes proposed to Paragraph 158 of the existing National Planning Policy Framework?

43 Do you agree with the changes proposed to footnote 54 of the existing National Planning Policy Framework? Do you have any views on specific wording for new footnote 62?

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Yes, the Mayor supports these proposed amendments as part of the national approach to achieving net zero carbon and optimising the use of wind resources.

44 Do you agree with our proposed Paragraph 161 in the National Planning Policy Framework to give significant weight to proposals which allow the adaptation of existing buildings to improve their energy performance?

Yes, but they could go further.

The Mayor supports these proposals but is also mindful of the scale of the retrofit challenge more generally and suggests that more explicit support for refurbishment and retrofit of a wider range of building types could be given. In recognising the need to still apply heritage considerations, clarification as to the extent to which retrofit and refurbishment are to be regarded as public benefits in the planning balance should be clarified.

45 Do you agree with the proposed timeline for finalising local plans, minerals and waste plans and spatial development strategies being prepared under the current system? If no, what alternative timeline would you propose?

No comment

46 Do you agree with the proposed transitional arrangements for plans under the future system? If no, what alternative arrangements would you propose?

The Mayor welcomes the intention of a clear 'grace period' that recognises that plans may only have recently been adopted/published at the time the reforms are introduced and seeks to ensure they are regarded as 'up to date' during preparation of new plans.

However, as currently drafted the proposals could introduce a period of uncertainty where there is no 'up to date' plan, resulting in loss of strategic management/ vulnerability to speculative development. This is because the proposed grace period where the plan is regarded to be up to date is tied to the introduction of the new system, rather than the point at which the plan-making authority commenced the new style of plan (delimited by the point at which it becomes 'out of date') which has to be produced within 30 months.

For example, the London Plan was published in March 2021. Under the 5 year review requirement a review would need to be completed by March 2026 and the final plan published within 30 months i.e., September 2028. However, the proposed 'grace period' would mean that the extant London Plan would only be regarded as up to date for 30 months from when the new system is live, presumed to be early 2027. This creates an ambiguous gap between early 2027 and September 2028. If the period is to be the earlier deadline, this unfairly penalises authorities that are proactive plan-makers. The position should be clarified in favour of the latter date, whatever that might be.

The further implication of the proposals - that LPAs which do not meet the new timescales for plan-making will be left with an 'out of date' extant Development Plan - is also of concern for

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similar reasons. Whilst the Mayor recognises there is a desire for LPAs to quickly progress a Local Plan under the new system and more timely and time-efficient plan-making is supported in principle, the 30 month production period seems particularly ambitious. This is especially given previous experiences with old-style Local Plan production and the realities of the work involved and engagement required. No new Local Plans were produced in anything like these timescales in the years immediately following the introduction of the 2004 system, with many Core Strategies alone taking many years to proceed to adoption. Although targeted revisions might be possible within shorter timescales, this will not be possible if they are required to address housing supply or similar matters requiring anything more than fairly minor amendments and updates.

Whilst the new system has one less stage of consultation, 30 months is still a very compressed programme particularly given current constrained resources and capacity. This will also be a new system for the government and PINS to adjust to, an adjustment made harder in the context of competing priorities, including those associated with the transitional arrangements for Supplementary Planning Documents. The concern is that many Local Plans produced under the new system will be delayed in their adoption resulting in numerous circumstances across the country where speculative planning applications are determined in a local policy vacuum. The Mayor therefore proposes two alternatives / mitigations:

- i. If there is a slip in the timescales for adoption, that as part of the transition arrangements it's clear that extant Local Plans and SDSs continue to be considered as 'up-to-date' parts of the Development Plan to avoid a circumstance where planning applications have to be determined in a vacuum of local/strategic planning policy.
- ii. Alternatively or in tandem with (i) above., that as part of the new system there is a requirement for regular dialogue between plan-making authorities and the Secretary of State (SoS) regarding plan preparation timescales and providing the SoS is satisfied that LPAs are being proactive in the production of their new style Local Plans (or SDS), extant Local Plans will continue to be fit for purpose and considered to be 'up to date' for decision making purposes. Only in exceptional circumstances where LPAs are not making progress and cannot provide clear reasons for delays, would penalties such as diminishing the weight of existing plans be considered.

Consideration should also be made to removing any parts of the plan from being 'out of date' that have either been reviewed and found in a published document to not require updating or, where a direction has been made by a SoS, any part of the plan that is not specifically directed to be modified. It is noted that progress on the London Plan was delayed by the SoS for over a year and, in the context of a 30 month plan-making window, this should be specifically excluded from the timescales.

47 Do you agree with the proposed timeline for preparing neighbourhood plans under the future system? If no, what alternative timeline would you propose?

No comment

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48 Do you agree with the proposed transitional arrangements for supplementary planning documents? If no, what alternative arrangements would you propose?

No

Irrespective of the proposed timelines for transition arrangements, the proposal that SPDs will cease to have effect until the LPA is required to adopt a new-style local plan poses a significant issue for London boroughs. This is of concern to the Mayor as SPDs support the implementation of local plans, which in turn supports the implementation of the London Plan.

When the new system takes effect, LPAs must decide which aspects of an often carefully crafted and refined body of guidance should be retained and what should be included within a new Local Plan, Supplementary Plan and/or design code. Whilst the transition arrangements do provide LPAs with a period within which to progress alternatives, this window is at a time when LPAs with finite resources will need to be giving priority to their new-style Local Plans.

As plans are expected to be shorter, streamlined documents, they are unlikely to be a suitable replacement for detailed planning guidance currently contained in SPDs. It is expected that much of the useful SPD guidance developed by LPAs will therefore have to be incorporated into a Supplementary Plan and the timescales for the production of these is likely to be slower than for Local Plans (and add considerable resource burdens compared to producing SPDs, even under a 'light touch' examination system). It is likely that there would be a period where existing SPDs are made obsolete before new Supplementary Plans can be introduced. The number and variety of SPDs needing to be replaced by Supplementary Plans could require multiple examinations with implications for LPA resources and timetables.

One of the benefits of the current system is that SPDs can be very effective and produced relatively quickly by LPAs when and where they are required. The proposals for Supplementary Plans should seek to do the same and ensure the process to adopt them is not overly onerous.

As part of transition arrangements, consideration should be given to how SPDs can continue to apply and have weight until such time as the LPA has produced and adopted a Local Plan under the new system, even if this new Local Plan is delayed beyond the timescale by which it is supposed to have been adopted (see comments under Q46). SPDs are not part of the Development Plan and provide guidance to developers rather than setting new policy. There should not be any concern with extant SPDs continuing to apply up until the point that a replacement Supplementary Plan or other mechanism has been adopted.

As noted above, many SPDs currently include significant detail that is not appropriate for inclusion in a Local Plan or a Supplementary Plan but is essential in enabling an LPA to plan positively for its area. This includes detailed guidance on matters such as Planning Obligations, affordable housing delivery, carbon reduction and off-setting, air quality options and assessments. This would imply a need for LPAs to continue to publish guidance in some form to provide certainty and clarity for applicants. Therefore, consideration should be given to including an explicit reference to need/acceptability of providing such guidance, the scope and range of matters that might be covered, as well as the level of material weight that such

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guidance can be given in the decision-making process. This would provide greater certainty and avoid this becoming a matter of legal contest.

It is noted that anything is capable of being considered as a material consideration for the purposes of determining a planning application. Whilst specific provisions might be removed from planning legislation (with set timescales for their deletion) in reality they can be published by an LPA in any case. The overall effect of this may therefore be to remove the rigour currently set out in Regulations for their preparation and adoption, rather than removing the guidance they provide from consideration. This will be particularly true where the guidance is useful to all parties and supports speeding up planning decisions. While there seems to be a general presumption from government that less is simpler/quicker/better, this is not necessarily the case. The Mayor shares the aim of making the system clearer and more efficient, but is concerned that losing some aspects of the well established system may actually make the planning process less clear, more contested and therefore potentially slower, as well as less able to secure key benefits e.g. environmental outcomes.

Note that section 15CC (6) of Schedule 7 allows the SoS to prescribe further matters that Supplementary Plans may include. Regulations under this clause could ensure that the technical and detailed guidance contained in SPDs may be included in Supplementary Plans or continue to be published as guidance that could form a material consideration.

49 Do you agree with the suggested scope and principles for guiding National Development Management Policies?

50 What other principles, if any, do you believe should inform the scope of National Development Management Policies?

51 Do you agree that selective additions should be considered for proposals to complement existing national policies for guiding decisions?

52 Are there other issues which apply across all or most of England that you think should be considered as possible options for National Development Management Policies?

No

Changes proposed to Section 38(6) of the Planning and Compulsory Purchase Act 2004 subvert the role of local planning policies and neighbourhood plans in favour of centrally produced policies - National Development Management Policies (NDMPs). Whilst this change is presented as providing more certainty, it will reduce the weight of local and neighbourhood plan policies as well as other material considerations – making for a less flexible system, which has less regard to locally important concerns and ultimately, poorer decision-making.

The elements of a development plan (together with the ability to consider ‘material considerations’) currently provide a framework for decision-makers to undertake ‘the planning balance’ which underpins sound decision-making. However, NDMPs would be elevated above and therefore override the development plan, resulting in a loss of the framework that exists to provide requisite checks and balances. The text as set out in the consultation *“These would be given the same weight in certain planning decisions as policies in local plans, neighbourhood plans and other statutory plans”* is therefore misleading as the Bill gives NDMPs a higher status than other parts of the Development Plan.

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The Bill suggests an unfettered power in practice, centralised with the SoS of the day, with no recourse should unwelcome or unworkable NDMPs come forward in the future. NDMPs contain no requirement to be: capable of implementation for development management purposes; consistent with wider government policy, other NDMPs or the National Planning Policy Framework (NPPF); take account of national, regional or local net zero targets; justified; capable of being applied nationally; or consistent with the overarching economic, social and environmental objectives which have come to form the basis of sustainable development.

Because any conflict between NDMPs and the Development Plan will be decided in favour of NDMPs, this effectively removes the Development Plan from consideration, irrespective of whether it would result in a better decision. The result would be more decisions taken in line with a centralised agenda and which marginalise local policy objectives if these conflict with the national policy aims. This is clearly a marked departure from the localism agenda.

This centralisation of power is not accompanied by accountability through mandatory and prescriptive forms of consultation and engagement on NDMPs. Unlike with Development Plans, there is no mandatory requirement to consult on the wording of the NDMPs; undertake a meaningful and iterative process; publish documentation such as supporting evidence or strategic environmental and equality impact assessments; or for a process of independent scrutiny. This lack of assessment and public involvement will only serve to further disenfranchise communities, and disincentivise engagement on local plans and investment in neighbourhood planning.

London's devolved strategic planning powers have been highly successful over the last two decades. Since the first draft London Plan in 2002, successive Plans have facilitated a step-change in the planning of the UK's only global city. London has led the way in planning policy approaches – such as the suite of policies tackling climate change and biodiversity loss, improving air quality, and increasing and speeding up affordable housing delivery, to name but a few.

Furthermore, strategic planning for London has been pivotal in securing buy-in, support for significant investment in, and financing of, transport and other infrastructure projects of a magnitude that simply would not have been possible without it such as the Northern Line and Barking Riverside extensions, opening up brownfield sites to deliver over 36,000 homes and 20,000 jobs. The results speak for themselves: since the creation of the GLA, annual net housing supply has doubled, and new homes built in London lead the country in terms of energy efficiency and design quality.

Proposals in the Bill mean these innovative policy approaches, driven by the London Plan, are at great risk of being curtailed or blocked at the discretion of the Secretary of State of the day. The Mayor is therefore calling for protections for these powers, which serve to benefit the country as a whole, when innovative approaches that are piloted in London, can be rolled out elsewhere if they prove to be successful.

The Mayor is unequivocal in his support for greater devolution for fellow combined authority mayors and notes that the Levelling Up White Paper committed to further devolution for local

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leaders. However, centralising and watering down planning legislation as proposed in the Bill risks undermining what the Government is seeking to achieve.

These concerns are not matters for London alone. A curtailment of ambitious planning approaches would disbenefit the country as a whole as it encourages a 'lowest common denominator' approach that fails to deliver on local and national agendas that matter most. For example, London was the first major city in the UK to have a zero carbon homes and commercial buildings standard for new development made possible through the London Plan. London has required improvements over Part L of the Building Regulations (energy performance of buildings) towards net zero, since the 2011 London Plan, changes which are crucial in supporting the Government to deliver its commitment to achieve net zero by 2050. As a result of our innovative policy approach, we secured carbon savings 46% above National Building Regulations in 2020. There is a risk of either making development unviable elsewhere or not being able to tackle the challenges London has and setting best practice back decades.

For these reasons the Mayor rejects inclusion of these matters within an NPPF without the necessary provisions within national legislation.

53 What, if any, planning policies do you think could be included in a new framework to help achieve the 12 levelling up missions in the Levelling Up White Paper?

Given these are planning reforms that are meant to assist the Levelling Up agenda, the Mayor is concerned that it is not discussed once in the document nor is any link made between sustainable development, (and particularly design quality) and levelling up to address geographical inequality. Moreover, the Mayor is mindful that national policy together with local policy and other mechanisms (e.g. design review) are ineffective in relation to Permitted Development rights, which have reinforced inequalities in many cities across the country. As described below (see Q54) policies concerned with supporting economic growth also need refreshing and balancing with the overall emphasis on housing needs. The integration of policy concerned with health, inclusion and well-being with other design considerations should also be strongly considered.

54 How do you think that the framework could better support development that will drive economic growth and productivity in every part of the country, in support of the Levelling Up agenda?

The framework could take a more positive approach within Chapter 6 to growth in urban contexts by making clearer the link with and benefits of public transport and wider infrastructure investment, given the direct role these have in unlocking the delivery of higher density development and the positive conditions for more local regeneration that these afford. The current narrative assumes a zero sum game, and seeks to play regions off against each other. The framework could be clearer that investment is needed across all areas and a failure to deliver infrastructure reduces future productivity and economic growth. However, investment in the right projects, irrespective of their location, more than pays back through contingent uplift in homes and other development capacity, and creating places that are sustainable, attractive and enable healthy lifestyle choices.

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Towns and cities face considerable challenges in planning for employment and business development. This includes the loss of employment land, in particular industrial land, and business premises in sustainable locations and accommodating increased growth in the context of competing land uses and the drive to achieve higher densities. This is squeezing out uses and activities urban areas rely on to function and thrive. A new section should be added “Supporting a prosperous urban economy’ which outlines the role of planning in addressing the challenges and opportunities urban areas face in planning for jobs, business and industry, and provides a better counter-balance to housing considerations. It is noted that the current Chapter 6 ‘Building a strong competitive economy’ at 1 and a half pages in length reads as an afterthought. More than half the chapter is devoted to “Supporting a prosperous rural economy”, and peculiarly, town centres are dealt with in a separate chapter.

Present policy also misses an opportunity to address the current challenges faced in the economy in more proactive language. For instance, in relation to town centres (Chapter 7) no changes are proposed, missing an opportunity to strengthen the role of town centres in the creation of economic opportunities considering macro-economic challenges.

The Mayor has previously expressed considerable concern about Permitted Development Rights, the irrational and harmful curbing of Article 4 Directions where they are needed and the on-going assault on protections for industrial land and other sustainable employment locations in favour of housing. These mechanisms undermine the ability to carefully curate town centres and other employment environments to best strategic effect, and other efforts to improve housing quality and (ultimately workforce) health, typically resulting in poor quality housing in many cases in unsustainable locations. Alongside this, agglomeration benefits, the need for warehousing and logistics to respond to the uptick in online retail and food and beverage and the evolving role of town centres as community hubs as set out in the Grimsey Report and reflected in the 15 minute city concept are all lacking acknowledgement in national policy. These should be better acknowledged and addressed in this chapter.

Whilst the role of housing in town centre environments is acknowledged in the Chapter, it would be helpful to be clear that this should not squeeze out other uses or undermine other town centre objectives, clearly referencing the relevance of the Agent of Change approach (pioneered by the Mayor) which should be more closely linked to economic development.

55 Do you think that the government could go further in national policy, to increase development on brownfield land within city and town centres, with a view to facilitating gentle densification of our urban cores?

Yes

The term “gentle densification” and references to “densities significantly out of character with the existing area” may be a barrier to the efficient use of brownfield land within city and town centres. This is set out in detail above, particularly Q 9[b].

The Mayor also notes that ensuring appropriate planning authority resource, and the certainty that resultant plans and guidance brings, is key to development of these sites. Optimising brownfield land development requires considerable plan-making and design skill resource which

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is increasingly scarce in authorities faced by ongoing budgetary pressures and recruitment and retention difficulties. This is made clear in the Mayor's forthcoming Placeshaping Capacity Survey³ which reports that 93 per cent of London authorities find it difficult to attract skilled candidates and that placeshaping teams across London have reduced in size by 21 per cent since 2014. More resource should lead to better quality products, as well as faster paced production.

³ [Helping London authorities deliver with a Placeshaping Capacity Survey 2023 | London City Hall](#) – due for publication later in March 2023.

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56 Do you think that the government should bring forward proposals to update the framework as part of next year's wider review to place more emphasis on making sure that women, girls and other vulnerable groups in society feel safe in our public spaces, including for example policies on lighting/street lighting?

Yes

Our built environment is vital in supporting the safety of women, girls, gender diverse people and other vulnerable groups. The murders of Sabina Nessa, Sarah Everard, Bibaa Henry and Nicole Smallman, alongside countless other acts of violence against women, are stark reminders that all those who work in planning and development need to work at pace and do their utmost to create safer inclusive built environments.

Accordingly, the Mayor of London would welcome national inclusive design standards as well as wider planning policy to improve the safety of women, girls and gender diverse people, and guidance to support implementation. Any updates to the NPPF in relation to the safety of women, girls and other groups should be considered alongside updates to accessibility standards (Part M of the Building Regs and British Standards) and draw on other good practice guidance developed by the GLA family and PAS.

In preparing such updates, it may be helpful to consider the pioneering approach of Mayor's London Plan 2021. Policies such as D5 Inclusive Design and D8 Public Realm, seek to ensure that new public spaces and developments are safe and reflect the highest standards of inclusive design. These are supported by London Plan Guidance: Public London Charter and the recent Mayoral publication on Women, Girls and Gender Diverse People Safety in Public Space, which provide boroughs and applicants with tools to embed safety and inclusive design considerations into proposals early on. The Mayor's London Review Panel is also mainstreaming gender inclusion into the design review process.

Cross-organisational work to co-develop new standards and share learning and best practice to support implementation at pace is also strongly advised. The Mayor's Design Advocates, for example, are working across ten projects, exploring with partners how to embed principles of gender safety. Lessons will underpin guidance for the development community, inform the Mayor's approach to investment, and planning decisions. Case studies and examples from London and further afield can be shared if this would be of interest.

Moreover, addressing representation in the built environment sector more generally is also vital. Since publication of the Mayor's Supporting Diversity Handbook in 2019, officers have worked with six organisations, collectively representing 350,000 members, to establish an action plan for creating an inclusive built environment sector. The GLA is also in its second year of a programme to deliver teaching of built environment skills in London's schools with over 35% accessing the available materials to date. Involvement has included a high proportion of Black, Asian and Ethnic Minority backgrounds and from women and girls. This year's challenge has seen nearly 20,000 participants across London through work with the Minecraft World platform.

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Equalities Impact Assessments and Design and Access Statements are also important planning tools for the government to target: the Mayor advocates that government should emphasise that safety considerations should be incorporated as key impact considerations. Issues should be considered at the very earliest stages of design and minimum requirements and responsibilities made clear for all stakeholders.

In relation to design standards on lighting / street lighting specifically, these would be welcomed. However, the Mayor cautions that budget cuts to local authorities have resulted in street lighting levels being reduced in London, which increases the risk of violence against Londoners. Any future national standards or guidance should also consider and resolve potential tensions between planning objectives, such as safety and maximising biodiversity, which can be affected, for example, by lighting and hedging levels.

Beyond the planning system however, are other issues to tackle. The city at night remains a major consideration for women's safety. The Mayor's Night-time Strategy supports councils, communities and businesses, in creating night-time plans. Over 1,000 venues and organisations have signed up to the Mayor's Women's Night Safety Charter.

Finally, it is noted that planning exists in a context of structural misogyny that needs to be tackled more broadly in order to ensure the safety of women and girls.

57 Are there any specific approaches or examples of best practice which you think we should consider to improve the way that national planning policy is presented and accessed?

No

The Mayor continues to have an active interest in better communicating planning policy and related issues to the public, to be able to meaningfully engage them in the plan-making and wider planning process. Should any specific examples or approaches stand out during our ongoing research and endeavours on this point, we should be happy to share them in due course.

58 We continue to keep the impacts of these proposals under review and would be grateful for your comments on any potential impacts that might arise under the Public Sector Equality Duty as a result of the proposals in this document.

Whilst it is positive to see the Public Sector Equality Duty (PSED) referred to as part of this consultation, the Mayor notes that the PSED is a continuing and ongoing duty. Equality impacts should be considered throughout the process and key considerations/possible impacts should be demonstrated. As such, the Mayor is concerned that the Government has not published its own draft Equality Impact Assessment as part of this consultation and would welcome a meeting with Government to discuss potential equality impacts further.

The Mayor is particularly concerned with the potential equalities impacts of proposed amendments that are likely to affect housing delivery. Without allowing densities to evolve over time, new homes simply won't be built in many existing neighbourhoods, resulting in worse affordability. Ultimately this results in the continuing exclusion of those whose mobility needs

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make older homes inaccessible to them, and disproportionately negatively impacts on minority ethnicity communities and female headed single parent households, with lower average incomes and lower rates of home ownership.

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Annex 2 Mayor of London response to Ministry of Housing, Communities and Local Government consultation: Changes to the Current Planning System

01 October 2020

Response to consultation questions

The standard method for assessing housing numbers in strategic plans

Q1: Do you agree that planning practice guidance should be amended to specify that the appropriate baseline for the standard method is whichever is the higher of the level of 0.5% of housing stock in each local authority area OR the latest household projections averaged over a 10-year period?

The introduction of an amendment to the standard method that takes into account an area's housing stock - rather than simply relying on population projections – is welcomed. A method based only on population projections and affordability is too volatile to form a basis for planning, and it is essential that new housing is focused on existing settlements to ensure that development is sustainable and drives investment and regeneration. Notwithstanding, there remain some significant drawbacks to the method in its proposed form, as set out in the following answers.

Firstly, the GLA has previously noted serious concerns with the use of ONS household projections in a standard needs formula, and we repeat them here. These concerns stem from the method used to project population changes, and the inherent problem of the failure to better account for the impacts of previously constrained household formation which, is accounted for, would better reflect housing need. The uncertainties inherent in demographic projections may be particularly problematic in current times, given the unknown impacts of COVID19 on people's decision making around where to live.

Secondly, to work as a method applicable at the national level it should be fit for purpose in all areas and have some semblance of deliverability. As proposed, it does not respond to the complexity of London's housing needs, particularly its urgent need for affordable housing (see response to question 5).

Overall, the method continues to fail to address the question of what should be built and where, even with the introduction of a stock-based model as an alternative baseline. Given that the vast majority of the uplift in housing need under the proposed method is in the south of England, particularly in London and the rural shires, its incompatibility with the Government's own stated objective - to achieve a better distribution of homes between more high-demand areas and emerging demand areas across the country – is clear. The proposed method does very little to adequately estimate potential demand for housing in growing cities outside of London and the South East or to direct growth to urban areas better able to accommodate it and with ambitions for growth.

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The proposed requirement for London - an area with a recently examined strategic plan that determined available capacity - of more than 90,000 homes a year is clearly undeliverable. This will inevitably result in either 'planning by appeal' due to unachievable delivery quotas and/or the redistribution (by some yet to be determined mechanism) of that need to neighbouring areas of the South East. Discussions with the Wider South East show this is not a palatable option for them particularly given the impact of the affordability weighting across the wider regions.

To remedy these issues, a more sophisticated model that takes into account the need for affordable housing and the affordability of private rents would ideally be used. The proposed methodology penalises authorities with expensive stock for providing affordable rented housing for hard working lower income earners, including key workers. Failing that, more flexibility should be built into the current model through the following adjustments:

1. Raise the existing stock growth factor to 1% (see response to question 2 for justification).
2. Remove the weighting for the level of affordability and remove the weighting for change in affordability over time (see response to question 4 and 5 for justification).

The re-focus on stock growth will support the regeneration of areas that require it as well as support the Government's 'levelling up' agenda and the Northern Powerhouse.

The Government is also encouraged to make clear if changes to the standard method will result in an amendment to Planning Practice Guidance which allows for an alternative approach to calculating housing need to be taken in exceptional circumstances, including the introduction of a cap.

Q2: In the stock element of the baseline, do you agree that 0.5% of existing stock for the standard method is appropriate? If not, please explain why.

As stated in the GLA's response to question 1, recognising existing stock as part of the method is supported, however the level set for the existing stock threshold is questionable. Limited justification has been put forward for the rationale behind 0.5%.

As new housing should be sustainably focused in existing settlements, a higher minimum stock growth rate is appropriate for a metropolitan city region and does not put a disproportionate emphasis on existing stock or overinflate areas that are less urban in nature. An existing stock baseline of 1%, as set out in the response to question 1, is considered to be justified when combined with the removal of any weighting for changes in affordability (see response to question 5) and will have the added benefit of greater stability over time.

Q3: Do you agree that using the workplace-based median house price to median earnings ratio from the most recent year for which data is available to adjust the standard method's baseline is appropriate? If not, please explain why.

The GLA partially agree. Whilst some adjustment for affordability is appropriate, changes in the ratio of house prices to earnings are often driven by external macro-economic factors, creating

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short-term volatility in the outputs that should not be used as a basis to change long-term planning policies.

The formula should ideally take into account the need for affordable housing and the affordability of private rents (easily measured as the ratio of average private rents to average earnings, and more stable than the house price ratio). If that is not possible, then the existing formula should be amended to remove the weight given to the change in house price affordability.

Q4: Do you agree that incorporating an adjustment for the change of affordability over 10 years is a positive way to look at whether affordability has improved? If not, please explain why.

As stated above, the ratio of house prices to earnings is relatively volatile due to the influence of macroeconomic factors, and this concern particularly applies to the *change* in the ratio. Secondly, the level of and the change in the ratio are strongly correlated, with the result that they effectively duplicate one another (as Savills have also recently noted). Only one of these measures should be used, where there is a clear rationale for both policy and pragmatic reasons for targeting the level of affordability. The adjustment for the change in affordability should therefore be removed, in favour of a stronger weighting given to the existing stock of housing.

There remains the concern that any formula based on the affordability of market housing does not adequately respond to highly pressured housing markets like London, where housing needs are acute. Issues of high homelessness and overcrowding in the capital require a substantial uplift in the delivery of affordable, specifically social rent homes. Marginal changes in market affordability - even those that are considered to be more significant in other areas of the country - are unlikely to have a substantial impact on these needs within the timescale required.

It is also important to note that the proposed method still does not provide necessary detail for strategic plan making given the lack of tenure, type or size mix outputs which are particularly important in areas where affordability metrics will mean high levels of affordable housing need. This means that further evidence base work is always required to ensure a robust policy framework and certainty for applicants, as well as supporting build out rates.

Given London's affordability issues and its unmatched constraints, the current adjustment together with the removal of the cap, drives need to the point where it is entirely undeliverable. The PPG on housing needs assessment states that the rationale for applying the current affordability cap is "to help ensure that the minimum local housing need figure calculated using the standard method is as deliverable as possible". Removing the cap creates an artificial 'need' that will inevitably be irreconcilable when the constraints are then applied through policy. Given London's constrained nature and needs context, it is recommended that the cap be reintroduced if the affordability adjustment is to be retained as proposed. Alternatively, the GLA's proposal as set out in question 1 should be followed.

Q5: Do you agree that affordability is given an appropriate weighting within the standard method? If not, please explain why.

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As set out above, the change in affordability duplicates the effect of the level of affordability, while adding unnecessary and counter-productive volatility to the results. Moreover, ambitious LPAs should not have their targets reduced due to the affordability weighting when they have a sound plan for delivering more.

The affordability ratio does not reflect the relatively high rate of renting in London (nearly 50%), which is partially due to its relatively young working age population, flexibility in the jobs market and the relative cost of housing for those on a low income. People tend to rent what they need and don't tend to have spare space / bedrooms, whereas they buy what they can afford which can include a deposit from the bank of 'mum and dad' or using existing equity. Using median house prices, based on sales does not fully reflect the affordability picture of an area.

As stated above, by not including rent levels, it penalises authorities that seek to provide low rent accommodation for its low-income worker and key workers.

For these reasons it is considered that less weight should be applied to affordability inputs and an alternative suggestion is set out in the response to question 1.

Do you agree that authorities should be planning having regard to their revised standard method need figure, from the publication date of the revised guidance, with the exception of:

Q6: Authorities which are already at the second stage of the strategic plan consultation process (Regulation 19), which should be given 6 months to submit their plan to the Planning Inspectorate for examination?

The GLA agree that planning authorities should be a given transition period. However, where the housing targets have increased, under the current planning system, Local Plans should be reviewed and adopted within five years of the target being published.

The exception to this is where there is a Spatial Development Strategy (SDS) that is less than five years old or where the SDS is being reviewed to address increased housing targets. In both cases, the SDS takes precedence over any Local Plan. Given the importance of an SDS in this regard, it is imperative that the new London Plan is published as soon as possible.

Q7: Authorities close to publishing their second stage consultation (Regulation 19), which should be given 3 months from the publication date of the revised guidance to publish their Regulation 19 plan, and a further 6 months to submit their plan to the Planning Inspectorate?

The GLA agree that planning authorities should be given a transition period.

If not, please explain why. Are there particular circumstances which need to be catered for?

The London boroughs should be able to continue planning to meet their housing target as set out in the Intend to Publish London Plan (hereafter referred to as the new London Plan), which

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sets out a sustainable spatial strategy. However, the transition arrangements could result in further confusion with some planning authorities (generally in the WSE) pushing forward Local Plans in order to apply an existing lower housing target and others delaying in order to use an emerging lower housing target, if applicable. This is not conducive to speeding up delivery.

The Government should also be mindful of the added confusion and uncertainty, and its associated impact upon housing delivery, that will likely result should both this proposal and the proposal set out in the Planning for the Future White paper come to fruition. Ultimately, given the need to ensure appropriate transition periods, it is possible that at the national level, housing targets derived from four housing methodologies could be in play depending on where the local planning authority is in their local plan making process. This includes plans examined under the 2012 and 2019 NPPFs, those that utilise this proposed methodology and those which account for any new method resulting from the White Paper consultation.

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Annex 3 Infrastructure Levy - Summary of Issues

There is a widely held view across both the public and private sectors that the Infrastructure Levy (IL) proposed in the Bill would result in more complex and less effective arrangements than the current developer contributions system. It would deliver less affordable housing and infrastructure (including transport and social infrastructure), whilst putting less viable developments at risk.

Including affordable housing within the scope of the IL means that rates would need to be many times higher than the Community Infrastructure Levy (CIL). Setting rates at the level needed to maintain current levels of affordable housing would make less viable developments undeliverable. Conversely, setting lower rates will reduce contributions and therefore benefits to the community. As a result, IL would not achieve the same land value capture as currently achieved.

Instead of receiving payments when development starts, payment would be delayed until a later stage and based on development value. This means infrastructure will not be in place when needed; there would be greater uncertainty for councils, developers and communities about the final value of payments; and there would be greater risk for councils who may have to repay Levy receipts if a scheme's value is lower than expected. This would be exacerbated if councils have borrowed against expected future payments to deliver the infrastructure alongside the development. It would also involve a highly complex valuation process which authorities do not have the resources to implement.

Ministers have indicated that they would allow IL to be spent on items that are wholly unconnected to development, which would exacerbate existing funding shortfalls for affordable housing and infrastructure needed to support growth.

Although S106 agreements would be used for 'large sites', if councils are unable to charge CIL, all infrastructure contributions would be subject to S106 negotiations rather than the current blend of S106 and CIL, adding complexity and delay.

Restrictions to S106 agreements would not allow off-site mitigation measures and may prevent other obligations such as local employment and training measures, affordable workspace, construction monitoring or carbon offsetting. Strategic and upper tier authorities may not be able to secure contributions to address the impacts of development by improving the capacity of public transport and other infrastructure to support growth.

Much of the detail of IL is yet to be worked through and would be subject to further consultation and secondary legislation. A more effective approach would be to retain and improve the current system rather than introduce the Levy.

If government progresses with the Levy a number of amendments to the Bill are needed to help mitigate its harmful effects. These changes would allow for greater discretion for Charging Authorities to decide whether or not to introduce the Levy, and to determine how it would be charged and what it would apply to. Amendments are also needed to require infrastructure payments to be made earlier in the development process and to ensure that the Levy is spent on items that support the development of an area.

Annex 4 Building Safety Levy Consultation Responses

MAYOR OF LONDON

February 2023

Summary

This consultation sets out the Mayor of London's comments in relation to the current Building Safety Levy (BSL) consultation. The Mayor is supportive of the principle of raising funding to address building safety remediation. However, he has a range of concerns with the current proposals, including the impact that this could have on the delivery of affordable housing and infrastructure needed to support development. The BSL would also place a significant additional burden on local authorities if they are required to introduce and maintain systems for collecting the Levy.

The Mayor's comments on the consultation questions are set out below and his response to the previous consultation is provided at Appendix 1.

Question 1: Do you think the Building Safety Levy charge will impact on other charges made in relation to residential buildings including Community Infrastructure Levy and Section 106 payments or the Infrastructure Levy that will replace the existing system of developer contributions'? If so, what are they likely to be?

The Mayor of London is supportive of government's efforts to raise funds dedicated to building safety remediation in as equitable manner as possible, and the principal that no affected leaseholder should pay for required works.

The interplay between the different forms of planning obligation is varied and complex, however it is clear that the BSL could have a direct impact on affordable housing, infrastructure contributions and other obligations that are necessary to support the delivery of development. This would particularly be the case if BSL were to be permissible as an additional development cost in viability testing for Development Plans, Community Infrastructure Levy (CIL) charging schedules and individual applications, rather than through developer's profit. In instances where the costs of development outweigh the estimated value of the proposal, if the BSL were to be applied as a fixed charge, it is the quantum of affordable housing, infrastructure and other obligations that would reduce. This would however effectively pass on the costs of historic failings of the construction industry to households in need of affordable housing and limit the provision of infrastructure and other measures that ensure that development is sustainable.

The introduction of extra costs of development into the consideration of area-wide and site-specific FVAs through the introduction of a Building Safety Levy (BSL), will negatively impact the ability of development proposals to cross-subsidise much needed affordable housing.

As such, the Mayor considers that:

- *It is inequitable that resolution to the building safety crisis be funded at the expense of addressing chronic levels of need for affordable housing*

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- *The government should reconsider appropriate routes for raising industry funds, alongside the Residential Property Developers Tax (RPDT) and the developer pledge, as well as contributing funding to ensure there is a comprehensive solution available for those affected by cladding and other building safety issues*
- *If the BSL is adopted, then national planning policy and guidance should be updated to make it clear that the Levy should be paid through developer's profit and that this cannot be included as an additional cost within area-wide and site-specific planning viability assessments. This should also confirm that the profit allowance should not be increased to compensate developers for the cost of BSL*

The same issues would apply to the Infrastructure Levy proposed in the Levelling Up and Regeneration Bill when Charging Authorities assess rates to be included within a charging schedule and these are considered at Examination. For these reasons the same approaches set out above should be applied, with regulations making it clear that BSL cannot be included as an additional cost in viability testing.

Question 2: Who do you think should act as the collection agency for the levy? Please give reasons for your answer.

In addition to the comments set out above, the Mayor is concerned by the additional burden that collecting the BSL would place on local authorities whose resources are already highly constrained. Furthermore, government is also imposing significant complexity and requirements on councils through the imposition of the Infrastructure Levy. The introduction of both new levies would require authorities to maintain a number of different Levy and contributions systems simultaneously, particularly during the transition period for the Infrastructure Levy which would be lengthy and highly disruptive.

As above, this could be overcome by raising additional funds through the RDPT, the developer pledge, and government funding if necessary. If however government proceeds with BSL this should be administered through a central collection agency. If government elects to require local authorities administer the BSL it is vital that this is properly resourced and that wider support is provided to authorities to ensure consistency in approach and assist with legal matters.

Question 3: What proportion of receipts do you think the Collection Agency should retain? What administration costs will that need to cover?

As with the collection of CIL, a collection of allowance of at least 5 per cent should apply. However, in authorities where receipts are lower a minimum resourcing cost may be necessary to account for fixed costs including the setting up and administration of monitoring systems, accounting and transfer of funds, as well as officer time.

Question 4: How frequent should revenue returns be provided to DLUHC? Please give reasons for your answer.

The frequency with which funds are transferred to Central Government should strike a balance between being overly burdensome on the collecting authority and keeping up with cashflow

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requirements of the remediation works. The proposed quarterly return of funds seems to be a practical approach.

Question 5: Do you think that there should be regular review points? If so, how frequent should they be?

Yes, it will be important to keep the BSL under review and amend rates were necessary. As set out below, these should be evidence based, sense checked, consulted on and subject to scrutiny.

Question 6: We welcome views on the two-step process and charging points for the levy. Do you agree or disagree, please give reasons?

The proposed timings of when the liability shall become payable seem sensible in connection with smaller scale development. Payment through additional instalments should be allowed for larger scale or phased developments.

Question 7: What are your views on the percentage split, i.e., charging 60% of the levy prior to commencement stage and 40% at final certification. Are these the right amounts? If not, why not – please give reasons.

A greater proportion of the payment should be made on completion of the development or relevant phase to support developer cashflow and delivery. We would suggest a split of 40 per cent at commencement and 60 per cent on completion.

Question 8: If you consider yourself a small or medium enterprise, what impact will these levy payment points have on your ability to build? If so, what could help? To note we intend to exempt developments under 10 units or the square metre equivalent.

N/A

Question 9: What do you think should be the principal sanction to ensure the levy is paid?

We would recommend aligning sanctions with the RDPT or CIL wherever possible to help ensure consistency in approach. This will assist developers and collecting agencies in understanding, complying with and enforcing the BSL.

Question 10: Do you think that the failures outlined above may occur in operation of the levy? If so, how best can they be avoided?

Yes. See above.

Question 11: Is it reasonable to consider the sanctions regime of the RPDT in relation to the levy?

See above.

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Question 12: How might levy design avoid mistakes, gaming, and fraud, or else maximise positive incentives?

Providing a simple and clear charging, payment and enforcement structure will be important to help limit avoidance.

Question 13: Which of the options above do you think is the best basis on which to implement the levy? Please give reasons for your answer.

The BSL should be based on net additional floorspace rather than a unit-based levy as it is likely to lead to less market distortion in terms of unit sizes and the unit mix delivered. Net additional floorspace is also consistent with the calculation of CIL.

Question 14: How best can we protect small and medium sized builders? Is exempting smaller developments the best way?

We would suggest exempting sites that are not capable of providing ten or fewer residential units and developments with an equivalent floorspace. This would avoid incentivising under-development in order to avoid the charge and other requirements including affordable housing which typically apply to schemes with ten or more residential units.

Question 15: Do you think government should set differential levy rates based on geography based on the different land values and house prices in different areas? Please give reasons.

This approach is supported, however it should be noted that there is significant variation in residential and land values both across and within London boroughs.

If BSL rates are set nationally and based on residential values without consideration of the relevant property market, including variations in build costs and land values, they may be inappropriately high for some developments. Basing the Levy on average values could also result in rates being too high for developments with lower than average values. As such proposed rates should be based on lower percentile values. These should be evidence based, sense checked, consulted on and subject to scrutiny prior to adoption.

Question 16: Which of the two options outlined above would you prefer? Please give your reasons for your answer.

London as a region contains not only some of the highest value residential properties in the world but also areas of acute deprivation; the setting of a blanket rate at a regional level is highly likely to adversely impact the delivery of development unless the rate is very low. This would also impact on affordable housing delivery in areas where this is most needed, directly contradicting the current levelling up agenda.

Setting variable rates for every local authority area would however result in a complex set of charges which could have unintended consequences including boundary distortions. As such, rates should be set based on lower percentile values on a sub-regional basis. As set out above these should be subject to consultation, sense checking and scrutiny prior to adoption.

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Question 17: Do you think there should be different levy rate applied on brownfield and greenfield developments in the same geographic area? If so, do you think that the differential should be the same in every geographic area?

A differential rate applied to greenfield and brownfield developments would be supported to ensure brownfield land is prioritised for development. The costs of development associated with brownfield land are often significantly greater than those in connection with greenfield land, however the social and environmental benefits to such development outweigh those of greenfield development.

There is a strong likelihood that a standard rate across all land classifications would disincentivise and reduce the amount of brownfield development coming forward. A proportionately lower rate should be applied in areas where infrastructure costs are greater and where there is greater potential to deliver brownfield development.

Question 18: What amount of grace period should be set for projects that have already started the building control process on the date the levy goes live?

It would be problematic, impractical and inequitable to impose the levy on proposals where there are live planning applications or existing planning consents in place.

Question 19: What are your views on the above exclusions? Please set out whether you agree or disagree and give reasons for your answers.

The Mayor is supportive of the proposed exclusions however we highlight the response to Question 25. In addition, housing developed by for-profit entities whose profits are solely redirected into affordable housing should be exempt.

Question 20: Do you have any views on Build to Rent developments, purpose-built student accommodation, older people's housing. If so please set them out.

Build to Rent development and co-living development should be included within scope to avoid market distortions. This would also avoid incentivising their delivery over typical market sale schemes, which are the principal delivery method for low cost rent affordable homes through the planning system.

The exemption criteria should apply to purpose-built student accommodation developed and managed by Higher Education Providers and charitable organisations. Further comments on this were provided in the Mayor's response to the previous consultation which is copied below.

Question 21: Do you agree Affordable Homes should be excluded from payment of the levy?

The Mayor strongly supports the exclusion of affordable housing from the BSL. Please see comments on questions 1 and 32 regarding other measures that should also be taken to help limit the risks of delivering fewer affordable homes as a result of the BSL.

Question 22: Do you agree NHS Hospitals, NHS Medical homes, and NHS GP practices should be excluded from payment of the levy?

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Given the public nature of the services being provided, the Mayor would support this exclusion. Other forms of community infrastructure such as transport, education, community, affordable workspace and cultural facilities should also be excluded.

Question 23: Do you agree Conversions, improvements to owner occupied homes and refurbishments should be excluded from payment of the Levy?

Yes.

Question 24: Do you agree supported housing should be excluded from payment of the levy?

The Mayor would support the exclusion of supported housing from the Levy.

Question 25: Do you agree care homes should be excluded from payment of the levy?

The Mayor would support the exclusion of care homes from the Levy, however not 'extra care/ supported housing'. Developments which provide care homes accommodation and meet the following criteria should be excluded:

- *Personal care and accommodation are provided together as a package with no clear separation between the two*
- *The person using the service cannot choose to receive personal care from another provider*
- *People using the service do not hold occupancy agreements such as tenancy agreements, licensing agreements, licences to occupy premises, or leasehold agreements or a freehold*
- *Likely CQC-regulated activity will be 'accommodation for persons who require nursing or personal care'*

Question 26: Do you agree that children's homes should be excluded from payment of the levy?

The Mayor would support the exclusion of children's homes from the Levy.

Question 27: Do you agree Domestic Abuse facilities should be excluded from payment of the levy?

The Mayor would support the exclusion of Domestic Abuse facilities from the Levy.

Question 28: Do you agree residential care homes be excluded from payment of the levy?

The Mayor would support the exclusion of residential care homes from the Levy, however not Extra Care developments. See response to question 25.

Question 29: Do you agree Criminal Justice Accommodation be excluded from the levy?

Given the public nature of the services being provided, the Mayor would support this exclusion.

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Question 30: Do you agree military establishments be excluded from the levy?

Given the public nature of the services being provided, the Mayor would support this exclusion.

Question 31: Would excluding developments under 10 units (or the square metre equivalent) protect small and medium sized enterprises? What might the alternatives be?

Please see response to Question 14.

Question 32: Do you consider that we should set a discounted levy rate for the entirety of a development where that development provides a specified proportion of affordable housing?

Yes. The BSL should be designed in a way that incentivises and does not reduce the delivery of affordable housing which could have severe equalities impacts. To address this, a nil or discounted rate should be applied to schemes which provide 35 per cent or more onsite affordable housing. This aligns with the 'threshold approach' to affordable housing' set out in the London Plan 2021 which measures affordable housing by habitable rooms.

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Mayor of London response to Building Safety Levy consultation

October 2021

Summary

The Mayor welcomes the opportunity to respond to the consultation on the Building Safety Levy.

The Mayor has been clear that no leaseholder should have to pay the cost of remediating mistakes that have resulted from regulatory failures. He is supportive of the government's efforts to raise funds dedicated to building safety remediation. In particular, he welcomes the recognition that the development industry should contribute to the cost of resolving the building safety crisis.

The Mayor has reviewed the Building Safety Levy proposals, and asks the government to revise these so that:

- Measures are in place to prevent developers from passing down levy contributions to communities, those in need of affordable housing, or housing associations, via S106/viability negotiations.
- Exemptions are extended to cover housing developed by for-profit entities whose profits are solely redirected into affordable housing.
- Exemptions are expanded to cover purpose-built student accommodation developed and managed by Higher Education Providers (HEPs) and charitable organisations.
- The design of the levy and the rate at which it is set minimise the risk of developers adapting scheme designs to evade the levy where this would undermine existing design requirements.

Please consider this submission jointly with the submissions from the G15 group of London's largest housing associations and the National Housing Federation (NHF), which offer valuable insights into the potential implications of the levy on the social housing sector. The GLA, G15 and NHF share the view that any solution to the building safety crisis must protect affordable housing delivery.

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Response to consultation questions

1 Impact on local infrastructure and affordable housing supply

- 1.1 The Mayor is very concerned that without adequate safeguards levy costs will result in reduced local infrastructure and affordable housing provision. The planning process is the main mechanism through which developers can pass on levy costs. Because the levy is a site-specific charge, developers may elect to count levy payments as costs to individual schemes. If these contributions were included in viability assessments it would reduce the viability of delivering affordable housing, for which there is overwhelming need in London and infrastructure that is needed to support development. This would impact negatively on the outcome of the planning process and wider support for development and the Mayor recommends that provisions are built into the design to prevent this.
- 1.2 Further, the Mayor is concerned that the government – correctly – flags that affordable housing supply may be reduced to maintain overall housing supply (paragraph 52 of consultation document). The objective of both the RPDT and the levy is to ensure that the development sector makes a fair contribution to help fund cladding remediation costs. This objective will be undermined unless it is clear, in both the legislation and guidance documents, that levy costs must not be taken into account as a consideration in S106 negotiations or viability assessments. It would be highly inequitable if developers were ultimately allowed to offset levy contributions via adverse impacts on those in need of affordable housing, as well as to communities, through reduced infrastructure and facilities that enable the delivery of sustainable development.
- 1.3 **As such, the levy should be applied and set at a rate that does not have an impact on infrastructure and affordable housing delivery. The Mayor asks the government to ensure that it is the developer (the ‘Client’, as defined in the consultation document) who bears the cost of the levy. Additionally, the Mayor urges the government to ensure that the policy and legislative frameworks, as well as planning guidance, prohibit the application of levy contributions in S106/ viability negotiations, preventing new or past S106 agreements to be amended to accommodate for levy costs. This should also be applied to any future replacement of the S106 process taken forward through the government’s intended planning reforms.**

2 Scope of the levy

Affordable housing

- 2.1 Increasing affordable housing supply is the most effective and long-term strategy to respond to the worsening housing crisis, not only in London but in other major cities and

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parts of the UK as well. The Mayor therefore welcomes the exclusion of affordable housing from the levy.

- 2.2 However, exemptions from the levy do not recognise that it is increasingly common for non-profit registered providers (RPs) to cross-subsidise development programmes with surpluses generated from homes built through for-profit subsidiaries. These subsidiaries develop private properties for market sale or market rent and Gift Aid one hundred per cent of their surpluses to the parent organisation, the charitable RP. The current design of the levy would place these properties within the scope of the charge.
- 2.3 Our partners have stressed that funds from commercial activities undertaken by RP subsidiary companies are essential to fund new affordable housing supply. The NHF has told us these funds are vital in ‘bridging the gap’ between what is needed to meet affordable housing demand, and the funding available from government grants and debt. Charging the levy on properties developed by subsidiaries is expected to lead to reduced affordable housing supply.
- 2.4 **The Mayor therefore asks that the government amends the levy’s exemption criteria to include private housing developed as part of cross-subsidy models that solely support affordable housing supply. Please refer to the consultation responses from the G15 and the NHF for further detail on this point.**

Purpose-built student accommodation

- 2.5 Purpose-built student accommodation is a highly profitable venture and can have similar characteristics to the wider rental sector, especially when it is managed by private sector providers. The sector is currently estimated to be worth around £60 billion.² The Mayor therefore welcomes the application of the levy to purpose-built student accommodation, where these schemes are privately developed.
- 2.6 However, where the accommodation is developed and managed by Higher Education Providers (HEPs) as well as providers with a charitable status, the Mayor asks the government to exempt the schemes from levy charges. The reason for this is twofold. First, unlike conventional affordable housing developments, affordable student housing is not exempted from value-added tax, meaning that this accommodation is liable for a higher tax burden. Second, the London Plan’s policy on purpose-built student accommodation acknowledges the need for affordable student housing that is managed by HEPs and charitable organisations.³ HEPs tend to have a more direct relationship with students and are more likely to provide suitable lower cost accommodation than private providers.
- 2.7 Applying the levy to this form of development could limit the supply of accommodation developed and managed by HEPs and charitable organisations, which would increase the

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costs of student accommodation and put greater pressure on existing housing stock as students are more likely to seek accommodation in the wider rental market, including family sized housing which can be cheaper by room rented.

- 2.8 **The Mayor asks that the government expands exemption criteria to include purpose-built student accommodation developed and managed by HEPs and charitable organisations.**

3 Possible impact on housing design

- 3.1 The Mayor is concerned by the potential for the levy to negatively impact housing design. The consultation documents acknowledge that, in response to the levy, developers may change development characteristics. This could be with the intent of securing an exemption from the levy, typically by reducing the size of the development to below 18 metres; or compensating for the levy by seeking unsuitable levels of density to increase revenue.
- 3.2 The London Plan advocates making the best use of land by optimising the capacity of development sites, rather than simply maximising density. Optimising site capacity requires responding to local needs, and balancing the capacity for growth and increased housing supply with an improved quality of life for Londoners. Developers wishing to avoid the levy or minimise their contributions to it, may choose to design smaller or denser schemes, even though this may not be the optimum design approach for the site. For example, these designs may lead to schemes that are less sustainable and less pleasant, as light and natural ventilation are unable to penetrate the deep footprints. This behaviour could result in more schemes under-optimising the use of development sites and undermining the objectives of the London Plan. Crucially, these schemes would compromise the benefits communities and neighbourhoods could derive from new developments. This risk is especially important in the context of London, where land supply is severely constrained and the opportunity to optimise the use of land can't be wasted.
- 3.3 **The Mayor therefore urges the government to design the levy, including the rate at which it is set, in such a way that this will not lead to a decline in the quality of housing and overall housing standards, and which minimises the potential for developers to game the levy through scheme designs that seek to achieve exemption from the levy, reduce levy contributions, or offset this through excess height or density.**