



Planning Policy Consultation Team  
Department for Communities and Local Government  
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2 Marsham Street  
London  
SW1P 4DF

22 February 2016

Dear Sir/Madam,

### **Consultation on Proposed Changes to National Planning Policy**

CPRE (Kent), the Kent branch of the Campaign to Protect Rural England, welcomes the opportunity to respond to this consultation. It is our objective to retain and promote a beautiful and thriving countryside that is valued by everyone and we believe the planning system should protect and enhance the countryside in the public interest for the important contribution it makes to peoples' physical and mental wellbeing, as well as its vital role in feeding the nation. It is our position that national planning policy should seek to ensure that the adverse impact of development on the countryside, both directly and indirectly, is kept to a minimum and that development is sustainable.

We have considered the proposed changes to the NPPF in detail and would like to make the following general comments as well as detailed responses to the questions in the consultation document. CPRE (Kent) commented on the Housing and Planning Bill in October 2015.

CPRE (Kent) is concerned that these changes are proposed in advance of the Communities Secretary appointed Local Plan Panel report on how Local Plans can be streamlined to help councils quickly deliver the homes and infrastructure that their communities need. In addition, the Communities and Local Government Committee has announced an inquiry into the timing and content of the NPPF consultation on proposed changes to the Green Belt, the definition of affordable housing, and the impact on local decision-making from proposed measures such as the housing delivery test. DCLG is encouraged to ensure these discussions and their outcomes (together with the responses to this consultation) have an opportunity to contribute to any NPPF changes. Additional changes may be recommended and helpful comments made. DCLG is reminded that it difficult to anticipate the impact of changes to the speed at which local plans are prepared and to the operation of the planning decision generally.

The Kent Branch of the Campaign to Protect Rural England exists to promote the beauty, tranquility and diversity of rural England by encouraging the sustainable use of land and other natural resources in town and country.

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CPRE (Kent) also cautions that the proposed changes may have a significant impact on existing up-to-date local plans and their standing in law, particularly where there are no proposed transitional arrangements. Although currently being challenged by government, the '*West Berkshire District Council and Reading Borough Council v DCLG (2015)*' judgement must have implications for the manner in which changes are introduced by government. In summary the Court found:

1. The policies were inconsistent with the statutory code in that they sought, with immediate effect, to override adopted development plan policy
2. The consultation process had significant flaws – mainly that the paper did not properly explain an important element of the basis of the proposals so that LPAs were not given proper opportunity to comment (but also that the decision maker failed to “grapple with” representations which were made)
3. The Secretary of State failed to take account of an “obviously material” consideration viz. the impact on the supply of land for affordable housing which in turn would mean LPAs would be under challenge that their local plans were out of date
4. The public sector equality duty (PSED) under the Equality Act 2010 was breached. Ministers did not do enough to gather relevant information from consultees and the PSED assessment was not carried out with sufficient rigour.

CPRE Kent would also like DCLG to use this opportunity to make further amendments to the NPPF, including clarification that gardens are not classed as ‘brownfield land’ whether they are rural or urban.

Further clarification is also needed to enhance the protection for high quality agricultural land. The NPPF effectively gives protection to hierarchies of assets, which as a function of their site specific nature (for example designated habitats, historic buildings or landscapes) can be used to direct development locally. Although paragraph 112 of the NPPF suggests lower quality land should be used in preference to higher quality, this can be difficult to apply at the local level. Higher quality land is often at the urban edges, closer to services. Lower quality land is often designated for its important landscape or wildlife value.

It is vitally important that high quality agricultural land can be considered in terms of its contribution to a national resource of strategically important land necessary for food production/security. For a number of local authority areas, such as Thanet in Kent, the anticipated significance of the loss of highest quality agricultural land should be recognised in the NPPF as a good reason to restrain housing targets. CPRE (Kent) believe this is a constraint that should have an impact on final housing requirement and this is being overlooked. A sequential approach to the protection of agricultural land often conflicts other key principles of sustainable development associated with proximity to services and the necessary avoidance of land for its flood risk, or its landscape or habitat importance. Further guidance is required in order to protect this resource for the future.

I hope the following response to consultation questions is helpful. We ask you to take these views into account and urge you to contact CPRE (Kent) if any further clarification is required.

Yours faithfully,

Dr. Hilary Newport  
Director, CPRE Kent

## Affordable Housing

### Question 1: Do you have any comments or suggestions about the proposal to amend the definition of affordable housing in national planning policy to include a wider range of low cost ownership options?

A key theme of the NPPF, when published in 2012, sought to ensure that Councils could produce plans which reflected the needs and priorities of local communities. While the changes to the NPPF seek to include an additional range of products within the definition of affordable housing, this together with a statutory duty to deliver Starter Homes, and potential extension of 'right to buy', must raise significant concerns for delivery of affordable housing for rent/intermediate ownership to meet local needs. Local needs in rural Kent are particularly acute. *'Rural Homes: supporting Kent's rural communities'*<sup>1</sup> makes the following statement:

*"Rural housing issues, therefore, tend to have a proportionately greater impact on Kent than many other counties – particularly when coupled with the County's proximity to London".*

Councils in Kent recognise the need for rural affordable housing, set a housing target which takes into account affordable housing needs (the number of households who lack their own housing or who live in unsuitable housing and who cannot afford to meet their housing needs in the market), and typically set policies for meeting affordable housing needs, i.e. as a proportion of the total number of dwellings to be built on a site. This policy approach seeks to create mixed and balanced communities and is essential to ensure that housing is available for those that cannot compete in the general housing market. The amount of affordable housing expected from sites across Kent differs according to viability.

The Starter Homes proposals reduce the ability of local areas to plan for balanced communities. Since the total proportion of affordable homes provided on each site is unlikely to increase, there is a significant risk that homes for social rent, affordable rent and intermediate ownership are less likely to be provided, in preference for Starter Homes. Of course these might assist a sector of the community, but it may not necessarily place resources where the need is greatest. It would assist average / high income households on to the housing ladder, but not provide housing for those that are unable to save (due to housing costs) or are on lower incomes. Locally prepared housing strategies or local housing need surveys should really determine (and evidence) affordable housing policies in local plans.

It is Councils which need to decide the proportion of affordable homes that should be provided on sites, and the types of affordable housing product that should make up the housing provided. Without this, housing problems for those in most need is likely to increase. This together with the absence of any guarantee of an increase in housing supply, means the government needs to carefully consider the impacts of the entire suite of measures (right to buy etc.) being proposed on the supply of affordable homes.

The starter homes discount also risks further increases in land prices. There is no clear evidence that this link has been considered in detail.

Finally, it is of particular concern that these homes will not remain affordable in perpetuity. The number of affordable homes will shrink over time. In terms of rural affordable housing, it is critical that housing remains affordable in perpetuity to individuals that meet a local connection test. This is essential to ensure that housing continues to meet the need of the community. Without this safeguard, less land is likely to be made available by philanthropic land owners.

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<sup>1</sup> Kent Rural Housing Group, *Rural Homes: supporting Kent's rural communities - A PROTOCOL FOR DELIVERING AFFORDABLE LOCAL NEEDS HOUSING IN RURAL KENT*, first launched 2011

**Question 2: Do you have any views on the implications of the proposed change to the definition of affordable housing on people with protected characteristics as defined in the Equalities Act 2010?**

A reduction in the provision of existing affordable housing products will have a significant impact on lower income households that are less likely to be able to transfer aspirations to the Starter Homes product. Increased over-crowding is a likely outcome, with more people eligible for affordable housing and a longer housing waiting list.

Protected groups that are most likely to be negatively affected include women, disabled and long term sick – those groups that tend to be on lower incomes. There is of course also a risk that young people encouraged to buy discounted starter homes may find themselves unable to repay the loan, especially if mortgage rates rise significantly.

**Increasing residential density around commuter hubs**

**Question 3: Do you agree with the Government’s definition of a commuter hub? If not what changes do you consider are required?**

A public transport interchange should include locations which provide access to public transport and transfer between different routes and public transfer vehicles. It should not include the element of transport that is walking or cycling, since then any railway station could be called an ‘interchange’.

In part ‘b’ of the definition, the consultation document refers to ‘a place that has, or could have in the future, a frequent service to that stop’. This definition carries risks, since an improved service may not be implemented. While improved public transport might be planned as part of a development, it may not be considered viable and sustainable in the long term. This is a particular risk if the service is put in place after development is completed.

The definition needs to be much more clearly defined in a way that can identify the most sustainable locations. Without this detail, this will be a frequent point of discussion at planning inquiries.

The definition of a ‘commuter hub’ needs to recognise the range of services that make up a sustainable community. They still need to benefit from a range of social and community facilities. If there is no local access to schools and shops etc, then public transport is unlikely to adequately meet the needs of a busy working family and high density is less likely to be helpful in sustainability terms. The public transport routes need to serve employment centres and be priced so that they are attractive to commuters.

**Question 4: Do you have any further suggestions for proposals to support higher density development around commuter hubs through the planning system? Question 5: Do you agree that the Government should not introduce a minimum level of residential densities in national policy areas around commuter hubs?**

Increased density around commuter hubs is a good planning principle, where it is locally acceptable in location, design and infrastructure terms. The current definition of proposed commuter hubs, however, is unsatisfactory and will not be limited to urban sites or those places where high density is most likely to be appropriate. Councils are best placed to provide guidance (with consultation) on density, so that it is appropriate in design/ layout terms and to ensure that land is used efficiently.

The efficient use of land and the total amount of land required to meet housing requirements is related to the density of development. Higher densities should be required in appropriate locations, where it does not compromise on the quality of place or the needs of the community it is catering for.

As discussed in the previous question, it is essential that new communities at commuter hubs have access to social and community facilities. Capacity of these facilities will need to be considered when increasing population in any locality. If there is insufficient local access to schools and shops etc, then public transport is unlikely to adequately meet the needs of a busy working family, and high density will be less helpful in sustainability terms.

### **Supporting new settlements, development on brownfield land and small sites, and delivery of housing agreed in local plans.**

#### **Question 6: Do you consider that national planning policy should provide greater policy support for new settlements in meeting development needs?**

The settlement pattern in Kent has always made it very difficult to identify appropriate sites for new settlements. It is a 'peopled' countryside of market towns, and frequent villages and hamlets, so that the historic and cultural landscape is normally considered too sensitive for significant new settlements.

It is essential that local planning authorities are responsible for identifying sites to meet development needs, in consultation with the local community. New settlements are already one of the development options available to Councils. However, since delivery in terms of a 5 year supply has become so critical, urban extensions are more likely to be considered deliverable. This is because they can be connected to existing social and community facilities and employment – potentially a simpler opportunity for sustainable development secured by sustainable travel.

Council planning departments have had significant reductions in staff and resources. Most will not have the resources, or the expertise to facilitate a new settlement.

#### **Question 7: Do you consider that it would be beneficial to strengthen policy on development of brownfield land for housing? If not, why not and are there any unintended impacts that we should take into account?**

Brownfield development and indeed 'brownfield first' is an important planning aim and could deliver high volumes of higher density development in urban areas. Urban Capacity Studies should be included in the evidence base for local plan preparation, and Council's should proactively seek regeneration opportunities in urban areas. The use of brownfield registers is strongly supported. Delivery, however, will need to be supported by an enabling function of Local Authorities (properly resourced) and appropriate incentives for bringing forward brownfield sites.

Development of brownfield land should be prioritised, provided it is located in sustainable locations, with access to services. We do of course need to recognise, however, that some brownfield sites are poorly located and their development would lead to long car based commutes. Sustainability is key. The reference to retaining brownfield sites of high environmental value in the consultation document is also supported.

Urban intensification may be appropriate in some locations if regeneration and redevelopment would improve the environment of communities. The focus of providing a high quality of life in urban areas

should not be lost from planning policy and regeneration benefits of development in urban areas should be more prominent in the NPPF.

The innovative use of appropriate brownfield land is an important part of ensuring that development benefits communities.

**Question 8: Do you consider that it would be beneficial to strengthen policy on small sites for housing? How could the change impact on the calculation of local planning authorities' five year land supply?**

**Question 9: Do you agree with the Government proposal to define a small site as a site of less than 10 units?**

This change is unnecessary. Appropriate development within urban areas is already considered positively within the planning system. The details considered when determining a planning application can be very critical in terms of townscape, archaeology, flood proof design and relationship to adjoining properties. Care needs to be taken over the character of a settlement. Often it is the spaces between buildings that are key to the character of these settlements or the setting of listed buildings.

The best way to deliver 'principle' of development is allocation in a Local Plan and ambitious urban site searches / capacity studies should be used to identify such sites. If the proposal to strengthen policy on small sites is pursued, then it should relate to brownfield sites only. Councils should be guided to identify these in Strategic Housing Land Availability Assessments for inclusion on the brownfield register.

Urban edge sites often make a significant and important contribution to the setting, character and distinctiveness of our settlements. A presumption in favour of sites at the edge of settlements could be very harmful and CPRE (Kent) agrees they should only be considered through local plan reviews or as exceptions to policy. The current proposal would remove the incentive for rural exception sites to come forward.

In terms of local plan reviews, it is important that small sites form part of housing supply since these are often an essential part of housing delivery in the early period of the plan. A plan led approach is essential, so that if small urban edge sites are required, then the cumulative impact on the character of settlements can be considered, and the least harmful can be selected.

It is normally sites that have capacity for more than 5 units that are sought in LA's 'call for sites' exercises. Sites larger than this should be identified and allocated in a local plan if appropriate. Sites between 5 and 10 units can be significant for some settlements and make a significant contribution to meeting the housing target. The proposed definition of a 'small sites' will have harmful consequences for the plan-led system in Kent.

CPRE Kent also believes that 'village capacity studies' can be a useful way to identify small sites in existing village settlements. These would need to be prepared in consultation with the community and ensure the spaces important to the character and distinctiveness of settlements are retained.

**Question 10? Do you consider that national planning policy should set out that local planning authorities should put in place a specific positive local planning policy for assessing allocations for development on small sites not allocated in the local plan?**

No. If a site is not allocated in a local plan, then the proposal should be considered against the policies in the local plan. That is the purpose of those policies – to guide the determination of unanticipated proposals. It is right that development should be determined in accordance with the development plan.

**Question 11: We would welcome your views on how best to implement the Housing delivery test -**

**What do you consider should be the baseline against which to monitor the delivery of new housing?**

**What should constitute significant under-delivery, and over what time period?**

**What steps should be taken in response to significant under-delivery? How do you see this approach working when the housing policies in the Local Plan are not up-to date?**

The new 'housing delivery test' is likely to lead to more green fields being released for development as councils either plan for more development in advance or have to find new sites to develop when existing targets are not met. A focus on brownfield development is welcomed, but the 'delivery test' in its proposed form will allow developers to cherry pick greenfield sites instead, letting the brownfield sites go to waste.

Delivery often falls behind annual targets very quickly after plans are adopted. It is important that Local Plan preparation and the scrutiny of evidence at local plan inquiries focuses in more detail on the capacity and intentions of developers. Local authorities do not build houses, and developers make unenforceable estimates about delivery, which informs local plan development phasing. Failure to bring forward sites and the subsequent failure of local authorities to demonstrate a 5 year supply already results in the release of sites that are not in adopted local plans. Developers need to work towards delivery of their sites allocated in development plans. Local plans were evolved with extensive consultation with the community, with the sites promoted enthusiastically by developers to provide housing within the period of the plan.

Potential policy solutions:

- 'Use it or lose it' measures: Give LPAs power to decide how long an application should remain current. Reducing the time limit on renewed applications might assist, as would increasing the cost of applications.
- The definition of 'implementation' of a planning permission needs to be strengthened. An implemented development should be one which has discharged all 'before development commences' conditions on the planning permission and made a more than minor start on site. This would of course need to be carefully defined, and represent a significant investment in the site.
- The charging of Council Tax on the dwellings for which they have given planning permission, even if development remains uncompleted, would incentivise housing delivery.
- Give the Local Authority sufficient resources to effectively carry out an enabling role. This might include a right to buy development land at a pre-planning permission cost and either develop the site, or make the land ready for self-build.

As well as incentives and tools to support the delivery of consented development there needs to be a realism test applied to developer submissions to local plans, to ensure that developers are not committing to development of sites in local plans without any likelihood of having available capacity to start development. This might result in lower housing targets in some local planning authority areas. Communities involved in local plan preparation need to have more confidence in the planning system and the importance placed on the plan led system.

A delivery test would put extra duties on local authorities which already under-resourced. If such a test were to be implemented, an assessment over a two year period would certainly not be sufficient to avoid short term fluctuations. Many housebuilder delivery estimates can be adversely affected by unforeseen downturns that can last more than two years. Instead it should be used as part of 5 year review of delivery to determine whether a local plan review should be triggered.

**Question 12: What would be the impact of a housing delivery test on development activity?**

Development industry capacity and enthusiasm is likely to emerge as the main constraint on housing delivery. Not site availability.

New research published by the Local Government Association in January 2016, titled '*475,000 homes with planning permission still waiting to be built*' clearly demonstrates that the planning system is not a barrier to housebuilding<sup>2</sup>.

- Housebuilders are taking longer to complete works on site;
- The number of permissions in 2014/15 is higher than in all previous years;
- Construction recruitment need is up 54%, but the number of qualifications being awarded has fallen;
- Gap between houses being the number of houses being built and approved is increasing.

Volume housebuilders have an interest in maintaining house prices (and increases) and focusing low density development on greenfield sites. They are not building on the least sensitive sites and in the interest of local people. It is government and local councils which need to look at the reasons why previously developed land is not being taken up by developers and provide the appropriate incentives to ensure this happens.

### Supporting delivery of starter homes

**Question 13: What evidence would you suggest could be used to justify retention of land for commercial or similar use? Should there be a fixed time limit on land retention for commercial use?**

Land values for employment uses are often significantly lower than that for housing. As a result, this policy is likely to result in increasing the 'hope value' of land and make it more difficult for local council's to encourage the delivery of employment uses. Uptake of employment land can be very cyclical and it is not uncommon for employment land to be protected for employment use for long periods. A two/three year timeframe is absolutely inappropriate. Instead local planning authorities should be required to provide 'significant and compelling evidence' during local plan reviews to continue their protection for employment use. This process should seek to ensure that there is not an 'over-allocation' of land for employment uses.

As an example, in their Employment Land Review (2013), Canterbury City Council recognised NPPF advice to avoid protecting employment land, but explained its rationale for the need to retain the best quality sites in the coastal settlement of Herne Bay. Reasons included:

- a) Without the proposed sites it would be difficult to address the falling jobs density locally;
- b) The sites were fundamentally suitable for employment use and form part of existing well located business parks;
- c) The sites play a part in the District's portfolio of sites.

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<sup>2</sup> Local Government Association, *475,000 homes with planning permission still waiting to be built*, 2016 at [http://www.local.gov.uk/media-releases/-/journal\\_content/56/10180/7632945/NEWS](http://www.local.gov.uk/media-releases/-/journal_content/56/10180/7632945/NEWS)

They concluded that to rely on the prospect of new sites coming forward, which currently lack any formal status and when adequate sites already exist within the planned supply, would be difficult and probably counter-productive. Local councils need to be in a position to consider the balance of land safeguarded in their local plan for different uses. This is essential for sustainable development in the long term and is necessary for future infrastructure provision, as much as for employment land.

However, an over-supply of employment sites might result in an unnecessary release of less sustainable sites to residential development. Balance is key. It is important that councils can protect land, where appropriate, from higher value uses, but the location of those sites and the overall amount should be properly scrutinised.

**Question 14: Do you consider that the starter homes exception site policy should be extended to unviable or underused retail, leisure and non-residential institutional brownfield land?**

Further extension of the starter homes policy to land protected for a range of uses is of some concern. As above, local planning authorities should be required to provide 'significant and compelling evidence' during local plan reviews to justify the continued protection of sites for particular uses or reuse of redundant sites. This is the purpose of local plan preparation and it is important that local planning authorities can proceed with some certainty in long term planning for regeneration, including that which relates to the future of town centres and meeting other community needs.

**Question 15: Do you support the proposal to strengthen the starter homes exception sites policy?**

Since the NPPF represents the Government position on Sustainable Development, it is very uncomfortable that the issues available for consideration by a local authority should be placed in a hierarchy, without a local assessment. Local people need to be able to make important decisions about their area.

**Question 16: Should starter homes form a significant element of any housing component within mixed use developments and converted unlet commercial units?**

Local authorities, in their regeneration efforts, are adept at incorporating residential as part of mixed use schemes to improve viability. Specifying the mix of homes in the NPPF might not be helpful.

Similarly, local authorities are best placed to manage (in local policy) the future of unlet commercial units. The detailed consideration of local issues, locally, is very important particularly in town centres, since town centre vitality can be influenced by numerous and complicated issues. Many town centres will be conservation areas and contain listed buildings. Primary retail frontages and in many cases secondary shopping frontages, can be harmed by ground floor residential uses.

More incentives should be used to encourage conversion of any unused upper floors of shops and other commercial units.

**Question 17: Should rural exception sites be used to deliver starter homes in rural areas? If so, should local planning authorities have the flexibility to require local connection tests? Question 18: Are there any other policy approaches to delivering starter homes in rural areas that you would support?**

While it is clear that starter homes would give young people the opportunity to get on the housing ladder, the insertion of potential for significant profit (particularly in the short term), would significantly reduce the likelihood of philanthropic landowners selling land for rural affordable housing, since it may not remain

affordable. It is likely to have an impact on the value of land and reduce the availability of affordable housing.

It is important for the delivery of rural exception schemes that land can be purchased at low cost and this will not remain a common practice if a profit element is introduced. It is important that affordable homes delivered on rural exception sites are restricted in occupation to people with a local connection and also fall within a definition of housing need. These principles of occupation should be maintained in perpetuity and the property should not be lost to the open market, be it rented, in shared ownership or discounted on local market values. The local connection is very important because local people needing a village location for work, or have strong family ties would be out-bid by people who do not have a local connection.

A discount that is not continued in perpetuity would result in landowners being less likely to gift land for affordable housing, since it may not remain affordable. The long term affordability and availability of housing in a rural settlement is more important than giving that money to a small number of first-time buyers.

**Question 19: Should local communities have the opportunity to allocate sites for small scale starter homes developments in their Green Belt through neighbourhood plans? Question 20: Should planning policy be amended to allow redevelopment of brownfield sites for starter homes through a more flexible approach to assessing the impact on openness?**

Green belt is a strategic designation. Piecemeal allocations in the green belt can have a greater than local impact. Release of land may be of interest to the wider community and generate objections to a neighbourhood plan from communities beyond the neighbourhood planning area, potentially resulting in changes to the area subject to referendum.

It is important that brownfield sites within the Green Belt should be considered through the preparation of Local Plans and be subject to the consultation associated with that process. Openness is critical. Housing will generally have a different footprint and appearance than the previous use and will materially diminish the delivery of Green Belt function. Acceptable redevelopment for housing is likely to be the exception rather than the rule.

'Garden Grabbing' could have a significant impact on the openness of the greenbelt and the character of settlements, and CPRE encourages the Government to clarify in the NPPF review that garden land in the green belt is not brownfield.

It is essential that a more rigorous testing of development in Green Belt is required. Housing pressure on the Green Belt is increasing rapidly and is having damaging implications. Green Belt is critical constraint and clear Government statements that local planning authorities do not need to meet full OAN where constraints such as Green Belt apply are being overlooked. Positive planning for urban brownfield sites needs to be strongly encouraged in the NPPF, together with more detailed guidance on how to apply the 'exception test' so that unnecessary losses of Green Belt land are avoided. A test of classing development on areas of brownfield land as 'inappropriate' where this would damage openness or land of high environmental value, is essential.

## Transitional arrangements

**Question 21: Views on transitional arrangements**

The proposed changes may have a significant impact on existing up-to-date local plans and their standing in law, particularly where there are no proposed transitional arrangements. The 'West Berkshire District

Council and Reading Borough Council v DCLG (2015)' judgement must have implications for the manner in which changes are introduced by government.

Local Plans have been prepared in consultation with local communities and the impact on local plan strategy might be significant. Clearly this consultation and the views of local authorities will be important in determining whether transitional arrangements are necessary. CPRE Kent is concerned that the proposed changes may have far-reaching consequences for local plans and reminds the government about limited plan-making resources in local planning authorities. Local plan reviews, however small, can be vastly time-consuming and it is likely six to 12 months would be entirely insufficient, particularly if housing strategy reviews need to form part of the evidence base.