

MAYOR OF LONDON

Rt Hon Greg Clark MP

Secretary of State
Communities and Local Government
2 Marsham St
London SW1P 4DF

Date: 22 February 2016

Dear Mr Clark,

Re: Consultation on proposed changes to national planning policy

Thank you for the opportunity to comment on the proposed changes to the national planning framework. Overall the Mayor is supportive of the proposals and, like the government, extremely keen to increase housing delivery in London and provide a wide range of housing options for Londoners.

It is hoped that this is just the first stage in the consultation process as it is very important that all stakeholders have an opportunity to respond to the specific proposed wording. It is the detailed wording that influences policies in Development Plans, is used in planning decisions and is interpreted and debated in Court as part of Judicial Reviews.

The Mayor would also like to take this opportunity reiterate his view that when the Secretary of State 'signs off' the London Plan as compliant with the NPPF. It should thereafter be recognised as the London expression of the NPPF. Local planning authorities (LPAs) in London then only need to ensure conformity with the London Plan, thus streamlining the planning system in London.

I attach the Mayor's response to your specific questions below.

Yours sincerely,



Stewart Murray
Assistant Director – Planning

Mayor of London

Q1. Do you have any comments or suggestions about the proposal to amend the definition of affordable housing in national planning policy to include a wider range of low cost homes?

The Mayor welcomes the broadening of the definition to include a greater range of products, including those that help people achieve their aspiration of home ownership. Although not explicitly stated, the update of the definition is primarily concerned with ensuring that Starter Homes can be identified as affordable housing in planning terms.

The Housing and Planning Bill, while describing Starter Homes as affordable housing, is careful to differentiate between Starter Homes and other affordable products, with it being clear that it is the latter which meet needs not met by the market. The proposed changes to the NPPF do not seem to take on this nuanced approach and this could create difficulties in implementing the requirements of the NPPF. Starter Homes will help many onto the housing ladder and thus the Mayor welcomes the introduction of the product. However, as Starter Homes have no income cap eligibility criteria, they do not meet the current NPPF definition of being provided to households 'whose needs are not met by the market'.

Paragraph 47 of the current NPPF requires local plans to meet the full, objectively assessed needs for market and affordable housing in the housing market area as far as consistent with the policies set out in this framework. Paragraph 50 requires plans to set policies to meet the affordable housing need identified. A number of Local Plans across the country have been found unsound as they have been unable to meet this requirement.

Starter Homes could potentially make up the bulk of affordable housing delivered in the future and the planning system cannot ensure that they are accessed by those whose needs are not met by the market. Therefore, it is important that either the relevant paragraphs of the NPPF are updated or policy/guidance is provided setting out how it would be possible to meet these requirements with the introduction of Starter Homes.

The Government has recently announced that the eligibility criteria for shared ownership properties will be extended to anyone with a household income of less than £90,000 in London. The Mayor strongly supports consistency in eligibility criteria and welcomes a pan-London approach. While the London Plan currently sets a pan London criteria, many LPAs set further criteria at a local level in planning policy. It is not clear how the Government's new income threshold will be enforced given these local restrictions, imposed through local existing planning policies. This could usefully be addressed in this update to the NPPF.

Q2. Do you have any views on the implications of the proposed change to the definition of affordable housing on people with protected characteristics as defined in the Equalities Act 2010? What evidence do you have on this matter?

No comment.

Q3. Do you agree with the Government's definition of commuter hub? If not, what changes do you consider are required?

The London Plan already supports higher density development in locations that have either good existing or planned public transport connectivity and capacity. In London the level of public transport that a site is served by is measured by the public transport accessibility level (PTAL). The London approach addresses some of the potential ambiguities which may arise from the government's proposed definition of a commuter hub.

Public transport mode

Higher density development should be encouraged around any point which has higher level of public transport accessibility relative to the average for an area, not just rail based public transport. For example sites next to bus stations can be good locations for higher density development relative to the density that would consider acceptable for sites further away. The appropriate density for a site will depend on the nature of the public transport interchange. Thus the local development plan should set the appropriate density levels for the different public transport interchanges in the local plan area.

Distance to the commuter hub

The term 'around a commuter hub' is ambiguous; the government could set a distance based on a reasonable walking distance to the hub e.g. 10 minutes commonly considered to be 800m. However, this approach does not allow for local circumstances or variation in density the further a site is from a hub. As stated earlier, in London PTAL is used to inform what the appropriate density is for a site. National policy should state that appropriate density levels for areas around public transport interchanges should be set in the development plan (including the London Plan), but for areas which do not have a relevant development plan policy, national policy should provide a clear definition of what is meant by around a commuter hub.

Planned service improvements

Part b of the proposed definition refers to 'a place that has, or could have in the future, a frequent service to that stop'. Many places 'could' have improved public transport services in the future but don't have any planned improvements. The definition should refer to current and planned frequent services; otherwise a high density development could be built on a site which continues to have low level of public transport service which results in overcrowded public transport and/or high car dependence.

Q4. Do you have any further suggestions for proposals to support higher density development around commuter hubs through the planning system?

Car parking standards

The rationale for this proposal is to encourage more sustainable forms of development, particularly by reducing private car use. To ensure that this form of development is sustainable and does lead to reduced car uses, local plans should be able to set maximum car parking standards for developments around 'commuter hubs'.

Standards

The NPPF should highlight the importance of housing quality when building to a higher density and support the adoption of space standards and optional access standards.

Q5. Do you agree that the Government should not introduce a minimum level of residential densities in national policy for areas around commuter hubs? If not, why not?

Yes, as stated in answer to question 3, London already has a sophisticated public transport-led approach to residential density levels, and nationally-set minimum density levels may hinder the optimisation of housing delivery in London. However, national policy should not prevent development plans setting minimum density levels if the local authority or Mayor of London considers them appropriate to facilitate sustainable development.

c) Supporting new settlements, development on brownfield land and small sites, and delivery of housing agrees in Local Plans

Q6. Do you consider that national planning policy should provide greater policy support for new settlements in meeting development needs? If not, why not?

Yes, national policy should provide greater support for plan-led new settlements. National policy should also recognise the unique two-tier circumstances in London of the London Plan and borough Local Plans in regard to planning for new settlements. The planning of a new settlement is a strategic planning issue and national policy should recognise that in London the London Plan sets out the city's strategic policies and should therefore be the natural locus of policies relating to the planning of large-scale settlements within the GLA boundary.

Q7. Do you consider that it would be beneficial to strengthen policy on development of brownfield land for housing? If not, why not and are there any unintended impacts that we should take into account?

The vast majority of development in London is on previously developed land (brownfield land): 98.4% of residential units approved during 2013/14 were on brownfield land. Focussing development onto brownfield land through national policy in general promotes sustainable development. However, there are a number of potential unintended consequences which could arise from the proposed approach, which could lead to unsustainable development. Any criteria to assess suitability for housing must take account of the need and demand for other land uses

Loss of essential land uses

The current proposal for a presumption in favour of residential development on brownfield land lacks clarity in terms of what characteristics of sites would make them "suitable" for housing. Given that most of London, other than its Green Belt, parks and gardens, meets the NPPF definition of previously developed land, a presumption in favour of development on this land for housing risks displacing other land uses which are just as essential for the sustainable social and economic functioning of the city. In particular all land uses with a lower existing use value than residential use could be displaced; this includes most other uses in most areas', including community and leisure uses, educational uses, and employment uses, especially industrial uses.

Industrial sites, particularly in inner London, are the location of businesses (e.g. logistics, food, construction, waste, motor vehicle servicing and repair) that play an essential role in servicing the businesses of central London. Recent research by AECOM for the London Industrial Land Baseline Study (2015) has revealed that the trend rate of release of industrial land for 2010 to 2015 is 105 ha per annum, compared with the London Plan recommended rate of release of 36.6 ha per annum. Central, South and West London have vacancy rates for industrial land stock at or below the 5% frictional vacancy rate.

Residential land values in London are typically three to seven times higher than industrial land values, which means that there is considerable market pressure to release industrial land for residential development. A presumption in favour of residential development on brownfield land will lead to the loss of industrial sites in areas of London which have already lost a significant proportion of their industrial land over recent years and are operating with extremely low vacancy rates.

Case studies for the London Industrial Land Baseline Study show that at a local level significant shifts to non-industrial uses can undermine the integrity of industrial areas, and care is needed in planning for and managing change in industrial areas. A presumption in favour of residential development on brownfield land could risk the rapid deterioration of London's industrial areas, detrimentally affecting its economy and, by extension, that of the UK. In addition to the negative effect on the economy, if activities servicing core London markets are forced to relocate out of London, either to the adjacent South East or further afield, then total travel miles, congestion and consequent carbon emissions will increase. Thus a presumption in favour of residential development on brownfield land could result in unsustainable development.

Inefficient use of land

A blanket presumption in favour of development on brownfield land runs counter to the plan-led approach to development and regeneration set out in the NPPF. Making the most efficient use of urban land can require complex site assembly and masterplanning. If a site on the brownfield register is to be granted planning permission for any housing proposal and there is a presumption in favour of development, then there is a risk that the development will result in the inefficient use of land. The premature development of a key site can hinder land assembly and actually militate against the wider regeneration of an area.

London's most recent Strategic Housing Land Availability Assessment (SHLAA) in 2013 showed that the vast majority of the sites identified for longer-term redevelopment were currently occupied. If the potential sites were made public on a brownfield register and given permission in principle or a presumption in favour of development for housing, LPAs would be concerned about inefficient and premature development, the impact on land values and existing productive uses. This could potentially lead them to under-report such sites and exclude them from the SHLAA, thus undermining the effective future planning of housing capacity and provision.

Criteria for brownfield land register

National policy should enable local authorities (and in London, the Mayor) to set clear criteria to identify brownfield land which is suitable for development for housing and to exclude land required for: employment (based on local (and in London strategic) assessments of employment land need in line with NPPF requirements); social and physical infrastructure; and the economic success of a town centre.

The sites on the brownfield register should be determined by the LPA to ensure that important uses are not displaced; to provide certainty that the development of these sites has local (and in London, strategic) support and that the LPA will proactively facilitate development.

The power to issue a development order for such land in London should lie with the Mayor, a logical extension of his strategic planning powers. London has specific development pressures – very high levels of housing need, a strong economy, and competing pressures for available land and high density development. Almost all land with housing potential in London is brownfield and most already has an existing use in place. PIPs in London could therefore cover a different type and

scope of development than the rest of England. Amending the Bill to take into account the Mayor's strategic planning role and unique knowledge of London would help ensure PIPs are introduced in the most effective way to achieve the Government's objectives in the capital.

Q8. Do you consider that it would be beneficial to strengthen policy on development of small sites for housing? If not, why not? How could the change impact on the calculation of the local planning authorities' five-year land supply?

Small sites (sites less than 0.25 hectares) have made a substantial contribution to overall housing supply in London. However in recent years the supply of new housing from small sites has decreased: it constituted 40% of overall new build housing completions in 2006 but only 20% in 2014. The London SHLAA (2013) anticipates that 25% of London's overall housing capacity between 2015 and 2025 will come forward from sites under 0.25ha – some 106,000 net additional dwellings¹.

Therefore, small sites clearly have an important role to play in meeting housing need, and strengthening support for development on small sites could help increase the development coming forward from such sites. However, as highlighted in the answer to question 7 above, national policy should not provide a blanket presumption in favour of residential development on small sites as this could have unintended impacts on other essential land uses and the potential to stymie or pre-empt more productive development.

National policy should encourage planning authorities to identify specific small sites as far as possible and to identify those which will be subject to a presumption in favour of development. It should also recognise that many other small sites will come forward subsequently as windfalls. It should require development plans to include criteria which will enable appropriate sites to be subject to a presumption in favour of development.

Currently, at the London-wide level, small sites (those below 0.25 hectares) are treated as windfall development and their contribution to capacity is calculated on the basis of past trends. Some LPAs allocate some specific small sites, while others rely solely on the trend information to estimate future windfall development from this source. If policies were strengthened to support housing development on small sites, the NPPF, or subsequent guidance, should provide a steer on the approach for calculating the expected increase in housing development as a result of this strengthened policy and to allow this to be reflected in the 5 year land supply

Q9. Do you agree with the Government proposal to define a small site as a site of less than 10 units? If not, what other definition do you consider is appropriate, and why?

The proposed definition of a small site being one of less than 10 residential units is potentially vague as a site with 9 large houses could be significantly bigger than a site with 9 flats. A definition including residential units and land area will ensure the policy support aimed at bringing forward the development of small sites is applied to the appropriate sites and does not inadvertently cover larger development sites. For example small sites could be defined as a site capable of delivering less than 10 residential units and where the floor space of the development would be less than 1,000 square meters.

¹ London SHLAA 2013, GLA, p.78.

Q10. Do you consider that national planning policy should set out that local planning authorities should put in place a specific positive local policy for assessing applications for development on small sites not allocated in the Local Plan?

As highlighted in the answer to questions 7 and 8, while national policy should support residential development on small sites, it should not provide a blanket presumption in favour of residential development due to the unintended impacts on other essential land uses. National policy should set out that development plans should either allocate small sites or set out criteria for clearly identifying the small sites to which a presumption in favour of residential development applies in order to avoid inefficient, unsustainable development.

Q11. We would welcome your views on how best to implement the housing delivery test, and in particular:

It is important to recognise the role planning can play in bringing forward housing capacity in the form of planning permissions and the complex, often non-planning factors, which influence delivery. London has a pipeline of planning approvals for circa 260,000 residential units, with average annual approvals of over 50,000 units over the decade to 2014, but annual delivery over recent years has been around 25,000 completions (27,000 in 2014/15). Converting these approvals into completions and ensuring that a steady stream of approvals is maintained are arguably London's greatest current challenges. The first of these challenges goes beyond planning and involves all players in housing delivery. The Mayor therefore welcomes the acknowledgement in the document that 'developers can also play their part' and the fact that DCLG are discussing with house builders and others what steps should be taken to drive faster build outs.

For London at least, where almost all LPAs are proactive in identifying suitable housing sites and granting permissions, penalising LPAs for delivery, which is not within their gift, will not deliver more homes. LPAs are required to ensure they have a 5 year supply of deliverable sites and the NPPF includes an overall presumption in favour of development. Given the approach to meeting need in London (which bases LPA targets on identified capacity within the context of London's overall need figure) a delivery test based solely on completions would actually provide a perverse incentive for LPAs to identify less land rather than more. In addition, it could incentivise developers to 'sit on' sites with planning permission in the hope that their non-delivery will mean other sites (currently in a productive alternative use or protected as Green Belt or MOL) are allocated for housing. Government should carefully consider these potential intended consequences of the housing delivery test.

If a delivery test is to be introduced, it should reflect the number, type and mix of approvals granted each year as well as completions and should not be introduced in isolation from measures which can incentivise the rapid translation of permissions into completions.

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

The baseline for monitoring new housing should be the annual housing targets set in the local plan for the relevant monitoring years or the London Plan where that is more up-to-date. If a new plan has recently been adopted the monitoring baseline should include different annual housing target for the years covered by different plan periods. In London the London Plan annual housing monitoring target for each borough could be applied.

Delivery should be measured in terms of planning permissions granted for housing and, to provide a wider context, housing completions compared to the local plan/London Plan annual target over a period of the preceding 5 years to take account of short-term fluctuations and the 'lumpy' nature of development.

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

Significant under-delivery should be a measure of both approvals and completions to identify what the key issue for under delivery is in that LPA. If an LPA is not approving enough housing then requiring it to allocate more housing sites may be an appropriate response. However, if it is approving more housing units than its plan target but has a low completion rate, it may need to focus on local barriers to delivery (site ownership, financing, local infrastructure needs etc.) to convert more approvals to completions. LPAs should also consider the number and size of schemes in the pipeline and ensure they have a robust rolling five year land supply is. An LPA has much more control over approvals compared to completions and thus the measures of significant under-delivery should reflect this.

- **What steps do you think should be taken in response to significant under-delivery?**

If an LPA is under-delivering in terms of approvals as well as completions relative to its plan target, then it should be required to identify and allocate further sustainable and deliverable housing sites to increase its housing capacity to above its plan target.

If the LPA is approving enough housing units relative to its plan target, but they are not translating into completions, then it should be required to demonstrate to DCLG/the Mayor how it will act to bring forward delivery. This could be demonstrated through a local assessment of barriers to housing delivery and proposing ways to overcome these, e.g. aiding in site assembly, delivering local infrastructure, and supporting small developers in navigating the regulatory hurdles to development. For this to be successful, government should also introduce tools, resources and measures that can be employed to ensure sites with permission are brought forward in a timely manner. This should include DCLG/the Mayor working proactively with LPAs and other agencies to identify barriers to delivery across both the public and private sector, as many of the barriers to delivery are beyond the control of the LPA.

- **How do you see this approach working when the housing policies in the Local Plan are not up-to-date?**

The targets in the London Plan would be used where the London Plan is the most up to date part of the development plan.

Q12. What would be the impact of a housing delivery test on development activity?

As raised in answer to question 11, a delivery test focused on the planning system but based only on completions will not lead to increased levels of development activity in London. To lead to increased development activity, the delivery test must take account of the level of approvals, be

accompanied by resources/ tools and mechanisms to enable LPAs to ensure sites are delivered in a timely manner, and be focused on ensuring sustainable development.

d) Supporting delivery of starter homes

Q13. What evidence would you suggest could be used to justify retention of land for commercial or similar use? Should there be a fixed time limit on land retention for commercial use?

As highlighted in the answer to question 7, London is losing its industrial land at about three times the planned release rate. This is primarily due to the large differential in land values between residential uses and most other land uses. This rapid change of land use from employment to residential may compromise the functioning of London's economy as a whole, ultimately resulting in unsustainable development. Any change in policy which supports the loss of commercial land needs to be carefully worded to ensure it does not unintentionally lead to the loss of land required for the efficient operation of the economy.

It should also be noted that the London-wide SHLAA seeks to identify all sites which have potential housing capacity either now or at some point in the plan period. Therefore, it is unlikely that this approach would identify additional land for housing in London, a point which has been acknowledged by DCLG in our discussions on Starter Homes.

In addition, the terms 'unviable' and 'underused' employment land need to be clearly defined and take account of longer-term planned economic growth strategies.

Suggested evidence to justify retention of commercial or similar uses:

- The site is currently occupied by a commercial use
- The site is designated for a non-residential use in an up-to-date development plan
- For non-designated vacant land –
 - The LPA can demonstrate the land is required for the area's economic growth by an up-to-date needs assessment, where this evidence is not available the following criteria could be used to justify release:
 - (i) The site has been adequately marketed through a commercial agent at a price that reflects market value for the land use for at least three years with appropriate lease terms and offered with potential for redevelopment of derelict or obsolete premises where this is required to meet the needs of modern users; and
 - (ii) The site has been vacant for a considerable period (three years, and up to five years in areas of generally strong demand), without realistic prospect of re-use.
 - The change of use to residential will not adversely affect the operation of surrounding occupiers, e.g. new residents complaining about noise, business hours of operation etc.

Q14. Do you consider that the starter homes exception site policy should be extended to unviable or underused retail, leisure and non-residential institutional brownfield land?

As stated above, any change in policy which supports the loss of commercial land needs to be carefully worded to ensure it does not unintentionally lead to the loss of land required for the efficient operation of the economy and necessary social and physical infrastructure.

The terms 'unviable' and 'underused' employment land must be clearly defined and take account of longer-term planned economic and town center strategies.

Q15. Do you support the proposal to strengthen the starter homes exception site policy? If not, why not?

No. The current Starter Homes exceptions site policy takes account of whether the site is underused or unviable for industrial use. The proposed approach would not take into account the economic role of the site in supporting an area's economic growth, and instead focus only on impediments to building housing e.g. flooding and infrastructure requirements. The planning system needs to strike a balance between increasing housing supply and supplying sufficient employment and commercial space to support sustainable economic growth.

Q16. Should starter homes form a significant element of any housing component within mixed use developments and converted unlet commercial units?

Housing can be successfully integrated into much mixed use commercial (but by no means all business) development if designed well from the beginning of the development. The London Plan encourages the intensification of town centres to supplement London's housing capacity. However, the introduction of residential units into existing commercial developments may undermine the retail function of the town centre by breaking up shopping frontages. In addition the prospect of converting lower rent commercial floorspace to higher value residential floorspace may encourage landowners to dislodge existing commercial tenants via increased rents and termination of rental agreements, thus damaging the town centre's economy. The integration of Starter Homes in mixed use developments should therefore be determined on a scheme by scheme basis.

Q17. Should rural exception sites be used to deliver starter homes in rural areas? If so, should local planning authorities have the flexibility to require local connection tests?

No comment.

Q18. Are there any other policy approaches to delivering starter homes in rural areas that you would support?

No comment.

Q19. Should local communities have the opportunity to allocate sites for small scale starter home developments in their Green Belt through neighbourhood plans?

The appropriate way for neighbourhood plans to allocate housing sites for Starter Homes in the Green Belt would be by identifying small sites which meet the purposes of the Green Belt set out in the NPPF, and then proposing the removal of the Green Belt designation for the site through the Local Plan process.

Brownfield land in the Green Belt

Q20. Should planning policy be amended to allow redevelopment of brownfield sites for starter homes through a more flexible approach to assessing the impact on openness?

Guidance on assessing openness

If national policy on development in the Green Belt is amended as proposed it should provide clear guidance how to assess what is or is not “substantial harm” to the openness of the Green Belt. Consideration should be given to how the quality of the landscape bears on its openness. If clear guidance is not provided this policy change could result in disputes between local residents, the LPA and developers, which will delay delivery and lead to negative local opinions of all housing development.

Amount of Starter Homes

The proposed policy does not clarify the amount of new Starter Homes that would justify developing on brownfield sites in the Green Belt. As the aim of the policy is to bring forward more Starter Homes, the policy should clearly state what percentage of the new housing is required to be Starter Homes. We suggest that all of the new housing on such sites should be Starter Homes or another form of affordable housing, to justify the preferential development rights being granted to the developer over the development of other forms of housing and land uses on the site.

Delivery of supporting infrastructure

The government may be intending to encourage the delivery of Starter Homes by exempting them from local CIL and s106 obligations. Given that Green Belt sites, by their nature are outside urban areas and are not necessarily served by existing infrastructure, it is important to ensure that the new housing in these sites is sustainable. Therefore, the ability to deliver Starter Homes on brownfield Green Belt sites should be accompanied by mechanisms which ensure there is funding for physical and social local infrastructure which will be required by their residents. The provision of this infrastructure will help such developments gain greater local support than would otherwise be the case.

Q21. We would welcome your views on our proposed transitional arrangements.

Six to 12 months is not a sufficient transitional period given the time it takes to produce, consult on, examine and adopt a new policy approach. For example, it is anticipated that the next review of the London plan will take three years. Moreover, the proposed transitional arrangements are not clear how the duty in the Housing and Planning Bill to promote Starter Homes, and the requirement for a proportion of Starter Homes to be delivered on all suitable reasonably-sized housing developments, which will have no transition period, will interact with existing policies to meet need through the current definition of affordable housing. This again highlights the tension between the NPPF changes and the Housing and Planning Bill in terms of meeting objectively assessed needs which need to be resolved.

Q22. What are your views on the assumptions and data sources set out in this document to estimate the impact of the proposed changes? Is there any other evidence which you think we need to consider?

Some of the assumptions and data used in the document are not robustly justified or explained. For example, it is not clear why data from the West Midlands on Greenfield land allocated for employment use has been used to estimate the amount of underused or unviable employment land across England, or what the source is for the assumption that 50% of such sites are viable. None of these statistics or assumptions are sufficiently representative of conditions in London to calculate the potential impact of these proposed changes on housing capacity, let alone the potential impact on existing employment uses. The document also does not acknowledge or address the potential impact the introduction of residential development in commercial areas can have on existing businesses and industrial utility.

Q23. Have you any other views on the implications of our proposed changes to national planning policy on people with protected characteristics as defined in the Equalities Act 2010? What evidence do you have on this matter?

No comment.

