

GOVERNMENT WHITE PAPER: WEST LONDON RESPONSE

This response to the Government's white paper on "Planning for the Future" is submitted by the West London Alliance on behalf of the West London boroughs. Our area is amongst the largest formally-constituted joint working areas in the United Kingdom. It covers an area with a growing population of over two million and the second largest economy and the most productive workforce in the country. We have an ambitious approach to use of the planning system to support the sub-region's sustainable growth, working jointly to commission research to inform emerging planning policy and to encourage joint working and policy development across West London.

The response is supplementary to the detailed responses submitted by individual West London boroughs; we commend these to the Government.

General points

- 1) This response focuses particularly on practical and technical issues arising from the Government's proposals. It deals less with matters of principle; these will be picked up in member boroughs' comments, which we commend.
- 2) We welcome the opportunity to contribute to a fundamental review of the planning system to ensure it is fit for purpose and effective in helping address the major challenges: addressing the consequences and causes of the climate emergency; providing the homes and opportunities all parts of the community need; delivering the infrastructure needed to ensure a civilised standard of life – and ensuring we have places where people are glad to live and work.
- 3) We recognise that the current system has flaws
 - i) Plans do take too long to put in place and in some cases are not user-friendly.
 - ii) There is too much emphasis on trying to predict the unknowable – and penalising authorities for not proving they know it.
 - iii) Plan policies should be given more weight so its clear what development should deliver and that policies matter.
 - iv) There is scope to extend the range of those who get involved and to make better use of technology to make the system more accessible and responsive.
 - v) There is a need to put planning gain on a sustainable footing – and get away from opaque arguments about viability that have done much to bring the system into disrepute.
 - vi) Expectations of the system have grown while resourcing has shrunk.

But on the other hand

- a) the discretionary element also provides flexibility to address changing circumstances. This has allowed it, for example, to lead the way on issues like carbon emissions and room size standards.
- b) In practice it has been successful in delivering more planning permissions for housing than developers have been able to build out - at the end of March 2017 there were unimplemented planning permissions for 42,000 units in West London boroughs. We have delivered a range of different sizes and types of development and worked with a wide range of developers – from SMEs to national-scale builders.

- c) It also provides opportunities to plan for, fund and deliver key infrastructure important both locally and on a more strategic basis.
- d) Communities welcome the opportunity to engage with planning policy and value the voice it gives them in taking planning decisions.
- e) In West London the current system has delivered high quality places: Colindale, Wembley, Southall. West London boroughs have ambitious plans for new employment centres at Brent Cross and the Great Western Corridor. Key to this has been ensuring the right development, in the right place, at the right time – and supported by the right infrastructure.

Any new system should retain the best elements of the current system. Large-scale change will inevitably cause disruption; a pragmatic, incremental approach will keep this to a minimum while allowing time to learn from experience.

- 4) We also agree that there is scope to use **technology** to improve engagement, accessibility to information and policies and the quality and speed of decisions. However, tech cannot fill gaps in the proposals. Technology can only ever be a means to an end; it is not a substitute for defining those ends. Nor can it make an unworkable system functional.
- 5) In any extension of digitisation it is essential that the interests of client planning authorities and the communities they serve should be the paramount consideration. All planning-related information should be available on an open source basis and clients need to be able to set binding standards for the industry, particularly to ensure consistency of service, security and privacy and long-term value for money.
- 6) One way to minimise **unnecessary disruption in moving from the current system** would be to involve practitioners in working up the detail of the new system. The WP gives a high level outline of a new system, but it is clear there are large areas requiring further thought and others where translating broad statements of intent into deliverable legislation/guidance will be difficult. Across our seven boroughs we have planning officers who are leaders in their field, and we would be glad to engage with government in taking the reform process forward. We have particular experience of working closely across boundaries.
- 7) The WP also does not deal with important aspects like waste, minerals and hazardous substances – some of which do not appear to fit easily into the kind of system the WP proposes.
- 8) One thing is clear, however. The WP proposals would involve change on a huge scale. Overseeing this change and ensuring it is implemented in ways that do not affect day-to-day service delivery will not be cheap. Making the new system work, particularly to the kind of ambitious timetable envisaged in the WP will also require adequate resourcing. It is vital that planning authorities are properly funded to enable them to have enough of the right people, technology and other resources to make change work.

London - and the wider south-east

- 9) One major omission from the WP is any reference to London and the unique planning arrangements we have here, with a directly elected Mayor with responsibility to produce a spatial development strategy and development management powers for strategic applications. There is also no reference to strategic planning for the London city-region; given that this area

could be where over half the Government's annual housebuilding target of 300,000 units per annum would be met this is a major gap in the proposals. It would have been preferable if this white paper could have been published at the same time as that dealing with devolution, which would have allowed these issues to be discussed in parallel with the new institutional arrangements for strategic planning outside Greater London – it may well be that the issues around strategic planning mentioned here will have to be revisited when proposals for the future shape of the authorities that will be implementing them are brought forward.

- 10) It is clear that if the white paper proposals go ahead in anything like the form proposed the current role of the Mayor of London in planning will have to change. Based on our experience of the current system since 2000, we consider there is still an important role for strategic coordination at London level, but that this should be recast to more of a bottom-up approach where the key consideration should be support for local plan-making authorities in delivering shared priorities.
- 11) The Mayor could set overall objectives for the London planning system in agreement with the London boroughs and other key stakeholders. These should be set out in a short statement of strategic objectives and guidance about the spatial distribution of growth (including housing delivery) and set out the transport and other infrastructure investment that will support delivery of growth. It should also deal with issues like designated views and safeguarded wharves. This strategic statement – with a clear focus on outcomes and delivery - might resemble the pre-2000 regional planning guidance, rather than the current London Plan. As a more focussed document, it could be produced and amended more quickly than at present. Local plans would then be assessed to establish whether they will deliver on the London statement of strategic objectives.
- 12) This role would mean the Mayor would remain a key point of contact between the London planning system and key stakeholders such as the logistics sector. This might for example enable an expression at strategic level of the different roles land in particular uses play in different parts of London, supporting, for example, zoning for employment uses in outer, inner and central London. In the same way, the Mayor could have an important role in leading work with planning authorities outside Greater London, including planning for the functional market areas of key ports and other infrastructure of inter-regional importance, such as Tilbury, London Gateway and the part of the Heathrow corridor located beyond the GLA boundary.
- 13) There will continue to be important roles for the Mayor in supporting effective local plans. The current systems for identifying London-wide housing need and land availability work well and should be retained. These involve robust discussions about housing capacity and deliverability (informed, for example, by plans for transport and other infrastructure investment) and result in soundly-based inputs to policy which is far more likely to make a practical difference in terms of actual delivery of new homes than the kind of formula-based approach suggested in the WP . This kind of evidence base will be essential if the Mayor is to have a role in allocating housing requirement targets as proposed in the document.
- 14) The Mayor can also play an important part in identifying major development opportunities and working with boroughs to agree boundaries, identify potential development capacity, and develop planning policies and codes to ensure their sustainable delivery. This will be particularly

important for areas straddling borough boundaries. Infrastructure planning is another important role for the Mayor, particularly for transport infrastructure delivered by Transport for London.

- 15) Over time there will be other areas where borough planning authorities will identify the need for collective research or other services to support plan-making. The Mayor is well-placed to provide this kind of assistance. One particularly important area where this may be particularly the case is digital services where the Mayor could have a valuable role in setting standards, commissioning suppliers and ensuring consistency.
- 16) The model suggested here would also give the Mayor greater space and time to work with counterparts in the wider south-east of England to ensure that strategic plans and objectives properly address the needs of the city region and support its sustainable growth.
- 17) In the model for decision-taking outlined in the white paper planning there is little room for mayoral involvement – the strategic issues involved should be dealt with at local plan stage and that is where the Mayoral role should be focussed. There will still need to be a formal role for the Mayor in dealing with developments affecting strategic views, safeguarded wharves, land safeguarded for transport infrastructure and those adjacent to Transport for London roads, rail lines and other infrastructure. This could be done through the Mayor being designated as a strategic consultee for these sorts of development, backed with powers of direction where necessary.

Planning for Development

Simplification of land use plans (question 5)

- 18) We can see that front-loading the development process by resolving more issues relating to the principle of development in local plans has advantages. It gives the local plan the status it should have at the centre of the system. It makes clear to developers and communities alike what kind of development will be acceptable and the rules that will be applied.
- 19) There are advantages to making more use of zoning in local plans. However, zoning is an implementation tool; it is not planning. If identifying land for development and sites that should be protected; and being clear about what development can take place in those different areas are the “how”, the function of planning is to say why, setting the vision that land use rules are set to deliver in order to deliver development meeting local needs and aspirations and helping deliver locally-determined visions for the future. The WP recognises this in its proposal for a “statement of reasons” (although it is not clear whether this will form part of a plan). The distinction between a plan and a zoning ordinance is clear in many other countries’ systems. The WP is unclear about where the planning aspect comes in.
- 20) The WP proposals for the form zoning might take are so high level that it is difficult to comment on them meaningfully. There are many important details missing and, in some areas, what is said is unclear. We are fortunate in having officers from member boroughs with experience of zoning-based systems and would be glad to work with Government to address these gaps.
- 21) Zoning requires a wholly different mindset to the kind of strategic planning we are familiar with. It demands precision and clarity in defining what is suitable in each location. Broad-brush

definitions of terms like “substantial development”, “gentle densification” and “more stringent planning controls” of the kind you might find in the current National Planning Policy Framework will not work. Experience is that zoning systems are highly legalistic; they do not avoid disputes, but rather move them from the planning committee or appeal inquiry into the courts. It should also not be assumed that zoning-based plans are either shorter or less complex than current ones. It is also unclear whether there will really be less of an evidence-base requirement – even with a national housing requirement methodology there will be a need for a strategic housing market assessment setting out the need for different type of housing.

- 22) It is clear there will have to be more than three zones. In most zoning-based systems zones identify the type and scale of development permitted and/or types of location (as with town centres and the areas around universities referred to in the WP). They will sometimes have policy-based overlays (to deal with issues like flooding or development in areas of heritage importance). It will be difficult to set an exhaustive set of nationally-defined zones; boroughs should have wide latitude to set zones depending on local circumstances and policy priorities.
- 23) Zones based on the scale of growth envisaged are not really as simple as they seem. The scale and extent of development – and the approval process to be applied - appropriate for an area are likely to differ as much within the three zones as much as between them. The approach proposed may simply create rigidities. A binary approach would be even more constraining. If boroughs had more discretion to decide on zones, they could categorise them according to whether they are “growth”, “renewal” or “protect” (although the way this term is used in the WP is misleading) – so you could have a metropolitan town centre (growth) zone or a neighbourhood centre (protect) one. This would be more transparent for non-professionals.
- 24) In summary, it is clear that what is proposed here is not “simplification”. In practice it will simply move much of the work currently done in handling planning applications to the plan-making stage, rather than reducing the demands overall. The amount of work likely to be involved means that the process is likely to take rather longer than thirty months.

“Development management” policies (question 6)

- 25) There is scope to reduce the amount of process-related policy in local plans, although experience suggests that the distinction between outcome-based and “development management” policies may be more difficult to make in practice than envisaged. Policies of this kind in existing plans often explain how national policies will be applied in local circumstances, which makes their application easier, rather than more complicated. For zoning to work plans must set out the requirements development will be expected to meet. Authorities should be able to include “development management” policies where they can justify their inclusion – a blanket ban will result in plans that will be less clear and helpful to developers or the wider community. Our preference is for there to be no one size fits all approach to this at all, but of the options suggested in the WP we would support retention of a similar level of flexibility to set development management policies as under the current Local Plans system, with the exception of policies which simply duplicate the National Planning Policy Framework.

Soundness tests (questions 7a and 7b)

- 26) There is scope to revisit the test of soundness for local plans, but even if the current tests are replaced by a single “sustainability” one, it is likely either to need more detailed elements or will

be broadly applied - the likelihood is that the new test would not differ substantially in practical effect from the current one. This is also the case for strategic environmental assessment; it appears from the WP that even if it is to be abolished in its current form it will be replaced by something that looks very like SEA (and the problems experienced with this has often been about the way requirements are implemented (not least in response to requirements of national government agencies) rather than the requirements themselves). On balance we would support retention of both in substantially their current form, with more attention to finding ways of streamlining their application. The current housing deliverability test should be unnecessary in a zoning-based system.

- 27) The proposal to abolish the duty to cooperate without having a replacement in mind leaves on of the most significant gaps in the WP. There do need to be robust arrangements in place to deal with issues like strategic infrastructure, waste, new settlements and urban extensions, major development sites straddling boundaries and planning for sectors like logistics that cannot be sensibly dealt with solely locally. We have found working on a sub-regional basis with strong links to neighbouring parts of London and surrounding counties has worked effectively – and by supporting commissioning joint evidence base work, it has also saved money. This is a model that could be used more widely; central government could help by providing funding for these kinds of arrangements. More widely, if London and the south-east of England are expected to provide more than half of the Government's 300,000 pa housing target there will be a need for some inter-regional arrangements to ensure this can be delivered sustainably and that planning authorities are supported in developing new-style plans. We have set out our views about the form new arrangements might take in paragraphs 7-14 above.
- 28) One way of addressing the cross-boundary issue would be to allow scope for groups of authorities to prepare non-statutory spatial frameworks that will help provide the context for local plans and encourage joint working. These frameworks could, for example, allow authorities along corridors crossing administrative boundaries (perhaps alongside strategic infrastructure) to work and plan together for issues of shared concern.
- 29) We welcome the strong support for infrastructure planning (para. 2.20), but it is not clear how places where there is no reasonable prospect of any infrastructure that may be needed coming forward within the plan period should be treated within the three zone approach. It might be better to allow authorities to establish infrastructure deficiency zones where development will not be allowed unless developers provide or fund the infrastructure required (an approach similar to Grampian conditions) which will not effectively sterilise a site for an entire plan period (see para. 51).

Standard housing requirement test (questions 8a and 8b)

- 30) The WP conflates housing need (which includes questions of affordability and specialised provision as well as overall numbers), a standard housing requirement figure established by a standard formula and the availability of enough land to build the number of homes arrived at by either route. There is little point setting housing targets that cannot physically be met, even if other uses and green spaces are sacrificed. Although it is right to put authorities to proof to demonstrate they cannot meet housing targets, a system that operates on the basis that boroughs should only protect other uses or community facilities, heritage and environmental assets, or infrastructure if an arbitrary target cannot be met is the opposite of planning. In

practice developers would not build homes in places where these things were not protected, and people would not want to live there.

- 31) As the Government has found with its proposals for the current housing need methodology (and is accepted in para. 2.29 with regard to Green Belt), it is very difficult to come up with a formula that takes proper account of a far less comprehensive range of factors than those proposed in para. 2.25. Planning is a more complex process than this, involving trade-offs between different objectives. For all these reasons, we support the option set out in para. 2.28.

Streamlined development management processes (questions 9a, 9b and 9c)

- 32) Rather than prescribing approval types for particular zones defined by scale of envisaged growth it would be better to allow this to be prescribed for particular places on a more granular basis, reflecting local decisions on uses to be encouraged/supported in light of need, relationship with surrounding areas and any environmental, heritage or other constraints. Although the desire to front-load the process is supported, not everything can be resolved at this stage and it is not the case that the greater the scale of growth envisaged, the less rigorous the scrutiny of the development should be.

- 33) We would support the kind of approach used in zoning systems elsewhere allowing authorities to set appropriate approval routes to ensure the outcomes for each zone set in plans are met. For simpler, small-scale developments in less sensitive zones this would take the form of a self-assessment; for larger-scale developments or in places of particular sensitivity an application could take the form of an assessment showing how a scheme meets plan requirements. For larger schemes (such as those requiring environmental assessment) a full application of the kind we have today. Authorities could be required to show why a higher level of approval is required as part of the examination process. This approach would avoid the kind of complex approach outlined in paras. 2.30-2.37.

Decision-making (question 10)

- 34) The quality of decisions matters as much as speed and although there is considerable scope for use of technology to bring all planning authorities up to the level of the best it will not by itself guarantee good quality decisions commanding respect locally.

An interactive, web-based map standard for planning documents (question 11)

- 35) We question whether it is really necessary to prescribe the detailed format for local plans nationally. This is certainly not essential to deliver the kind of benefits outlined in this section. Planning authorities should be able to tailor approaches to meet the needs of those living, working and developing in their area (and in practice where templates are used in other countries they have to be adapted locally for this reason).

A statutory timetable for plan preparation (question 12)

- 36) Although there is scope to streamline the plan preparation process, setting arbitrary timetables of the kind proposed is likely to lead to poorer quality plans and a lack of local support for policies. It also overlooks the extent to which parts of the process around the examination are beyond the control of the planning authority or even the Planning Inspectorate or the scope for plans to be blown off course by the unexpected (like major changes to national policy). Given the changing status of local plan policies and the frontloading of the development process,

examinations may become longer and more contested, probably with more involvement by lawyers as the precise wording of policies becomes of more pressing importance to developers and others. What happens should a process hit the thirty month stage? Presumably the work done to that stage would not be invalidated?

- 37) Achieving the WP's objectives for local plans requires taking the time to engage properly with everyone with an interest in the development of an area and using technology is a way of helping do this, not a substitute for it. Although tech has considerable potential to make engagement easier and more meaningful, it should not be assumed everyone wants to (or can) engage with the process digitally.
- 38) The WP proposes to abolish the formal regulation 18 consultation at issues and options stage. This is often the more valuable (and valued) of the two current statutory consultation stages; identifying and dealing with issues at the start of the process often saves considerable time later on. The vague reference to pre-plan engagement is not sufficient and seems to be linked with (confined to?) calls for sites – a stage where there are often more questions than answers and engagement can be unproductive and frustrating.
- 39) If the statement of reasons explains why the zones and zoning requirements have been prepared as they have, shouldn't it be part of the statutory plan?
- 40) We support review of the current examination system to see whether it remains fit for purpose; there may be lighter touch approaches that are less demanding of time and resources (starting out with a presumption that plans are sound, allowing authorities to appoint their own examiner as with CIL or neighbourhood plan examinations, allowing less formal round table or written statement processes, moving towards mediation-based approaches). Any process must ensure credibility among stakeholders. It will be important to guard against them becoming lawyer-dominated like old-style plan inquiries.
- 41) We have already indicated that we regard thirty months as a wholly inadequate period for preparation of this new type of local plan and the proposed requirement is simply setting a new system up to fail. On a purely practical note, how is the Planning Inspectorate and others with key roles going to cope if all planning authorities start work on new-style local plans at once and follow the same timetable, seeking examination at the same time?

Neighbourhood plans (questions 13a and 13b)

- 42) It is difficult to see what room the proposals leave for neighbourhood plans. Presumably zoning policies would be "strategic" ones with which neighbourhood plans would have to conform, and they would also be subject to the restriction against including "development management" policies. They could prepare local design codes for their area, but would this be enough to encourage widespread take-up?

Stronger emphasis on build-out (question 14)

- 43) We agree with implementation of all the Letwin Review conclusions and not just those referred to in the WP – in particular greater powers for planning authorities with regard to masterplanning, acquisition and control over development of large sites. The rules for zoning and design codes will have to allow enough flexibility to require the variety of housing product referred to.

- 44) The planning system provides few other tools for authorities to proactively drive delivery of development – completion notices are ineffective and not widely used. Unless incentives were to be out in place (e.g. taxing sites with unimplemented permissions or “use it or lose it” time-limited consents) there is little authorities can do after permission is granted.

Planning for Beautiful and Sustainable Places

Overview (questions 15 and 16)

- 45) The built environment has lasting implications for those living and working in it that go beyond aesthetic design questions – important though these are. There is more to good design than aesthetics, and in any event “beauty” is an inherently subjective concept that will be extremely hard to define or express meaningfully in planning documents. A key priority must be ensuring the built environment makes its contribution to meeting the climate emergency – being suitable for the climatic changes that are happening now and mitigating the effect of future change. Doing this means addressing a whole range of issues including resource efficiency, carbon reduction, use of renewable energy, supporting sustainable transport options. It also means addressing the whole lifespan of a building. Other priorities include air quality, accessibility and inclusivity, community safety and sustainable construction.

Design codes (question 17)

- 46) We support the preparation of local design codes. These need to be effective in achieving high standards in the context of each area and there should be the minimum of national prescription about their form, content and preparation. There also need to be clarity about their formal status; if they are not part of the plan and so given the commensurate status in decision-making they should have a status higher than simply one material consideration among others. There should be scope both for area-specific and theme-based codes.
- 47) The amount of time, work and resources likely to be needed to develop codes that address the huge variety of urban environments found in a single London borough meaningfully should not be underestimated; if they are to be useful to everyone involved in development they are likely to have to be quite detailed and deal with what the WP terms “development management policies”. Similarly, the scope for making codes ‘machine-readable’ may be limited in practice given that many issues in planning (particularly in areas like design) are matters of judgement and interpretation.
- 48) However, these codes are not a substitute for the kind of planning needed to make a zoning approach effective.
- 49) We have considerable experience of developing code-like documents, including character and design supplementary planning documents. Some of this work has involved innovative use of digital technology. We would be glad to provide further information and engage with Government on how these Codes could be taken forward.

A national body to support code preparation and a statutory officer for place-making and design (question 18)

- 50) Although the Government appears to have pre-empted this question by establishing a new national design body, we remain unconvinced of the need for a national body to support local code preparation or of the value it would add. Local circumstances are likely to differ so widely that national guidance is likely to be unhelpfully general. To be meaningful, design codes must be locally-prepared and based, reflecting circumstances on the ground. Planning authorities might be encouraged (and funded) to work together to provide support and training and enable exchange of best practice and mutual aid in code development instead.
- 51) We strongly support the intention to ensure planning departments are properly resourced – shortage of resources, particularly for local planning work, is one of the reasons for the current system not realising its potential. We also support the idea of a statutory chief officer, but there is more to planning for sustainable development than design and the designated post should be chief planning officer.

Homes England's role (question 19)

- 52) Homes England does not operate in London.

Fast-tracking beauty (question 20)

- 53) We agree that the rigour of approval route for development proposals should be related to compliance with the criteria set in local plans and design codes. Planning authorities should have the ability to specify appropriate approval routes and so the degree of scrutiny required) in light of the circumstances of each area. As said earlier, there should not be an automatic link between zone designation on the basis of extent of anticipated growth and approval route and allowing the kind of flexibility we have suggested eliminates much of the complexity set out in paras. 3.17-3.20. "Beauty" is inherently subjective and will differ from place to place, depending on local context; it is assumed that what is meant here is development demonstrably compliant with local plan policies and design codes.
- 54) Experience suggests that extension of permitted development rights does not make for higher quality design. While pattern books can deliver high quality neighbourhoods where there is a commitment to quality (which may not be cheap), they can also make for lowest common denominator development of areas, with monotony of form. It is difficult to envisage a pattern book that would be both sufficiently detailed but also enable sufficient flexibility to work in the way suggested in para. 3.20.

The role of planning in mitigating and adapting to climate change and maximising environmental benefits, assessment of environmental impacts and conservation of heritage assets

- 55) We welcome the emphasis on including policies on environmental quality in local plans.
- 56) Planning has an important role in **climate change adaptation and mitigation**, including:
- i. in setting and enforcing standards for the design and construction of new buildings to ensure they minimise their carbon footprint and that they can be used sustainably throughout their lifecycle
 - ii. in ensuring buildings take account of likely climate change (e.g. flood risk, natural cooling, greening)
 - iii. in promoting a circular economy and sustainable management of waste

- iv. in leveraging resources to make carbon savings through retrofitting older buildings

The reality is that there is an urgent need to meet the challenges of climate change, and it is not sustainable in any sense of the term to wait to achieve carbon neutrality in 2050. In places like London where it can be clearly demonstrated that it is possible to go further faster without impacting on development viability, it is sensible to allow authorities to do so (and this is often welcomed by developers). Planning has shown the way in this field, for example in promoting use of renewable energy; it is important that the proposed changes to the system do not inhibit this kind of policy innovation.

- 57) We also welcome the recognition of the importance of **heritage assets** and support a pragmatic approach to ensuring they meet modern environmental standards while not compromising their historic importance. We do not, however, consider that allowing some architects to operate outside the listed building consent requirements is either workable or appropriate, given how context-specific these cases tend to be and the risk of damage to heritage assets' historic importance.

Planning for Infrastructure and connected places

- 58) This section deals almost exclusively with securing funding from development to fund infrastructure rather than how infrastructure will be planned for and developed in the new system. How will infrastructure be planned for, and how does land for infrastructure sit within the proposed zones?
- 59) Although we welcome the principle of a streamlined system for securing funding from infrastructure from those benefitting from the grant of planning permission, on the basis of the high level outline in the WP we are unconvinced that the proposed infrastructure levy (IL) can be implemented effectively in the form proposed or that it could raise sufficient resources to meet all the demands that will be placed on it (affordable housing, infrastructure required to make planned development acceptable in terms of achieving sustainable development, other local infrastructure, strategic infrastructure, neighbourhood projects and resourcing planning departments) with the reliability and predictability required for effective infrastructure planning. In what follows we have assessed the IL against the criteria set by the WP: responsiveness to local needs; transparency; consistency and simplicity; buoyancy; and certainty – to which we would add removing scope for evasion or manipulation.
- 60) It is clear that there will be a substantial continuing role for section 106 agreements to deal with non-financial issues and areas not involving direct financial contributions like securing training and employment opportunities. This continuing role requires further consideration.
- 61) There is no reference in the WP to the role of agreements under section 278 of the Highways Act 1980. In recent years Government has – incorrectly in our view – conflated these with CIL and section 106 contributions. They are different in kind, intended for different purposes and often used for purposes far removed from planning. We would welcome clarification that these agreements will be retained in their current form.
- 61) This is another area which would benefit from further discussion with practitioners with experience of operating the CIL, perhaps through the kind of expert commission the Government is establishing for design. There are clearly large areas of detail to be worked out to ensure a new system that can work and the experience of those who designed and

implemented the CIL will be invaluable. The WP refers to an alternative approach aiming to capture more land value than currently, with developers liable for paying the levy and the cost capitalised into land value. We would welcome further discussion about these ideas and others like a mechanism linked to developers' profits exceeding an agreed level.

Replacement of the Community Infrastructure Levy/planning obligations with a consolidated, value-based infrastructure levy (questions 23 a, 23b, 23c and 23d)

- 62) An infrastructure levy (IL) linked to values could mean that very short-term issues impacting on prices – which may be difficult to forecast in advance and may have little to do with the development viability essentials - would knock on to the amounts raised (this is true to an extent now, but with liability fixed in advance, to a lesser extent). If it is intended that the IL for each unit will only be paid when that unit is occupied, it is likely that individual identical units sold at different stages will pay different amounts at different times for reasons that may have little or nothing to do with the situation in the area concerned and more with the local economy. This will make it more difficult to forecast potential income. They will also make the IR pro-cyclical. In a downturn there may not be the revenue to “pump prime” recovery. It may also make borrowing against IR income unattractive – or expensive. The IR will be invariably buoyant or transparent, it will also be less predictable, which may make developers' viability assessments more difficult.
- 63) There is little justification for setting IL rates nationally and it is unlikely to be effective. It will be impossible to set a rate that will be appropriate for all parts of the country (or even across regions) given the wide range in viability essentials within individual authority areas, let alone between them. This may mean rates have to be set to suit places with the poorest viability essentials which will artificially depress the amounts collected. It will also remove the link between infrastructure planning and rate-setting (as required under CIL). Finally, it will pose problems for areas requiring strategic, cross-boundary infrastructure (such as the West London Orbital), which would have to be funded from boroughs' IL revenue unless there is scope for supplementary levies to cover their costs. It follows that we support the option in para. 4.16 to allow authorities to set rates locally, which meets all the WP success criteria – the only objection is lack of consistency, but developers seem to be able to cope with different CIL rates between authority areas.
- 64) The IL will be paid on occupation - presumably on sale or at the point it is let; this in turn means it will be based on the price realised for each unit (the alternative would be notional national/regional average prices for different types and sizes of development). This means that authorities will receive payments much later in the development process (at present this is typically on commencement, completion and/or first occupation). For larger developments the money could take some time to collect – if it ever is. This means that the lag between planning permission being granted and all the revenue for a development being gathered from a development will be longer than under the current system. This will make infrastructure funding more difficult as capital costs early in a project will take longer to recoup, adding to the financing costs.
- 65) Linking payment with occupation could make the IL complex to implement. Its not clear what “occupation” means – actual physical occupation, or the point of exchange of money or money's worth? In most cases its fairly clear what this means for residential development –

the point at which someone moves in, having purchased or rented the property with value established by the price or rent paid. For other forms of property this is less clear cut. If a developer builds an office or shopping centre, when is it “occupied”? When is it sold on to a pension fund? When individual shops or floors are let? What about a development built for the developer’s own use – presumably they would have to pay on physical occupation? Even with residential development it may not be clear-cut. What about units sold off-plan - could these be “occupied” even before they are built? Or properties sold as investments which aren’t actually physically occupied, or aren’t occupied for some time? The answers to these questions will be important to understanding when IL might be received – this uncertainty may well make IR a poor candidate as an income stream for borrowing.

- 66) The value-based de minimis threshold below which the levy is not charged will be a cliff edge - where the value of development is below the threshold, no IL would be charged. Where the value of development is above the threshold, the Levy would only be charged on the proportion of the value above the threshold. The result could be very small contributions (a threshold in terms of amount to be paid would probably be better). There could also be scope for evasion by manipulating proposals so they come in below a threshold; provision would have to be made to prevent this kind of “gaming”.

- 67) We welcome the proposal that the IL will apply to some forms of development that the CIL doesn’t and s106 usually doesn’t, notably permitted development changes of use like office to residential conversions. However, some of these probably won’t pay very much – or anything at all – because of the de minimis provisions. We also welcome the suggestion that there will be far fewer reliefs and exemptions than with CIL.

- 68) The proposal that boroughs could borrow against the IL is said to be a way of incentivising deliver of enabling infrastructure that will help development to complete faster and is clearly envisaged as a way of addressing many of the practical problems with funding infrastructure required before a development can go ahead from revenue that can only be secured when it is completed. It may also be seen as a way of getting around the fact that there will be multiple calls on IR revenue by allowing authorities to lever in additional resources. However, there are features of the IR (volatility, timing etc) that may make it an unattractive basis for financing. Many boroughs already borrow up to their prudential limits, particularly for affordable housing. Authorities would still have set aside the income needed to service the borrowing and given the pro-cyclical nature of the IL it could mean that revenue decreases (or may not materialise at all if development stalls between commencement and occupation) just at the time it is needed most. It is not clear how favourably the capital market would view borrowing against an income stream like the IL or how cost-effective this would actually be. For all these reasons we do not think allowing borrowing against IL revenue – and the transfer of risk that is surely properly the developer’s to the public sector - is the answer to all the fundamental problems with the proposals.

- 69) The features of the IL outlined here could undermine the Government’s objectives to free up land for development. As noted earlier the WP says that “sites should not be included in the plan where there is no reasonable prospect of any infrastructure that may be needed coming forward within the plan period”. In the absence of some kind of “Grampian condition” mechanism that allows development in these deficit areas to go ahead on condition that developers help fund/provide required infrastructure some sites might be sterilised for the five year period between plans.

- 70) Collection is likely to be considerably more complex – and expensive – than the current system. It will require tracking a large number of individual property transactions and checking on whether there is any “prevention of occupation being a potential sanction for non-payment” – something it would probably be quite hard to prove. For developments not intended for sale (and this covers a huge range of different circumstances) they would have to establish at what point the development was “occupied” and would then come up with an assessed value – or verify an assessed value that the developer comes up with. This is likely to involve disputes and references to independent experts. All of this will involve having to deal with a larger number of people at different stages. Hopefully payment will be the primary responsibility of the developer until all units are “occupied” and the burden will rest with them. IR is likely to be more expensive to collect than CIL (and the operation of the de minimis threshold may mean chasing a large number of quite small sums).
- 71) The WP envisages very rapid enactment and implementation. It won’t be possible to leave the IR for later as the process for setting and collecting the CIL is closely linked to the current development management process, which the rest of the WP proposals would change substantially. Although this is not touched on in the WP there would have to be arrangements for winding CIL down and IL up, presumably with a set date at which CIL will stop applying for new cases, leaving an overhang of “old” cases which will pay CIL. For section 106 it is assumed that already signed agreements will continue in force, and there will be a date beyond which they cannot be used to secure money contributions. This means there will be a point at which money will stop being paid on commencement of development and start being paid on occupation.
- 72) Because of the lag between permissions and occupation, there is likely then to be a period of 18-24 months when very little money will come in. After that, because it will be on occupation, it will probably start to come in fairly slowly. This means profiling income over the period between now and at least December 2024 will be quite difficult. Any forecasts in the early part of the period being modelled would be very uncertain and would probably widen the time gap between capital costs being incurred and collection of funding to cover it.
- 73) In considering these issues it is important to bear in mind that at present s106 and CIL only partly fund current infrastructure and affordable housing requirements and that in most areas infrastructure and housing planning demonstrate considerable funding gaps. For the reasons we have given, we consider the IL as proposed would not be any more effective in closing that gap than the present system – and could well worsen the situation.

Affordable housing (questions 25a, 25b, 25c and 25d)

- 74) We are not convinced that the IL is the best way of supporting delivery of affordable housing given that the priority is to deliver actual units rather than money. We would suggest that a better approach would be for affordable housing requirements to be set through the zoning system (as with the New York City mandatory inclusive housing programme). This would avoid the complexities of the proposals in paras. 4.20-4.25 which are likely to make it harder to deliver the same amount of affordable housing as currently.
- 75) Affordable housing delivery will be subject to the same kind issues of predictability and revenue profile set out earlier for infrastructure more generally. The proposals involve boroughs assuming greater risk which are unlikely to be addressed by “policy design”. borrowing or the suggestion that affordable units can be “flipped” in a falling market (which

militates against the objective of delivering more affordable housing). Of the options given, requiring that if the value secured through in-kind units is greater than the final levy liability, the developer has no right to reclaim overpayments would be preferred. This would give boroughs scope to set overpayments aside and use them as a funding cushion – but given the other pressures on IL revenue, the scope for this may be doubtful. Avoiding having to sacrifice affordable housing will require an approach that makes developers bear more of the risk.

Greater freedom about how IL can be spent (questions 26 and 26a)

- 76) We support the proposal to give boroughs greater discretion about how IL should be spent. However for the reasons given earlier we remain unconvinced that the IL will raise enough revenue sufficiently promptly to cover the costs of affordable housing and infrastructure currently secured through the planning system and it is envisaged that it will also contribute to the costs of planning services and to fund neighbourhood projects. It would be unwise to build expectations about IL providing substantial resources for wider priorities.
- 77) It is difficult to see how a ringfence for affordable housing would operate (would it be in terms of units or value secured? Over what timescale?). It would be unnecessary if, as we suggest, affordable housing is not secured through the IL.

Delivering change

- 78) We strongly support the proposals for a comprehensive resources and skills strategy for the planning sector and for a review of planning fees (although for the reasons outlined earlier, we have doubts about the scope for the costs of planning departments to be supported by the IL). We also strongly support the suggested “deep dive regulatory review” to identify and eliminate outdated regulations – this could be extended to cover national guidance and administrative practices in central government and its agencies (including the Planning Inspectorate).
- 79) It will be essential to provide central funding for boroughs to support implementation of the new system. This should be based on evidence of likely costs; we would be glad to be involved in providing information for this purpose.
- 80) There is an urgent need for a review of planning fees more detailed than suggested in the WP. We note that the WP does not refer to Planning Performance Agreements or charges for pre-application advice. Given the range of demands on the IL it seems unlikely that it would make up for the loss of these kinds of funding mechanisms; how these might be taken forward into a new system requires discussion with local planning authorities.
- 81) We also strongly support giving greater priority to, and resources for, planning enforcement. The current system is slow and resource intensive and has little deterrent effect for those flouting the rules. If a new system results in greater clarity about what is permitted, breach of planning controls should become a criminal offence.

Implementing reform

- 82) The WP sets a very ambitious timetable for implementation of the new system, with new-style local plans in place before the end of this Parliament in December 2024. We doubt this is realistic. The scale and complexity of the changes involved should not be under-estimated; nor should the amount of detail that remains to be resolved before it can be enshrined in

legislation. Even after a Bill is drafted and completes its Parliamentary progress there will be a need for at least a year to allow the preparation of the secondary legislation and policy guidance needed to give the new system practical effect. There will also need for time and resources to ensure all those involved in making the new system work, whether in planning authorities, central government, the Planning Inspectorate and in other sectors are ready.

- 83) Getting it right should be prioritised over doing it fast and proper engagement with practitioners from across the sector will be essential. Change on the proposed scale needs to be carefully planned and implemented if the planning and development processes are not to be impeded at a time when the contribution they can make to the national recovery will never have been so important.