

North Devon Council & Torridge District Council

Report Date: 22nd March 2023

Topic: Response to Government consultation - Strengthening planning policy for brownfield development

Report by: Senior Planning Policy Officer (TDC)

1. INTRODUCTION

- 1.1. The Government is currently consulting on proposals to strengthen support for the delivery of development on brownfield land with the stated intention of seeking to ensure the best use of land¹.
- 1.2. The Consultation closes on 26th March 2024 and Officers have prepared a draft response (Appendix 1) for the Committee to consider. The broad thrust of the draft response is to raise concerns about the proposals on the basis that they may unbalance and undermine the delivery of sustainable development and diminish the principle of a plan-led system. Upon agreement of the draft, Officers will make arrangements for the response to be submitted prior to the deadline for submissions.

2. RECOMMENDATIONS

- 2.1. Members of the Joint Planning Policy Committee are recommended to:
 - (1) Consider the draft response to the Government's consultation on strengthening planning policy for brownfield development (Appendix 1); and
 - (2) Endorse the response to be formally submitted on behalf of North Devon Council and Torridge District Council.

3. REASONS FOR RECOMMENDATIONS

- 3.1. To enable the Councils to seek to influence the Government's approach to the development of brownfield land.

4. REPORT

- 4.1. The Government is currently seeking views on proposals to update the national planning policies, as set out in the National Planning Policy Framework, relating to the development of brownfield land.
- 4.2. The Consultation has three main proposals focussed upon:
 - (1) Giving significant weight to the benefit of delivering as many homes as possible (on brownfield land?);
 - (2) Applying the presumption in favour of sustainable development to applications on brownfield land in major towns and cities; and

¹<https://www.gov.uk/government/consultations/strengthening-planning-policy-for-brownfield-development>

(3) Reviewing the threshold for the referral of applications to the Mayor of London.

- 4.3. Given that (2) and (3) above are proposed to only apply to prescribed major towns and cities² and applications within London respectively, these aspects are not likely to be directly relevant to North Devon and Torrige. The suggested response therefore focusses on the proposal to give significant weight to the benefit of delivering homes on brownfield land, although it does also provide some commentary on the proposed application of the presumption in favour of sustainable development, given the potential for an outcome of this being applied more widely than proposed in the consultation.

Giving significant weight to the benefit of delivering as many homes as possible (on brownfield land)

- 4.4. The consultation proposes that national planning policy is amended to indicate that when considering planning applications, decision-takers should give *significant weight to the benefits of delivering as many homes as possible, especially where this involved land which is previously developed*. The proposed response to the consultation (Q1) advocates objecting to this proposal, considering that there are adequate pre-existing provisions within national planning policy that seek to support the efficient use of land and to afford appropriate weight to the delivery of housing.
- 4.5. It is considered that this proposal could unbalance the provision of sustainable development, potentially undermining the delivery of other important planning objectives including the delivery of employment, regeneration or other important uses (particularly as these are often lower value). Officers are concerned that this could lead to locally derived proposals and alternative uses established through the plan-led system (the local plan) being disregarded at the expense of delivering housing, and without being able to make a reasoned and balanced planning decision. There are also concerns that the proposal could undermine the balance of other protections or challenges, such as flood risk.
- 4.6. There are also significant concerns that the proposal, as currently phrased, would have the potential to apply globally to all proposals and not only to those on brownfield land, extending far beyond the scope suggested by the title of the consultation. The response highlights that brownfield land is not only found in an urban context but can also be found in rural areas and that any change to policy needs to be rural-proofed to protect against unintended consequences.
- 4.7. Allied to this proposal, the Government is suggesting that decision-takers should *take a flexible approach in applying planning policies or guidance relating to the internal layout of development in these circumstances, where they would otherwise inhibit making the most efficient use of a site*, including the consideration of daylight and sunlight. Officers suggest (Q2 & Q3) that this is inappropriate and that policies that have seek to ensure the provision of adequate living standards for future occupiers should not be diminished for the purpose of simply maximising the delivery of housing. It is considered that this does not constitute sustainable development and does not support the principle of delivering well designed and attractive places. Planning legislation, policy and guidance already provides the

² Established and listed by the Government as the 20 urban local authorities containing the largest proportion of population for urban centres in England.

decision-taker with the discretion to afford differing weight to these matters based upon the particular merits of an individual case; with any specific provisions considered wholly inappropriate and unnecessary.

- 4.8. This part of the consultation concludes by seeking views on other planning barriers in relation to developing on brownfield land (Q4), how policy could better support development and ensure that it considers a range of sustainable development principles (Q5) and how it could better support development on small brownfield sites (Q6).
- 4.9. A response is provided on these matters indicating that it is not necessarily the planning system that causes barriers to the development of brownfield land but rather the complexity and cost of development; having regard to matters such as demolition and remediation. It is suggested that accessible packages of technical and financial support for developers is likely to be more effective at supporting delivery rather than seeking changes to the planning system.

Applying the presumption in favour of sustainable development to applications on brownfield land in major towns and cities

- 4.10. The consultation proposes introducing an additional trigger for applying the presumption in favour of sustainable development (the so-called 'tilted balance') for applications on previously developed (brownfield) land in those cities and urban centres that are subject to the requirement for the 'urban uplift' when calculating their housing requirement using the Standard Method.
- 4.11. The proposed trigger is based upon Housing Delivery Test (HDT) performance that measures the amount of housing delivered over the previous three years against the housing requirement. The proposal seeks to apply the presumption in favour of sustainable development to applications on previously developed land if the HDT performance falls below 95%.
- 4.12. Neither North Devon nor Torridge are subject to the urban uplift at the present time and accordingly this trigger, as proposed, would not apply to the Councils. However, the consultation does seek views on whether this proposal should only apply to those local planning authorities subject to the urban uplift. As such, there is the potential for the Government to seek to apply this more widely upon consideration of the outcomes of the consultation. Accordingly, it is proposed to provide a response on this basis.
- 4.13. It is considered that the proposal is unnecessary and inappropriate as there are already adequate measures within national planning policy to prioritise the delivery of previously developed land and to make efficient use of land. Officers would also suggest that the 95% trigger is wholly unreasonable as this has the potential to undermine the plan-led approach to planning (including the potential delivery of locally derived objectives and proposals) for a marginal (5%) underperformance on the delivery of housing.

Reviewing the threshold for referral of applications to the Mayor of London

- 4.14. The consultation seeks to reconsider the threshold that determines which applications for residential development are referred to the Mayor of London. As

this only applies to London Boroughs and it is not applicable to the Councils, Officers do not propose to offer a view on this aspect of the proposals.

5. RESOURCE IMPLICATIONS

- 5.1. The preparation and submission of the consultation response are being completed within the existing resource capacity of the Councils' planning policy teams. The Government's proposals that are subject to consultation are unlikely to result in any significant resource implications on the Councils; rather impacting the nature of proposals that are able to come forward on brownfield land.

6. EQUALITIES ASSESSMENT

- 6.1. The consultation seeks views on the potential equality impacts of the proposals (Q15). There are concerns that the proposals could have a disproportionate impact on the more deprived elements of communities; recognising that a higher propensity of brownfield land is often found within more deprived neighbourhoods. The proposals to reduce the standards of development are also more likely to affect the more vulnerable sectors of the community who are less likely to have choice in their housing opportunities.

7. ENVIRONMENTAL ASSESSMENT

- 7.1. Whilst the proposals are intended to help facilitate the redevelopment of brownfield land, which has the potential to have positive environmental benefits through remediation of disused sites, the proposed prioritisation of maximising the delivery of housing above other considerations has the potential to undermine the consideration of other aspects of a proposal, such as the delivery of environmental improvements, the provision of green space, habitat creation, the application of natural flood management or sustainable urban drainage schemes, etc.

8. CONSTITUTIONAL CONTEXT

- 8.1. Schedule 2 of the Agreement for a Joint Planning Policy Committee (North Devon Council and Torridge District Council, dated 22nd October 2021); Section 10 of Annex 1 – Powers and Duties of Committees, Constitution (North Devon Council, May 2023); and Terms of Reference and Functions of the Joint Planning Policy Committee, Constitution (Torridge District Council, October 2023).

9. STATEMENT OF CONFIDENTIALITY

- 9.1. This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

10. BACKGROUND PAPERS

- 10.1. The following background papers were used in the preparation of this report: (The background papers are available for inspection and kept by the authors of the report):

- (1) Consultation: Strengthening planning policy for brownfield development; Department for Levelling Up, Housing and Communities, 13 February 2024; online only and available at:

<https://www.gov.uk/government/consultations/strengthening-planning-policy-for-brownfield-development>

(2) National Planning Policy Framework (NPPF); Department for Levelling Up, Housing and Communities, 19 December 2023.

11. STATEMENT OF INTERNAL ADVICE

11.1. The author confirms that advice has been taken from all appropriate Councillors and Officers:

- (1) Cllr M Prowse, Lead Member for Economic Development and Strategic Planning Policy; Vice-chair of Joint Planning Policy Committee (NDC)
- (2) Cllr R Hicks, Lead Member for the Economy; Chair of Joint Planning Policy Committee (TDC)
- (3) Helen Smith, Planning Manager (TDC)
- (4) Sarah- Jane Mackenzie-Shapland, Head of Place, Property and Regeneration (NDC)

12. APPENDICES

12.1. This report is supported by the following appendices:

Appendix 1 – Draft Consultation Response

Appendix 1: Draft Consultation Response

Question	Answer	Draft Response
<p>Q1. Do you agree we should change national planning policy to make clear local planning authorities should give significant weight to the benefits of delivering as many homes as possible [yes/no]? If not, why not?</p>	<p>No</p>	<p>The Councils consider this proposed change to national planning policy be wholly inappropriate and completely unnecessary. The Councils have significant concerns that the proposal could result in the delivery of inappropriate and unsustainable development, contrary to the wider provisions of national planning policy. The benefit of delivering homes from development is already a material consideration that can be afforded significant weight, however it is important that the weight to be afforded to that remains a matter for the decision-taker, when considering the planning balance in reaching a determination. There are a range of matters already within national planning policy that are considered satisfactory and sufficient to guide local planning authorities to seek the optimum use of land to deliver housing. It is considered that the proposal has the real potential to have significant unintended consequences that could result in poor quality development and poor planning outcomes; having the potential to undermine other important planning priorities, such as wider regeneration objectives or the delivery of beautiful places. Additionally, the Councils are concerned that the proposals could unbalance key planning protections such as those for flood risk, placing the delivery of housing above such considerations. The planning system is cited as being intended to be genuinely plan-led, however these proposals would fundamentally undermine this approach, seeking to set aside development plan provisions. It is important that any changes recognise that brownfield land is not only found in an urban context but can also occur in rural locations. It is imperative that any approach is rural-proofed and does not have unintended consequences for rural areas, resulting in inappropriate development that doesn't have due regard to its rural context. The wording, as proposed, clearly does not simply apply to brownfield land as per the cited topic of the consultation but could rather be applicable to any and all development proposals. It is considered that this would result in a significant change of emphasis that could undermine the wider balanced principles of delivering sustainable development. If the proposal was intended to apply only to brownfield land, as per the topic of the consultation, the wording should be revised to ensure that it is unambiguous in its restriction to this scope.</p>
<p>Q2. Do you agree we should change national planning policy to make clear local planning authorities should take a flexible approach in applying planning policies or guidance relating to the internal layout of development [yes/no]? If not, why not?</p>	<p>No</p>	<p>The Councils do not consider this proposed change to national planning policy to be necessary or appropriate. Local planning authorities already have the discretion to afford differing weight to development requirements, including the internal layout of development. This should be a matter that is balanced with all other requirements in the consideration of delivering sustainable development. The proposed change has the real potential to unacceptably compromise the consideration of amenity and result in poor design and living conditions. This would appear to be contrary to the Government's wider ambitions to secure beautiful development that is attractive, functional and which is more acceptable to host communities; with the proposals</p>

Question	Answer	Draft Response
		<p>even appearing to be contrary to the principles established in the Government's own National Design Guide, or potentially undermining the Government's only Nationally Described Space Standards. Whilst the Councils recognise the importance of delivering housing, this should not be 'at all costs' and result in poor quality development that requires unacceptable compromise. National planning policy establishes that the planning system should be plan-led and this proposal appears to be wholly at odds with that notion - seeking to simply set aside local priorities and requirements.</p>
<p>Q3. If we were to make the change set out in question 2, do you agree this change should only apply to local policies or guidance concerned with the internal layout of developments [yes/no]? If not, what else should we consider?</p>	<p>No</p>	<p>The Councils do not consider that local development plan policies nor associated guidance should be set aside as this is contrary to the wider principle of a plan-led system, disregards local priorities and will disenfranchise local communities. The Councils most definitely do not support disapplying any further matters.</p>
<p>Q4. In addition to the challenges outlined in paragraph 13, are there any other planning barriers in relation to developing on brownfield land?</p>	<p>No</p>	<p>The Councils do not believe that the planning system provides any fundamental barriers in relation to developing on brownfield land. The Councils recognise that there are challenges that come with seeking to develop brownfield land, however the planning system and an effective local plan should provide the basis to effectively support the positive redevelopment of brownfield land rather than hinder its development. The Councils consider that providing additional funding and support through programmes such as the Housing Infrastructure Fund and streamlining associated application processes to make funding more accessible and responsive are likely to be far more successful and appropriate in supporting the development of brownfield land than making direct changes to the planning system that could have unintended consequences.</p>
<p>Q5. How else could national planning policy better support development on brownfield land, and ensure that it is well served by public transport, is resilient to climate impacts, and creates healthy, liveable and sustainable communities?</p>		<p>The Councils consider that pre-existing national planning policy, coupled with effective locally prepared approaches to deliver sustainable development set out in a development plan already provide an effective and appropriate way to support the delivery of development on brownfield land. Rather than seek changes to national planning policy to further incentivise the delivery of housing on brownfield land, the Councils feel that attention should be focused on reducing other barriers such as the inherent costs and complexity that can often arise from clearing and remediating previously developed land. Focusing on programmes of easily accessible funding through grants and loans, coupled with simple access to technical expertise and support for Councils and developers alike are likely to be far more effective in unlocking the potential of brownfield land, without resulting in the delivery of compromised development that has the potential to occur should these proposals be followed through. The importance of joining up and aligning programmes and priorities should also be recognised, such as the need to fund</p>

Question	Answer	Draft Response
		and deliver flood protection projects (Defra / EA) in order to unlock the potential to deliver against housing requirements (DLUHC).
Q6. How could national planning policy better support brownfield development on small sites?		The Councils recognise the important contribution that the development of small brownfield sites can make to the delivery of housing and also to the achievement of other planning objectives such as regeneration and making places beautiful. As noted in response to other questions, the Councils feel that the provision of additional support outside of alterations to national planning policy are likely to be far more effective in helping support the delivery of development on brownfield land. For small sites, the accessibility of grant and loan funding, along with simple and swift access to technical expertise and support is likely to offer significant benefit, particularly to encourage and enable small and medium enterprises to deliver development.
Q7. Do you agree we should make a change to the Housing Delivery Test threshold for the application of the Presumption in Favour of Sustainable Development on previously developed land [yes/no]?	No	Whilst this proposed change would not currently be directly applicable to the Councils, they do not consider that any change should be made to the Housing Delivery Test threshold for the application of the Presumption in Favour of Sustainable Development on previously developed land. For the Councils to which this would apply, it has the potential to fundamentally undermine the delivery of locally derived planning priorities and approaches that have been established through a robustly prepared development plan in a plan-led system, when for all intents and purposes the host Council will be fulfilling its duties to support the delivery of housing.
Q8. Do you agree the threshold should be set at 95% [yes/no]? Please explain your answer.	No	Whilst this proposed change would not currently be directly applicable to the Councils, they do not consider that the proposed threshold is reasonable or appropriate. In effect, the 95% threshold would result in a move away from a plan-led approach for a marginal level of underperformance on the delivery of housing; having the potential to see brownfield sites released for residential development contrary to wider provisions of the development plan, which have the potential to undermine wider local planning objectives or priorities. The Councils can see no reason why brownfield land should be treated any differently to any other land in relation to Housing Delivery Test performance, particularly considering that local planning authorities are already obligated to prioritise the redevelopment of brownfield land through pre-existing national planning policy.
Q9. Do you agree the change to the Housing Delivery Test threshold should apply to authorities subject to the urban uplift only [yes/no]? If not, where do you think the change should apply?	Yes	Should the proposals be taken forward, the Councils agree that they should only apply to those authorities subject to the urban uplift. These are the locations that are likely to have the most significant supply of brownfield land and within which the application of the changed approach is likely to have the potential for the largest impact on the delivery of housing.
Q10. Do you agree this should only apply to previously developed land within those	Yes	Should the proposal be widened to apply to not only previously developed land, this has the effect of fundamentally altering the operation of the Housing Delivery Test. This is not

Question	Answer	Draft Response
authorities subject to the urban uplift [yes/no]?		considered necessary or appropriate, with the existing Housing Delivery Test thresholds and associated measures considered to be balanced and progressive.
Q11. Do you agree with the proposal to keep the existing consequences of the Housing Delivery Test the same [yes/no]? If not, why not?	Yes	The Councils consider that the pre-existing consequences should remain as they provide a well-considered, hierarchical and proportionate response to housing delivery performance.
Q12. For the purposes of Housing Delivery Test, the cities and urban centres uplift within the standard method will only apply from the 2022/23 monitoring year (from the 2023 Housing Delivery Test measurement). We therefore propose to make a change to the policy to align with the publication of the Housing Delivery Test 2023 results. Do you agree [yes/no]? If not, why not?	No	As per the Councils' other responses to this consultation, the Councils' do not believe that national planning policy should be amended in line with the proposals, considering them to be inappropriate and unnecessary - with current national planning policy already incentivising the delivery of housing and the development of brownfield land.
Q13. Do you think the current threshold of 150 residential units for referral of a planning application of potential strategic importance to the Mayor of London is the right level [yes/no]?		As local planning authorities located in the south west of England, distant from London and not affected by this aspect of the proposals, the Councils do not consider it appropriate to comment on this matter.
Q14. If no, what would you set as the new threshold? [300/500/750/1000/other] Please explain your answer.		As local planning authorities located in the south west of England, distant from London and not affected by this aspect of the proposals, the Councils do not consider it appropriate to comment on this matter.
Q15. 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.		When developing brownfield land for housing, the proposals intend to set-aside or diminish some of the planning provisions that seek to ensure an adequate level of amenity for residents. Further, the proposals are seeking to potentially have the effect of promoting the delivery of housing on brownfield land, at the expense of other potential objectives and priorities that are intended to help deliver sustainable balanced communities. Higher levels of brownfield land can often be found in locations with higher propensities of deprivation and it is important for the Government to ensure that the proposals do not adversely discriminate against particular elements of communities.