

Consultation response form

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

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

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

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If you selected other, please state the type of organisation

City of London Law Society

Please provide the name of the organisation (if applicable)

City of London Law Society – the Planning and Environmental Law specialist committee.

Chapter 1: Introduction

Question 1

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

The Committee queries whether new para. 3 has the potential to confuse? Is it really necessary? We welcome new para. 6.

Chapter 2: Achieving sustainable development

Question 2

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

Please select an item from this drop down menu

Please enter your comments here

We welcome the slightly changed emphasis to "objectives" and the specific reference to the originating reference to the resolution of the United Nations General Assembly.

We also welcome footnote 7 and the identification of those NPPF policies which may limit the application of the presumption in favour of sustainable development. That said, however, given its central importance, we question the Glossary definition of "irreplaceable habitats".

There is clearly an overriding need for the recognition of European sites, National Parks, SSSIs and similar which all benefit from their own legal protections. The term "irreplaceable habitats", however, does not in law merit the same level of policy weight or protection.

As defined in the Glossary, the term raises a number of questions. How is "technical difficulty" to be measured? What may be difficult for a small developer, may be relatively straightforward for one which is better resourced or experienced. Why should the technical difficulty or timescale for providing replacement habitats (for "irreplaceable habitats") prevent the presumption from applying where the developer is able to demonstrate, in accordance with paragraph 11(d)(ii), that it is nevertheless able to put in place measures such that the adverse impacts will not "significantly and demonstrably outweigh the benefits"?

If the term is to remain – which we query – it requires clear definition to ensure that it is capable of consistent interpretation by LPAs and by public interest groups who might otherwise manipulate its subjectivity as a means of challenging decisions and delaying the delivery of housing and other developments.

Question 3

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

Please select an item from this drop down menu

Please enter your comments here

Yes – to do otherwise is a recipe for contextual misinterpretation.

Question 4

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

The CLLS has no comment to make.

Chapter 3: Plan-making

Question 5

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

Please select an item from this drop down menu

Please enter your comments here

1. The plan-making process is central to the statutory plan led system which is the hallmark of the development control system. The Committee welcome the logical elevation of this section to the front end of the NPPF, and the attempt made to clarify and consolidate its content alongside the thorough guidance in the proposed revisions to NPPG.

We support the changes to para. 11 and related paragraphs which we hope will add clarity to an area that can often be misinterpreted (sometimes deliberately) whilst also recognising the need for flexibility.

By way of specific mention, we welcome:

(a) The proposed split between the new streamlined policy and the improved and extended content of the draft NPPG, but would recommend the insertion of a signpost from the NPPF to the NPPG so that the content and utility of the NPPG is maximised;

(b) The section on Strategic Policies (20 to 25) is fully supported – 15 year review, 5 year assessment. As ever, the question that has been avoided is how does one deal with non-performing planning authorities and the development uncertainty that such non-performance creates? The reference to reviews being underpinned by an

adequate, yet proportionate, evidence base at paragraph 24 is particularly welcomed. We note the deletion of the section referenced -"Using a proportionate evidence base" in the current NPPF at paras 158-177 and its replacement with updated guidance in the updated NPPG;

(c) The Committee is conscious of the failure of many LPA's to "cooperate". We would amend the heading to this section to "Duty to Cooperate" to emphasise the importance of this part of the plan-making exercise. In addition, the word "should" where it appears in this section should be replaced by "must".

(d) Para. 36 - the changes to the 'soundness' test. This is a significant amendment. The new 'positively prepared' requirement is helpful, and we welcome reference to the justification for a Plan being based on "a strategy" rather than "the most appropriate strategy" when measured against the reasonable alternatives and based on proportionate evidence. We consider the objective of avoiding significant debate around what constitutes "the" most appropriate strategy at EIP stage a pragmatic step which will drive efficiencies in the review process without undercutting its effectiveness and the ability for appropriate and robust interrogation of a promoting authority's proposals.

2. Whilst the general content of this section is very much welcomed by the Committee, we do nonetheless consider some further improvements can be made to the draft text:

(a) at para. 16 c) we consider reference could be made here to "neighbouring authorities";

(b) at para. 26, whilst the retention of reference to cooperation is welcomed, we consider a further sentence at the end of the paragraph could be beneficial in underscoring that such cooperation should be "ongoing, proactive and effective" (mirroring the reference to "joint working" at para. 29. We also query the deletion of much of the useful text previously provided at para. 181 NPPF as to how such co-operation can be both effectively undertaken and evidenced, albeit we recognise the updated NPPG will contain detailed guidance to which a cross reference could be usefully provided; and

(c) at para. 36 (a) we consider the words "and co-operation" should be inserted after the words "effective joint working", and that the words "proactively and effectively" could be usefully inserted before the words "dealt with rather than deferred".

Question 6

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

As noted above

Chapter 4: Decision-making

Question 7

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

Please select an item from this drop down menu

Please enter your comments here

The general assumption is that viability assessments will be based on standardised inputs. Where, however, a viability assessment has used, for example, a particular model created by the developer or contains sensitive commercial information (for example about very recent commercial deals which could influence negotiations with other tenants), then there may be circumstances in which the publishing of such information could unfairly prejudice the commercial interest of the developer. On that basis, we consider that, whilst publishing viability assessments may be the general presumption, exceptions should be allowed and applicants for planning permission should have the opportunity to explain to authorities why particular information should be redacted. A redacted version could then be provided for publication, alongside an unredacted version for use by the authority. In any event, the information would be subject to regulation around environmental information in the usual way, giving a procedure whereby third parties can challenge non-disclosure.

It is certainly our view that a blanket requirement to publicise all viability assessments would effectively cut across the jurisdiction of the ICO and the Tribunal under the EIR and the requirement to balance public interest.

Generally, we are not convinced that "national policy" should be used as an instrument actually to police the use of viability statements in that to do so, it would be straying into areas that go beyond helpful policy guidance.

Question 8

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

Please select an item from this drop down menu

Please enter your comments here:

We note that the Government expects viability to be assessed at the development plan stage and that it should reflect the burden of any proposed community infrastructure levy and s106 obligation policies, such that the need for viability testing at the application stage will be limited.

It seems unlikely that viability assessments will be required if schemes are policy compliant. In practice, however, we consider it unlikely that authorities will set their requirements for the levy and s106 obligations at such a level that all sites will be viable if policy compliant, particularly in London where the aspiration is for 50% affordable housing.

Given the difficulty of assessing the viability of every site in detail at the plan-making stage, it is not unlikely that, once an applicant has assessed detailed costs and values in respect of a particular scheme, there may be concerns about viability. In any event, applicants may not have the means to undertake that level of detailed assessment at the plan making stage.

Accordingly, we anticipate a continuing need for viability assessment in the future where schemes do not comply with policy because of viability concerns. In those circumstances, the authority should consider whether it has sufficient information from the plan making stage to accept that position or whether it requires a further viability assessment.

We do not see a need for guidance on other circumstances in which viability assessments may be required. The draft guidance sets out various circumstances which may apply – we do not agree that viability assessment and/or review mechanisms are necessarily required on unallocated sites, where further information and/or review mechanisms are necessarily required on unallocated sites, where further information on infrastructure costs is required, where different types of development are proposed or where there are changes in economic conditions and do not consider this helpful.

Question 9

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

Please enter your comments below

We do not think it helpful or necessary to mandate the use of review mechanisms to capture increases in the value of a larger multi-phased development. This should be a judgment for the authority to take based on the level of policy compliance, whilst acknowledging the desire for certainty for those investing in such development as to likely returns.

The draft guidance states that it is important that authorities are sufficiently flexible to prevent planned development being stalled in the context of significant changes in costs and values that occur after a plan is adopted. It refers to policies in plans setting out how review mechanisms may provide more certainty through economic cycles.

In our experience, as a general rule, review mechanisms tend to be one way only i.e. they set a baseline requirement for affordable housing and other infrastructure contributions for authorities, which can only be increased if viability improves. They rarely provide flexibility for the developer, should the developer be at risk of a deficit if values fall and/or costs rise. Firmer guidance as to a fairer approach may therefore be helpful if this is the Government's aim.

Question 10

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

As noted above

Chapter 5: Delivering a wide choice of high quality homes

Question 11

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

Please enter your comments here

The need for local planning authorities to identify and allocate a percentage of small sites – whilst potentially beneficial - raises concerns in terms of the burden on authorities to assess appropriate sites and the quantum and type of development that may be appropriate to meet perceived needs. In addition, the balancing act whereby benefit needs to outweigh harm can be harder to fulfil on small sites.

With that in mind, we question whether, instead, authorities could be given more flexibility as to how small sites should be assessed and encouraged. This may include identification of sites through a later call for sites (which need not hold up the strategic plan) or use of brownfield registers or a combination.

The process at present excludes much needed flexibility – whilst circumstances change regularly – particularly during the life of a Plan – and we note, in this context, the reference to the need for flexibility in the Plan-making section.

Question 12

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

Please select an item from this drop down menu

Please enter your comments here

The CLLS Committee has no comments.

Question 13

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

Please select an item from this drop down menu

Please enter your comments here

We do not support this policy in principle. The system is plan-led and the aim should be to encourage confidence in strategic and local plans, and in particular neighbourhood plans, where communities have invested considerable time in bringing them forward. This policy encourages proposals for development on unallocated sites.

Whilst guidance proposes that such developments are adjacent and proportionate to existing settlements, it is not clear what “proportionate” in size means. If a community is of 500 homes, what is a proportionate exception site - 10 or 100 homes? We note that the protection applied in footnote 7 should not be “compromised” but we do not consider that this goes far enough.

Guidance suggests that some market housing is also permissible. Clarification as to what comprises the necessary “high proportion” of entry-level homes may be helpful.

Question 14

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

It is assumed that the 10% affordable home ownership referred to in paragraph 65 comprises 10% of the total number of housing: for example, if a site for 100 homes requires 30% affordable housing provision, 10 houses must be for affordable home ownership. This could be clarified.

We query whether sufficient thought has been given to the need to differentiate. This is a general comment which we accept may be asking the impossible – but, for example, in para. 62 how does one differentiate between the housing needs of older people and the housing needs of older people in care - different Use Classes and different treatment in terms of affordable housing requirements and CIL?

Para. 69(d) may encourage authorities to adopt policies which seek to control how developers bring forward large sites, rather than the ‘working together’ approach suggested. It has to be recognised that the delivery of large sites can take considerable investment and that investment should not be deterred by authorities dictating how they should be brought to market (which may affect value).

As to para. 78, it is well rehearsed that larger sites can take time to be brought forward. A landowner may need to sell to a developer, reserved matters may be required, pre-commencement conditions discharged, funding raised, footpaths diverted, etc. The current wording does not reflect that. We consider that the paragraph should be limited to sites which are granted permission on the basis that they will contribute to housing delivery within the period specified.

B

In terms of the Glossary (Annex 2) relating to Affordable Housing - the Consultation draft of NPPF defines "Affordable Housing" as:

Affordable housing: housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

a) Affordable housing for rent: meets all of the following conditions:

(a) the rent is set in accordance with the Government’s rent policy, or is at least 20% below local market rents (including service charges where applicable);

(b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to

remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes, affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).

(c)/(d)[The other definitions are Starter homes, Discounted market sales housing, and Other affordable routes to home ownership.]

Critically, the current NPPF does not mandate ownership of Affordable Housing, whereas the consultation draft mandates ownership by a registered provider (save for a Build to Rent scheme). In our view this materially reduces the flexibility for local planning authorities to decide the best delivery mechanism for affordable housing in their areas and – ultimately – we believe could significantly reduce the amount of affordable housing delivered.

Examples of affordable housing provision by non-registered providers that we have worked on which would not be permitted under the consultation NPPF include:

- Affordable housing provision by a country estate where the estate owner required ownership of the affordable housing as part of their long term stewardship of the estate;
- Provision by a Community Land Trust that not registered as a registered provider;
- Provision by joint ventures established between registered providers and local authorities but where the joint venture itself is not separately registered; and
- Provision in build to rent schemes that would not necessarily meet the criteria in the consultation draft.

It is also our experience that in parts of the country there are few (in some cases no) registered providers willing to purchase affordable housing on small schemes.

There is no fundamental reason why affordable housing has to be delivered by a registered provider and many LPAs are now comfortable about affordable housing provision by other entities.

Chapter 6: Building a strong, competitive economy

Question 15

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

Please select an item from this drop down menu

Please enter your comments here

1. Whilst the Committee welcomes policy which is brief and to the point, we are concerned that this section of the draft NPPF is a missed opportunity.

2. We welcome the new emphasis in para. 82 to significant weight being placed on "the need [for planning policies and decisions] to support local business needs and wider opportunities for development". We question, however, the benefit of singling out for specific mention the importance of this objective for specific industries where Britain can be a global leader in innovation, or to areas with already high levels of productivity. In light of the impact of the financial crisis in 2008, drivers of change in the economy (including e-commerce) and the need to build a strong post-Brexit economy, the policy driver is of equal importance to all areas of the economy (including sectors such as retail, logistics and distribution and minerals to name but three), and to areas which are underperforming in terms of productivity. In time, the specific thrust of this paragraph may become self-defeating. The wording would benefit from generalisation.

3. The emphasis placed in paragraph 83 on policies which have regard to Local Industrial Strategies, seek to address potential barriers to investment and which enable a rapid response to changes in economic circumstances is welcomed as ensuring a sufficient degree of flexibility in local policy, and which we see as key to a building a strong and competitive economy. We suggest the term "Local Industrial Strategies" would benefit from a definition in the Glossary.

4. The additional text in relation to support for a prosperous rural economy in paragraph 84 is also welcomed. Whilst we appreciate there is specific policy at paragraph 79-81 which address rural housing, we query whether mention should also be made in this paragraph to the importance of adequate rural housing supply in achieving a prosperous rural economy.

Question 16

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

As noted above

Chapter 7: Ensuring the vitality of town centres

Question 17

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

Please select an item from this drop down menu

Please enter your comments here

The Committee welcomes the emphasis now provided in paragraph 86 to "growth, management and adaption" of town centres, and that local planning policies should look at least ten years ahead in anticipating and facilitating the likely scale and type of development required. We think this is essential in the current challenges facing the retail marketplace, which is likely to continue over the coming period. We also welcome the express reference given to local authorities keeping town centre

boundaries under review, and to their supporting "diversification and changes of use" as part of a "clear strategy for the future" where town centres are in decline in their plan area.

Question 18

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

The CLLS committee has no further comment to make.

Chapter 8: Promoting healthy and safe communities

Question 19

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

The Committee is generally supportive of the changes made to Chapter 8 – Promoting healthy and safe communities, but does have some comments, as follows:-

1. Paragraph 94 – it is not clear what the guidance in this paragraph is seeking to achieve that is specific to estate regeneration schemes rather than any other form of development.
2. Paragraph 96(a) – the requirement for local authorities to anticipate and address all plausible malicious threats, especially in locations where large numbers of people are expected to congregate, creates an exceptionally high standard. As such, we anticipate that authorities could face challenges to their decisions on the basis they have not complied with this requirement. The removal of the words “all” and “especially” would reduce the scope of such challenges.
3. Paragraph 96(b) – similarly the obligation to recognise development for operational defence and security purposes is ambiguous. We suggest that the obligation to support such development should suffice.
4. Paragraph 101 – we question whether the removal of the reference to “Local Green Space designation not being appropriate for most green areas or open spaces” will lead to an inference that it can be used more widely than previously. If that is not the intention, we suggest adding a further bullet to make this clear.

Question 20

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

As noted above

Chapter 9: Promoting sustainable transport

Question 21

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

Please select an item from this drop down menu

Please enter your comments here

Yes – we fully support the changes to this chapter which we believe add clarity. That said, we would ideally like greater reference to meeting the challenge of sustainable transport and the needs of rural areas both in terms of public and private transport issues.

Question 22

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

Please select an item from this drop down menu

Please enter your comments here

No – we see no reason to differentiate between aviation facilities, ports, public transport facilities etc.

Question 23

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

We query whether it would be helpful to clarify the position where a new development in an already congested area should be required to mitigate the existing traffic impacts as well as its own traffic impact? When should the assessment be made? Whilst set rules would probably be inappropriate, some guidelines would be helpful.

Chapter 10: Supporting high quality communications

Question 24

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

We note that the new Chapter 10 suggests no radical changes to existing paragraphs 42 – 46:

- New paragraph 112 now makes it much clearer that plan policies should set out expectations about the provision of high quality digital infrastructure. This is a welcome reflection of the importance of next generation technology to meeting the Government's sustainable development objectives (and puts the onus on LPAs, through the plan process, to engage in sensible "future proofing" of development).
- On the decision-making side, the lowering of the bar (from "will not cause" to "is not expected to cause") in relation to the evidence required in relation to interference in new paragraph 114(a) is pragmatic and is welcomed in practical terms

Chapter 11: Making effective use of land

Question 25

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

Yes

Please enter your comments here

Yes. In general we welcome the proposed approaches to using land, including encouraging use of brownfield land, remediation, under-utilised land and buildings, and using airspace above residential and commercial premises for new homes.

It may be helpful if there were also included cross-reference to the need for sustainability – which goes to location of the land in question and surrounding uses.

Question 26

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

Please select an item from this drop down menu

Please enter your comments here

We welcome the employment of minimum density standards to support development in areas of identified housing need. We would be concerned that, without such standards, the government's objectives for optimising the use of appropriate land for housing development would not be achieved. It is important to establish through national planning policy that local planning authorities must seek to ensure that such sites are developed to their full potential.

That said, we query whether it might be helpful to provide some guidance as to the meaning of "strong reasons" in paragraph 123 (a).

Question 27

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

We welcome flexibility in the approach to daylight and sunlight considerations (paragraph 123(c)). The Housing White Paper (February 2017) suggested there would be more detail on applying daylight and sunlight flexibly in national planning guidance (para A69 of the White Paper: "the Government intends to amend national planning guidance to highlight planning approaches that can be used to help support higher densities, and to set out ways in which daylight considerations can be addressed in a pragmatic way that does not inhibit dense, high quality development"). Will the updated guidance be published in draft to give more detail on this before the NPPF is adopted in final form?

Chapter 12 : Achieving well-designed places

Question 28

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

The CLLS committee has no comment to make.

Question 29

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

The CLLS committee has no comment to make.

Chapter 13: Protecting the Green Belt

Question 30

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

Please select an item from this drop down menu

Please enter your comments here

We note the new "sequential" approach to exceptional circumstances and suggest that this may inhibit appropriate sites coming forward and will dramatically increase the amount of evidence required at local plan examinations. It would also disincentivise authorities from going through the local plan process and may lead to developers relying on VSC instead, which leads to greater uncertainty. We welcome the new exceptions to definitional harm, particularly in relation to development on previously developed land where there is identified affordable housing need.

Question 31

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

The CLLS committee has no additional comment to make.

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

Question 32

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

Please see our comments above in relation to Q2 and the definition of “irreplaceable habitats” (also relevant to paragraph 173(c)).

On paragraph 149(a), we query why there is no reference to bringing forward new developments through suitable mitigation measures as well as suitable adaption measures. New developments are a cause of climate change: it follows that mitigation as well as adaption is relevant.

On paragraph 153(b), we query the meaning of footnote 40 which states that wind developments should not be approved unless it can be demonstrated that the proposals “have the backing” of the affected local community. Does this mean 100% support from the community or something less and if so, how much less? How are LPAs to apply the footnote if, for example, there are similar numbers supporting and objecting?

Question 33

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

Please select an item from this drop down menu

The first sentence could read – “will reduce greenhouse gas emissions”.

Chapter 15: Conserving and enhancing the natural environment

Question 34

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

Please select an item from this drop down menu

Please enter your comments here

Please see below.

Question 35

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

This is a critically important provision which we welcome. We note the introduction of an “agent of change” principle at paragraph 180 but question why it is limited to instances where the effects of an existing use on new development “could be

deemed a statutory nuisance”.

The matters constituting statutory nuisances are listed in section 79 of the Environmental Protection Act 1990 and are subject to a number of exemptions which include aircraft noise and smoke from industrial plant. It is not clear to us why sectors excluded from the statutory nuisance regime, such as airport, noise recreation facilities and industrial operators, should not also benefit from the agent of change principle where new development is introduced in their areas.

On a more general level, we expect that LPAs will find it difficult, and resource intensive, to apply an agent of change test based on statutory nuisance because of its forward looking nature:

- It will require LPAs to anticipate the nature and extent of the likely levels of harm arising from all existing and likely surrounding uses. LPAs will need to have a detailed and up to date knowledge not only of the existing “ground conditions” surrounding all new development sites but also those which are likely to be in existence when the development under consideration is occupied. LPAs will therefore need to be able to predict how both existing and pipeline future uses are likely to impact on the proposal under consideration. This will be particularly difficult in urban locations where a cumulative exercise may need to be carried out with other nuisance-causing uses which either exist or which are likely to exist when the proposal under consideration is occupied.

The agent of change principle is akin to a “reverse environmental impact assessment” because it will be the responsibility of the LPA, not the developer, to undertake the assessment and it will be based on a (statutory nuisance) threshold which is considerable lower than, and therefore more far-reaching than, the “significant impact” test contained in the EIA Regulations.

- LPAs may find the test difficult to apply because local authority environmental health departments generally establish a statutory nuisance following a complaint from members of the public and after the affected person has established a “nuisance diary” proving that a statutory nuisance exists. This will not be possible at the stage when a planning application is being determined. As a result, the agent of change principle will be highly subjective in its day to day application and risks being applied in an inconsistent manner by different LPAs to the detriment of housing delivery.

Chapter 16: Conserving and enhancing the historic environment

Question 36

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

We note that the reference to the optimum viable use test when considering less-than-substantial harm to a heritage asset has been removed. The change does introduce a degree of subjective interpretation which may create difficulties. Whilst it

is clearly intended to retain the change, we query whether the paragraph would benefit with examples.

We query the location of the statement included in footnote 55 which has the potential to reduce the importance of such assets. We would prefer the reference to be included in the main text.

We query whether the paragraph references in paragraph 197 are correct.

Chapter 17: Facilitating the sustainable use of minerals

Question 37

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

See below

Question 38

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

Please select an item from this drop down menu

Please enter your comments here

The changes to this chapter seem to go rather further than is necessary – presumably in an attempt to simplify what is in fact a very technical area. We certainly query the deletions made in para. 200 (e).

Elsewhere, the amendments are generally welcomed but we believe the identification, extraction and transport of minerals, the consents required and the sustainable implications for an industrial process which by its nature is environmentally intrusive, merit a separate policy document.

Question 39

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

Please select an item from this drop down menu

Please enter your comments here

The CLLS Committee has no comment to make

Transitional arrangements and consequential changes

Question 40

Do you agree with the proposed transitional arrangements?

Please select an item from this drop down menu

Please enter your comments here

We consider that the transitional arrangements applying the presumption on delivery of less than 25% of the housing requirement in 2018 and 45% in 2019 are low.

Question 41

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

Please select an item from this drop down menu

Please enter your comments here

The CLLS committee has no comment to make.

Question 42

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

Please select an item from this drop down menu

Please enter your comments here

The CLLS Committee has no comment to make.

Glossary

Question 43

Do you have any comments on the glossary?

The Consultation draft of NPPF defines “Affordable Housing” as:

Affordable housing: housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

a) Affordable housing for rent: meets all of the following conditions:

(a) the rent is set in accordance with the Government’s rent policy, or is at least 20%

below local market rents (including service charges where applicable);
(b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and
(c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).
(c)/(d)[The other definitions are Starter homes, Discounted market sales housing, and Other affordable routes to home ownership.]

Critically, the current NPPF does not mandate ownership of Affordable Housing, whereas the consultation draft mandates ownership by a registered provider (save for a Build to Rent scheme).

In our view this materially reduces the flexibility for local planning authorities to decide the best delivery mechanism for affordable housing in their areas and we believe ultimately could significantly reduce the amount of affordable housing delivered.

Examples of affordable housing provision by non-registered providers that we have worked on which would not be permitted under the consultation NPPF include:

- Affordable housing provision by a country estate where the estate owner required ownership of the affordable housing as part of their long term stewardship of the estate;
- Provision by a Community Land Trust that not registered as a registered provider;
- Provision by joint ventures established between registered providers and local authorities but where the joint venture itself is not separately registered; and
- Provision in build to rent schemes that would not necessarily meet the criteria in the consultation draft.

It is also our experience that in parts of the country there are few (in some cases no) registered providers willing to purchase affordable housing on small schemes.

There is no fundamental reason why affordable housing has to be delivered by a registered provider and many LPAs are now comfortable about affordable housing provision by other entities. We have a major concern with this and would be grateful if it could be included within the response.