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 (*)

Your details

First name*	**Fenella**
Family name (surname)*	**Collins**
Title	**Head of Planning (A1557010)**
Address	**CLA, 16 Belgrave Square**
City/Town*	**London**
Postal code*	**SW1X 8PQ**
Telephone Number	**020 7235 0511**
Email Address*	**Fenella.collins@cla.org.uk**

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

Organisational response

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

Trade association, interest group, voluntary or charitable organisation

If you selected other, please state the type of organisation

The CLA represents over 30,000 landowners who own or manage around half of rural land in England and run over 250 different types of businesses in the countryside.

Please provide the name of the organisation (if applicable)

Click here to enter text.

Chapter 1: Introduction

Question 1

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

Yes. The response form does not provide for additional comments. So the CLA's additional comments are included in our answer to question 1.

Planning practice guidance - The draft revised NPPF makes reference in several places to "national planning guidance". Is this a reference to the online Planning Practice Guidance?

The new NPPF must clearly set out, throughout the document, that guidance is available in the online Planning Practice Guidance (PPG) and provide links to it. Most professionals are aware of the online PPG and may be able to find it on gov.uk (although it has to be said it is not easy even for professionals to use the gov.uk website to find the specific plannign guidance required!), but the layman who has printed off a paper copy of the revised NPPF will probably not realise that additional guidance is available.

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

Paragraph 2 – the government reaffirms the plan-led system. The challenge for the government is to ensure, after nearly 30 years, that local government actually delivers it.

Paragraph 9 – There are welcome comments in this paragraph.

Paragraph 11 – and footnote 7 - The CLA remains very concerned about the changes to the presumption in respect of decision-taking. Planning authorities are likely to use paragraph 11 and footnote 7 as an excuse to refuse all planning applications for rural economic development in designated and protected areas.

We accept that ancient woodland and veteran trees, SSSI, archaeology and areas at risk of flooding etc require "strong" protection from development. But we are concerned that "strong protection" for National Parks, AONBs, Heritage Coasts etc will simply be used as an excuse not to deliver urgently required small scale rural

housing developments on rural exception sites and beneficial economic development to support new economic growth and deliver jobs and higher levels of productivity in these areas.

Many planning authorities associated with National Parks, AONBs etc do not have up to date local plans in place. So, the presumption is the only other mechanism for driving new beneficial economic development, including housing development, into our designated areas.

Based on our current evidence, beneficial economic (including housing) developments are particularly difficult to achieve in these areas today. Our designated areas are not just about farming and tourism, there are multi-diverse businesses operating in these areas but they must be able to invest in the future of these businesses in terms of growth and productivity. Unfortunately all too often we hear of planning applications for rural economic developemnt being turned down on grounds of being “unsustainable” The rural communities in designated areas are largely “unsustainable” because yet again there has been practically no new development allowed in these villages for many tens of years. These communities have the same needs for jobs, homes and services as do their urban counterparts. Many of these villages need new housing and economic development to bring sustainability (including services) back to the community. Putting in place national planning policy that provides a “strong reason to restrict development” in these designated areas will merely exacerbate existing persistent problems around delivery of new housing and jobs in our designated areas.

The Minister for Planning said recently that difficult choices had to be made by planning authorities, but equally difficult choices must be made by the Government if we are to deliver sustainable communities in our designated areas.

We are not convinced about “strong” protections against development in other designated areas, and that includes Green Belt (which is first and foremost a planning policy and not an environmental designation). These latter areas should continue to be subject to the original wording of old footnote 9 where development is restricted.

We strongly urge a rethink about the proposed changes to foot note 7.

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

No, we do not agree. The deletion of the core planning principles means that the strength that was derived from a specific list has been diluted. They appear lost in the text now. The core planning principle about “thriving rural communities” appears now in section 5 of

the draft revised NPPF. But delivering “thriving rural communities” is also about delivering new rural economic development too. Rural communities have the same needs for jobs, homes and services as they do in urban areas. So, the phrase “thriving rural communities” should also figure in section 6 Supporting a prosperous rural economy if it is to be properly delivered in a sustainable manner, and return rural communities to sustainability

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?

No

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

Will the tests of soundness actually test whether the ‘plan’ is deliverable? What happens if a local authority area has a strategic plan and some neighbourhood plans, but no local plan to deliver local planning policies? How can these circumstances be found sound?

Question 6

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

Yes. These are set out below.

Paragraph 16 – The draft revised NPPF suggests that there should be a ‘Plan’. Whilst there is a duty to have a Plan in place, that duty does not require that Local Plan should be produced. One could end up with a strategic plan, that might include local planning policies or it might not, and a number of neighbourhood plans, but no legal requirement to have a Local Plan aimed at delivering local planning policies. For example, we believe that a Local Plan is required to deliver “balanced communities” especially in rural areas – balanced means with a mix of employment, shops, housing and services etc.

Paragraph 23 – We support the policy. The challenge for the government is to ensure, after nearly 30 years, that local government actually delivers it. Currently the delivery is a lottery. Planning authorities need central government support. Furthermore, local plan deliver is expensive. If there is a change of local government, it often means that the draft local plan is thrown out by the new councillors and started again.

Para 30 suggests that "Local **policies** can be used by authorities and communities to set out more detailed policies for specific areas…..". Should this read "Local **Plans**……"? (our emphasis)

Development contributions
Paragraph 34 **– Existing Use Value (EUV) and securing a 'competitive return' to a willing landowner**

The CLA opposes the government's proposal that would allow planning authorities to set CIL charging schedules based upon the existing use value of land (EUV), because it is likely to lead to

The draft revised NPPF consultation and the Developer contribution consultations read together propose the following:

(1) removal of NPPF para 173 which secures a 'competitive return' to a willing landowner and developer;
(2) the ability to set CIL rates based on EUV of land, alongside proposals to streamline consultation and examination requirement for CIL
(3) An 'EUV plus' methodology and a front-loaded approach to viability of plan-making.

The CLA's initial observations are that the net result of the changes to the NPPF (paras 34 and 58, and the removal of the ability to secure a competitive return to a willing seller) and the content of the developer contributions consultation, appear to be about removing virtually all incentives for landowners to bring agricultural land forward for development.

The existing NPPF para 173 refers to viability and deliverability. It provides for "….**competitive returns to a willing landowner** and developer to enable the development to be deliverable." (our emphasis).

The concept of a "willing seller" commonly features in legal principles applied to a wide range of open market valuations. The "willing seller" is a hypothetical character with no special characteristics or attributes, but who is assumed to be willing to sell at the best price he can *reasonably* obtain in the open market (*Trocette Property Co Ltd v Greater London Council (1974) 28 P & CR 408, 416*). Likewise, in *Inland Revenue Commissioners v Gray [1994] STC 360* Hoffmann LJ (as he then was) explained that the hypothetical seller is an anonymous but reasonable vendor, who goes about the sale as a prudent man of business. The hypothetical purchaser is also assumed to behave reasonably and to make proper enquiries about the property. He reflects reality in that he embodies whatever actually was the demand for the property at the relevant time. The concept of the open market involves the assumption that the whole world was free to bid for the property, and then forming a view about what in real life would have been the best price reasonably obtainable. The term "willing" indicates that it must be assumed that the vendor and purchaser behaved as would reasonably be expected of prudent parties.

A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to

provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy.

Land value uplift is the primary incentive for development to take place. Without it, land will not be brought forward for development. Furthermore, landowners (agricultural land) will have no incentive to carry the substantial costs of bringing land through the planning system. This will result in less land available for development and lead to an increase in the price of land that is available for development.

The Developer Contributions consultation proposes the existing use value (EUV) methodology, whilst the PPG refers to EUV+. The use of EUV is aimed at allowing to set CIL charging schedules based upon the existing use of land. This will allow planning authorities to capture any value generated through planning permissions to fund infrastructure. The approach is aimed at a front-loaded approach to viability in plan making. The associated guidance suggests a 20% return on GDV to the developer – it is not clear where this percentage return has come from. The premium over EUV should be determined locally but it is important that there is evidence that it represents a sufficient premium to persuade landowners to sell their land. But in fact, this means looking at Market Value.

An approach based on EUV with some uplift may well be inappropriate where the EUV is negligible (as in the case of agricultural land). Accordingly, an alternative approach is required to establish the benchmark using market value.

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 Developer Contributions consultation proposes the existing use value+ methodology, and a front-loaded approach to viability in plan making. This means that any planning application, even for a new farm building required for the purposes of farming that holding, would be caught by CIL or a land value capture system. The proposed changes to the use of a EUV+ methodology for plan-making will undermine investment and the supply of land by benchmarking and restricting land values. It is not clear the front-loaded approach to viability will actually work, rather it could complicate matters and lead to further delay and complications for plan-making. We would refer to our fuller response to question 6 which sets our concerns in more detail.

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:

Yes. But please see our answer to question 6 above.

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

Click here to enter text.

Question 10

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

The CLA is very concerned about the loss of two very useful paragraphs that are contained in the 2012 NPPF namely:
Decision-taking
186. Local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. The relationship between decision-taking and plan-making should be seamless, translating plans into high quality development on the ground.
187. Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.

The revised NPPF has replaced them with the following: at para 39 that planning authorities "*should approach decisions on proposed development in a positive and creative way*"….and "*work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area.*" ….

Paragraphs 186 and 187 were particularly useful in reminding planning authorities what the NPPF says about decision-making. The CLA strongly supports the reinstatement of paras 186 and 187 in the revised NPPF.

Information requirements
Paragraph 45 – This paragraph should be reinforced with a requirement that planning authorities should set out the reasons why they require a specific report.

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

This portion of our response relates to housing in settlements that local authority settlement hierarchy assessments (completed as part of the Local Plan) have identified as having little or no services. As we will explain, many of these settlements would greatly benefit from small or medium sized development sites of market and affordable homes.

The sustainability trap

It has been 10 years since the Matthew Taylor Review 'Living Working Countryside' identified the 'sustainability trap' where development can only occur in places already considered to be in narrow terms 'sustainable'. Hundreds of small rural settlements across England which have lost key services like public transport, GP services, shops and schools due to a lack of incremental growth in recent decades have been caught in the 'sustainability trap' and are restricted from future growth.

For decades this sustainability trap has played a role in inflating house prices, stifling economic development and eroding the social cohesion of many small rural communities by restricting new development of all types and tenures. Without a change in approach, this will continue and increasing numbers of small rural communities will fall into the sustainability trap.

How are settlements assessed to be "unsustainable"?

As part of the Local Plan process, local authorities establish settlement hierarchies. This involves giving a community a score based on a range of factors such as local services, employment and transport connectivity.

The scores are used to categorise settlements into groups, with development then directed towards those areas with higher scores. This reflects the policies of the old Planning Policy Statement (PPS) 7 which required Local Authorities to locate most development for rural housing, jobs, shopping, leisure and services in local service centres.

The National Planning Policy Guidance (NPPG) makes it clear that blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence.

In practice, housing allocation is a trickle down process and small rural settlements are inevitably left with limited to small-scale infill development, redevelopment or the conversion of buildings within existing boundaries or rural exception sites as the only options for development, or to produce a neighbourhood plan and allocate additional housing via that mechanism.

What's been the result?

- Britain is unique amongst OECD countries insofar as it has rural house prices well above urban house prices, and that house prices rise systematically as settlement size decreases (OECD Rural Policy Reviews: England, United Kingdom,2011).
- Less than 50 percent of those living in rural areas are aged below 45 years, compared with almost 60 percent in urban areas, and the proportion of the population aged under 45 tends to decline the more rural the settlement type.

The CLA sees a clear relationship between local planning practices of assessing sustainability, the restrictive planning policies that follow on from those assessments and that in mainly rural areas the ratio between lower quartile earnings and lower quartile house prices was 8.7 - second only to London (14.7) in terms of unaffordability.

Proposing a solution

In the view of the CLA, the impact of not taking more proactive steps to improve the sustainability of small rural locations will be a continuation and deterioration of the metrics shown in this paper. The Matthew Taylor report is correct that sustainability is about action rather than preserving communities in aspect.

Policy change at the national level is part of the response, but it is at the local level that change is needed. The most important change required is to compel local authorities to take a proactive role in supporting communities considered 'unsustainable' to be more sustainable.

Maintain settlement hierarchies

While this may seem to be counter to the narrative above, the fact that Local Authorities go through this exercise provides a good evidence base for understanding the decline (or regeneration) of settlements. The problem is that there is no action taken to address the long term sustainability of these settlements.

As part of this policy area, the CLA is proposing Government review the criteria used by Local Authorities to arrive at scores for settlements and propose changes where we believe the criteria are out of date. For example, technological change has had a marked impact on how people live and work and this is not currently accounted for.

Mandatory housing needs assessments

The CLA is proposing that Government should require local planning authorities or parish councils conduct housing needs assessments in those communities not allocated housing in local plans due to not having sufficient services to be allocated housing in the local development plan.

To facilitate this, Government should allocate funding from the £60 million a year fund established to support community led housing and coastal communities. It is our estimate that £3 million a year from this fund over the next five years would achieve this (housing needs assessments cost roughly £2,000 each to complete).

The housing need assessment is the first step necessary in proving the need for a windfall site and would provide the basis on which for action to be taken.

Continue with windfall sites

As has been stated earlier in this paper, windfall sites (such as rural exception sites) are one of the few mechanisms for building affordable housing in rural communities. There is an argument that windfall sites should no longer exist and all housing should be allocated through the local plan. The concern with this would be that applications for small sites in these settlements would simply be ignored or that similar

arguments relating to sustainability would continue to be made by local planning authorities.

Increase cross subsidy on these windfall sites

Having identified the communities that are 'unsustainable' and assessed need, the next step is to build the homes.

Windfall sites depend on landowners donating or selling land just above agricultural value, which is significantly less than the value of land with planning permission for market housing. It is this reduction in price which provides the bulk of the subsidy required to build the affordable homes.

As such, from a landowner's perspective, the decision to pursue a windfall site is socially motivated rather than in expectation of significant financial remuneration.

CLA data shows our members are concerned by the affordability and availability of housing in their community, but it has to be emphasised that selling land at reduced value is something only a small proportion of landowners will feel able to do.

This is supported by our evidence which shows that 3% of our members with 500 acres or less and 10% of our members with 500 acres or more have sold or donated land for affordable housing.

As such, in order to provide sufficient incentive for a landowner/developer to build the homes identified in the needs assessment, there must be a significant financial interest to do so. To this end, the CLA is proposing that any windfall site that caters for housing need in these settlements should be able to build the same number of market homes as affordable, in effect a 50/50 split.

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

Yes

Question 13

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

Yes

Please enter your comments here

The CLA strongly supports the Government's proposed entry level exception site. We believe Entry Level Exception Sites (ELES) have the potential to allow landowners to play a greater role in affordable housing delivery in rural areas working alongside existing policies such as the Rural Exception Site (RES).

Different landowners will approach affordable housing delivery in different ways. This is well illustrated by a study conducted by Smiths Gore of landowners in the East Midlands in 2012. The report shows how Estates, which tend to be large, diversified businesses that already let housing or have development experience,

prefer to deliver affordable housing compared to farmers who are more focussed on agriculture.

See annex for associated Table.

Therefore, Entry Level Exception Sites could appeal to estates which are more interested in retaining an interest in the development while Rural Exception Sites would continue to offer a route for those who wish to have little involvement in a site beyond providing the land.

Given the Government is proposing to introduce a new exception site to support affordable housing delivery, the CLA recommends the Government takes a wider view of the role landowners can play in the development and management of affordable housing.

There are some excellent housing associations working in rural areas, notably the members of the Rural Housing Alliance. In addition, the National Housing Federation has put in place a 5-star plan to increase the development of affordable homes in the countryside.

However, landowners do find that some sites will not progress due to a lack of housing associations operating in their area or unwilling to take on management responsibility for a small number of homes in an isolated rural location.

As such, in order to get homes built, CLA members have frequently expressed a desire to own and manage affordable housing themselves, without the need for a housing association or other provider.

In circumstances where the landowner already manages rented accommodation it is understandable that they would wish to retain control of any new affordable homes they build rather than sell the properties to a housing association.

Some landowners, such as the Bolesworth Estate, have worked with local authorities to achieve this. By setting out processes in a section 106 agreement, the Estate was able to retain the affordable properties and manage them as part of the wider estate, subject to a strict lettings criterion, to ensure that local people have first refusal.

The Bolesworth Estate shows that it is possible for Estates and Local Authorities to co-operate to increase affordable housing provision, yet despite this, national policy restricts managing affordable rented properties to registered providers.

Giving tacit approval to these types of agreements in national policy would open up a new source of affordable housing in rural areas. As such the CLA recommends amending the section in the glossary of the NPPF that defines affordable housing to state that affordable rented housing can be" owned *by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority".*

If this change was to happen, the CLA would be able to provide draft section 106 agreements to help local authorities and landowners agree rental arrangements and allocations policies for affordable housing schemes.

The process is theoretically straightforward. The landowner lets the properties on Assured Shorthold Tenancies at a rent comparable to what would be charged by a Registered Social Landlord for a comparable dwelling.

It is up to the interested parties (local authority, parish councillors, landowner etc) to determine the allocations policy. A landowner may be motivated to build the affordable housing to cater for their own staff so a discussion about the landowner nominations should take place from the outset.

In all options for delivering affordable housing without the involvement of a registered social landlord the local authority may make a charge to cover the cost of checking affordability and eligibility criteria.

Question 14

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

Yes, in respect of Land pooling and Rural housing:

Land pooling
It is a pity the draft revised NPPF makes no mention of the Housing White Paper question 6 about land pooling.

The Housing White Paper annex consultation contained the following question:

Question 6 - How could land pooling make a more effective contribution to assembling land, and what additional powers or capacity would allow local authorities to play a more active role in land assembly (such as where ransom strips delay or prevent development))?

The CLA's response to HWP question 6 is as follows:

The CLA welcomes the intention to investigate land pooling as an alternative to compulsory purchase. The CLA would oppose the use of compulsory powers by local authorities for the purpose of land pooling, save in the most exceptional circumstances e.g. to overcome problems with the title to land or where the owner is untraceable. It is and should remain more likely that a planning authority would work with a developer who can find it easier to negotiate with landowners to pool land. The CLA is keen to work with the government (CLG, HMT and HMRC) as it develops its ideas further as there is a high level of complexity associated with land pooling.

Currently, there exists a high level of tax-related complexity associated with land-pooling which is entirely disadvantageous to private landowners entering into and/or leaving land-pooling arrangements. This complexity does not incentivise private

landowners to enter into land-pooling arrangements. Nevertheless, private sector land pooling does take place but it is affected by very complex Capital Gains Tax considerations which can deter private sector land pooling. If the Capital Gains Tax considerations were to be simplified, this might make private land pooling a more attractive option especially if the landowner was given more certainty that no CGT charge would be payable either on entering or exiting such an arrangement.

In recent years, as Governments have looked for larger sites to be brought forward for residential development, landowners have looked to enter into collaboration agreements to facilitate the delivery of land. This has highlighted the potential tax disadvantages that can arise from such arrangements.

At its simplest, Landowner A owns White Acre and Landowner B, Black Acre. They wish to bring forward White Acre and Black Acre for residential development and decide to collaborate so that they can adopt a unified approach in the planning process, something which should help in the making available of strategic land. They are likely to want to agree, therefore, that they will promote the land and will not be concerned as to the land uses which are ultimately applied to White Acre and Black Acre and will wish to provide that if the overall site is sold in tranches, which is very likely in the case of large sites, it will make no difference as to the order in which parts of White Acre and Black Acre are sold in terms of who receives proceeds, and in what shares. They will, therefore, wish to "pool" the site in some way by deciding on the percentage proceeds each should receive on the sale of any part of the site.

Under the current tax legislation, an agreement to "pool" in this way is potentially hugely detrimental. If part of White Acre is sold first then A will receive part of the proceeds as consideration for the sale of the land and will be able to put the relevant part of his base cost against those sale proceeds. A will not, however, get any allowable deduction for the part of the proceeds he is obliged to pay to B and will potentially pay tax on those proceeds. B will also be taxed on those proceeds paid to him by A but because he will not be selling any part of Black Acre, he will have no base cost against which to set the proceeds he receives.

In collaborating, and agreeing to share proceeds landowners will, therefore, wish to structure arrangements in a way that is not prejudicial. It should be emphasised that this is not aimed at achieving some kind of tax advantage, merely to eliminate the tax disadvantages which would otherwise arise from an informal pooling arrangement as set out above. One way of potentially neutralising the tax disadvantage would be through what is referred to as a "*Jenkins v Brown*" arrangement.

However, in recent years, HMRC seem to have been making a deliberate effort to make such arrangements more difficult to put in place: -

They have obfuscated on the SDLT implications of such arrangements and, notwithstanding statements made by them in the past that such arrangements would not trigger SDLT, have suggested in recent years that they now take a different view. Most recently, HMRC referred an application for SDLT clearance to their legal team. Two years later no response to the application has been issued

but the suggestion is that such a change of view would require primary legislation to implement. This has left the position uncertain.

Finance Act 2016 replaced the Transactions in Land code previously contained in Chapter 3, Part 13 ITA 2007 with a new code contained in Part 9A ITA 2007. This has eliminated the ability for clearance and it is unclear from the new guidance issued in December 2016 how widely HMRC will apply the new code. This has brought into question whether a *Jenkins v Brown* type pooling arrangement, and alternatives to pooling such as the use of cross options, might attract adverse tax implications.

We consider it extremely important that a mechanism is put in place which, from the tax perspective, ensures that such commercially acceptable, indeed desirable, arrangements which are not put together for tax avoidance reasons can be structured without tax disadvantages to the efficient delivery of residential land which the Government wishes to achieve.

The risk for landowner of making an agreement with a developer in these circumstances would mean that the landowner will not enjoy CGT reliefs which he gets with a disposal direct to the planning authority. This is a very complicated area of tax law that requires simplification. (See *Ahad v. HMRC* http://www.bailii.org/uk/cases/UKFTT/TC/2009/TC00291.html where the relief was lost because the particular party which effected the purchase did not have compulsory powers which were available to another of the parties.)

The CLA believes that land-pooling is likely to be more successful if undertaken privately. This will be helped if the tax system is made clearer and more predictable. Inevitably the arrangements will be complex and it would be helpful if there could be a clearance procedure to enable the parties to be certain of the tax consequences of what they propose. We reiterate that we are making a request for an amended tax structure that will actually lead to the incentivisation of land-pooling by private landowners. What is required is a level playing field.

The CLA is arranging to meet HMRC to find workable solutions to the problem raised above. MHCLG officials will be kept abreast of any outcomes.

Rural housing

Paragraph 80 - It is crucial that handfuls of much needed new houses (of all types and tenures) in small villages are granted permission if we are to begin to return “sustainable development” to these places. However, this quantity of housing in smaller rural villages will not, at this stage, assist in reintroducing lost services to these places. So, the latter part of the second sentence could well be used by planning authorities to continue to prevent small scale housing developments in our smaller villages, and to continuing to declare in their local plans that these villages are “not sustainable” or “difficult to access”. This practice of trying to prevent much needed small-scale developments (or probably up to 10 homes a most) in our smaller rural villages is what has led to the loss of services. Given modern day technologies, it is unlikely that these services will ever be reintroduced but we can foresee planning authorities continuing to use the lack of services as a reason for refusal. The wording of the second sentence of paragraph 80 must be changed to prevent this happening; indeed, the wording should be about reintroducing the concept of organic incremental growth into our smaller rural villages. The concept of sustainable development must be driven down to the smallest village/hamlet.

Paragraph 81 (a) – the NPPF should provide more positive planning policies for seasonal and temporary workers dwellings. At the very least, it would be extremely useful for some national planning practice guidance about seasonal and temporary workers' dwellings.

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

Yes. The CLA welcomes the important policy change in paragraph 85 and the benefits that can be derived from it for the rural economy pre and post Brexit.

But we make the following specific comments:

The downgrading of the importance of economic development:
The downgrading of the importance of economic development - The CLA is particularly concerned at the apparent downgrading of the importance of economic development in the draft revised NPPF, in comparison to the chapter on housing. The need to deliver economic and employment growth across the country, including in rural areas, is of equal importance to the delivery of housing. By reducing national planning policy on economic development to four paragraphs over two pages, as opposed to housing which is set over five pages, this suggests the government is no longer concerned about economic and employment growth. Furthermore there is barely a mention of the importance of the industrial strategy, nor the economic interconnectedness of city regions and their rural hinterlands – we have expanded on this in our answer to question 16.

We make the following comments:

Paragraph 84 (c) – This should be reworded to reinstate the phrase (in bold) that currently exists in NPPF para 28 as follows: "sustainable rural tourism and leisure developments **that benefit businesses in rural areas** which respect the character of the countryside: and …".

Paragraph 85 - The CLA welcomes the very clear policy statement that some business and community development may have to be found outside existing settlements and in locations that lack public transport. This is a clear recognition by the government, after longstanding CLA lobbying, that rural areas are deprived on public transport.

However, the CLA is particularly concerned that the caveat in para 85 (about increased traffic on rural roads and the creation of footways to encourage walking and cycling, or public transport) is likely to be used by planning authorities trying to prevent potentially

beneficial rural economic development because of their longstanding aversion to any development outside settlement boundaries in the countryside. As CLA members are all too well aware, the use of the private motor car or haulage vehicles in rural areas is a necessity as there are, generally, no other options. Unfortunately, we can already envisage planning authorities using the caveat in para 85 to turn down rural economic development proposals.

Even the Department for Transport recognises (in the National Networks National Policy Statement 2015). that "...it is not realistic for public transport, walking or cycling to represent a viable alternative to the private car for all journeys, particularly in rural areas...."

If there are no options for improving the ability to cycle or walk or increasing public transport then this should not be a reason for turning down potentially beneficial rural economic development. Unfortunately, it looks as though the landowner will have to prepare yet another report to demonstrate these options are not available.

On the other hand, if there are sufficient local employment sites and opportunities in rural areas, then it may actually reduce movements across the district. But we have yet to reach that point in most rural areas. This is why it is particularly important for the NPPF to have a clear link to the Industrial Strategy.

Interconnectedness of rural economies and their city-regions -

Yes. The CLA welcomes the important policy change in paragraph 85 and the benefits that can be derived from it for the rural economy pre and post Brexit.

But we make the following specific comments:

Paragraph 84 (c) – This should be reworded to reinstate the phrase (in bold) that currently exists in NPPF para 28 as follows: "sustainable rural tourism and leisure developments **that benefit businesses in rural areas** which respect the character of the countryside: and …".

Paragraph 85 - The CLA welcomes the very clear policy statement that some business and community development may have to be found outside existing settlements and in locations that lack public transport. This is a clear recognition by the government, after longstanding CLA lobbying, that rural areas are deprived on public transport.

However, the CLA is particularly concerned that the caveat in para 85 (about increased traffic on rural roads and the creation of footways to encourage walking and cycling, or public transport) is likely to be used by planning authorities trying to prevent potentially beneficial rural economic development because of their longstanding aversion to any development outside settlement boundaries in the countryside. As CLA members are all too well aware, the use of the private motor car or haulage vehicles in rural areas is a necessity as there are, generally, no other options. Unfortunately, we can already envisage planning authorities using the caveat in para 85 to turn down rural economic development proposals.

Even the Department for Transport recognises (in the National Networks National Policy Statement 2015). that "...it is not realistic for public transport, walking or cycling to represent a viable alternative to the private car for all journeys, particularly in rural areas...."

If there are no options for improving the ability to cycle or walk or increasing public transport then this should not be a reason for turning down potentially beneficial rural economic development. Unfortunately, it looks as though the landowner will have to prepare yet another report to demonstrate these options are not available.

On the other hand, if there are sufficient local employment sites and opportunities in rural areas, then it may actually reduce movements across the district. But we have yet to reach that point in most rural areas. This is why it is particularly important for the NPPF to have a clear link to the Industrial Strategy.

Question 16

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

The Government has identified the need for economic growth as a major objective. For rural areas, this translates into a need for clear guidelines for rural economic development where policies are set out that improve the living and business conditions of rural communities. But in order to meet the needs of rural businesses the CLA has long argued that the first requisite is to identify the challenges and barriers that prevent rural economic growth.

The CLA is very concerned that there is no attempt in the draft revised NPPF to consider the inter-connectedness of rural economies and their city-regions.

The draft revised NPPF clearly wants to make the most of cities and city regions but only refers to city-based connections and very disappointingly, does not mention, at all, their rural hinterlands and the multi-diverse rural economies that exist around city-regions.

The CLA has long had concerns about this prevailing view because in many areas the city-regions' rural businesses and communities are forgotten about. There is no doubt that city centres are increasingly the location of the most productive, knowledge intensive businesses that generate most economic growth, but they rely heavily on surrounding towns, suburbs, and rural areas for workers and suppliers. It is unfortunate the NIA makes no mention of this fact.

The needs of those who live and work in rural areas, including those in land-based businesses are the same as those in urban areas i.e. jobs, housing, services, transport, infrastructure etc. Too often, rural communities feel that their requirements are forgotten. Certainly, the NIA, apart from digital connectivity, does not mention these requirements in rural areas. What must be recognised in the NIA is that these requirements in rural areas are the same as in urban areas, it is just that delivery is different, and more expensive, in rural areas mainly due to economies of scale.

In recent years, some major economic and technological trends have provided new stimuli to innovation and economic development in rural areas. First, more and more people are seeking 'quality of life innovations' such as healthier food and environment-friendly products and services, which are seen as typically rural offerings. Businesses in rural areas are seeking to capitalise on this growing trend.

Second, the primary sectors (particularly farming) that have historically dominated land use in rural areas are acquiring new roles through increased diversification and broader multifunctional economic use. Farms are producing non-food products, such as crops for energy purposes or serving as tourism resorts and environmental goods and services. Parts of the coastline are serving as wind and wave farms. Forests are being used in the fight against climate change and flooding, and also as a source of 'green fuel'. These new uses of land are set to redefine the place of agriculture in society.

Third, the counter-urbanisation movement is not only increasing the population of rural areas but is also bringing with it a wealth of experience and expertise. The new migrants bring with them significant human and social capital. Their impact is multifaceted. Many in-migrants tend to be entrepreneurial; they arrive with new ideas and seek to implement them. In-migrants are creating new tourism businesses that offer new forms of experience. Others take advantage of the possibilities offered by ICT to create 'digital' businesses in the creative sector,

The impact of an increased population will also leave its mark on innovation in public services. In-migrants are creating new demands for public services, including education, health and business support services. They also expect a better infrastructure, with broadband and wireless networks, improved transport and housing. So, ultimately, they create both pressure and incentives for increased innovation in public services.

In sum, the overall picture is very different from the traditional rural idyll. Rural areas are undergoing many important changes; they are witnessing population growth and industrial renewal. They are growing less isolated and more connected.

There has to be a willingness to recognise that our rural areas are no longer just about "farming" but are in fact about multi-diverse innovative economies. The NIA would be the best place to set out this recognition and properly to link these multi-diverse innovative economies with the city-regions within which they exist.

An additional issue that needs to be addressed is the continued "urban-centric" approach within decision making. Where there are now three distinct models of devolution – national, regional and local – decision making mechanisms have still failed to understand the differences between rural and urban economies. For example, the Local Enterprise Partnerships (LEPs) that the CLA regard as an increasingly important part of the policy process by invoking local and open engagement, continue to neglect the needs of rural communities and the valuable contribution that rural businesses make to the rural and national economy. What is urgently required is a reappraisal of the role of LEPs, as part of the review announced in the Industrial Strategy White Paper, that actually reflects the wants of all in society, not simply those who live or work in urban areas.

It is only once these challenges have been identified is it possible for policy making to take the actions necessary to further economic development. This means that a key element is the provision of necessary infrastructure to promote economic efficiencies within locally produced economic development strategies. As such, rural economic development should be approached at the local level that bears responsibility for appropriate economic success.

The CLA will be more than happy to discuss our comments above in more detail. In the meantime, the NPPF must properly reflect that city-region policies and infrastructure requirements must encompass their rural hinterlands.

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

Click here to enter text.

Question 18

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

Click here to enter text.

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?

Paragraph 99 - the words “protect and enhance” are used by planning authorities as an excuse to prevent new development. Development can take place round public rights of way to make a better fit with the existing rights of way network. Public rights of way can be shifted if necessary – the legislation allows for this. What decision-makers needs to do is to take a more flexible approach. The language of paragraph 99 should reflect that decision-makers should be required to be more flexible.

Paragraph 101 – As predicted, the local green space designation process is being used to prevent critically needed rural economic development (new housing and employment opportunities). Very often the landowner is given no forewarning of the proposed designation. Some CLA members advise that they are completely unaware a neighbourhood plan is being prepared. But the online PPG suggests that landowners should be approached by the neighbourhood plan preparation team. In other instances, we are aware that residents within a NP preparation area are responding to the consultations but that their responses are published in a truncated form such that the important parts of their representations are not being properly published. The CLA is have to advise its members who are experiencing this problem to object to the designation in

their responses to plan consultations, and also to request to be heard by the Examiner/Inspector at the examination in public.

Question 20

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

NO

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

Para 103 and Para 104 – the CLA is pleased to note the recognition in para 104 about the differences in transport solutions in rural vs urban areas. We do however point out the Department for Transport's own recognition (in the National Networks National Policy Statement 2015). that "...it is not realistic for public transport, walking or cycling to represent a viable alternative to the private car for all journeys, particularly in rural areas....".

The oft-repeated reason for refusal for rural economic development proposals is that it will be 'environmentally unsustainable' because of the perceived increase in rural traffic. There has to be a better understanding amongst decisions-makers at both application and appeal stages that rural traffic. If more employment hubs are created in rural areas near to where people live, there may be less traffic as a result in the longer term. Please see our response to question 16 about the need for plan policies to reference and encourage the interconnectedness of rural economies and city-regions.

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

Yes

Question 23

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

Yes.
Paragraph 105 - In paragraph 105, subsection (f), remove *"maintaining"* and insert *"protecting, maintaining and enhancing".*

105 f) recognise the importance of ~~maintaining~~ protecting, maintaining and enhancing a national network of general aviation facilities –taking into account their economic value in serving business, leisure, training and emergency service needs, and the Government's General Aviation Strategy"

Chapter 10: Supporting high quality communications

Question 24

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

Yes. See our comments below.

The CLA has been lobbying since 2000 for rural areas to be able to benefit from state of the art digital communications, often seen as ubiquitous in urban areas. We recognise that changes to the planning rules over the last five years has made it easier for the more rapid deployment of fixed line telecommunications and efforts have been made in simplifying the planning regime for mobile communications. Given the importance of high quality digital communications, particularly in terms of the public interest, it is vital that planning authorities are flexible in their approach.

However, it is also important that planning is consistent with the approach set out in Schedule 3A of the Communications Act 2003 that sets out the Electronic Communications Code. Government policy must be to push towards universal coverage for both fixed line and mobile connectivity and planning policy has to be mindful of this objective.

Consideration also needs to be given to the provision of modern digital infrastructure in relation to new build housing. One of the major obstacles that has been identified is the failure, often through a lack of communication, for new build housing developments to have in place suitable broadband connectivity, irrespective of the fact that the provision of this should increase the value of each unit in the development. Government policy is already directed towards a full fibre approach, that is, a direct fibre connection to the premise.

Although there is a voluntary agreement between developers and digital infrastructure providers for digital capacity to be extended to development of 30 units or more, this only applies to urban areas and does not fit the rural housing model. This means there is no pressure on the developer to ensure that rural developments can actually benefit from fibre connectivity.

The CLA believes that this anomaly needs to be resolved if rural communities are not to continue to be seriously disadvantaged by the ongoing rural-urban digital divide. We recognise the economic considerations of digital infrastructure providers where the provision of fibre connectivity could be uneconomic. However, it is in the interests of all parties that agreement can be reached regarding digital infrastructure provision to developments of less than 30 units. We would suggest a threshold of less than 10 units for rural areas where there is an existing fibre network.

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?

Please select an item from this drop down menu

Please enter your comments here

Yes

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

Yes but not in a small rural development of 10 or less homes on a rural exception site.

Question 27

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

Paragraph 118 (a) - The CLA has an established line on net environmental gain which will be sent separately to MHCLG officials.

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?

Click here to enter text.

Question 29

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

The CLA response welcomes the importance that is being given to design.

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

Paragraphs 144(f) and 145(f) – The CLA strongly supports these new inclusions, having persistently lobbied for them over many years.

Question 31

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

Yes. These comments are set out below:

Paragraph 135 - We have a number of comments:

1/ A static outer boundary
The CLA's longstanding concerns about the constant shifting of the outer Green Belt boundary over undesignated countryside and farm buildings have not been addressed adequately in the draft revised NPPF. Changes to Green Belt policy in the form of land swaps were mooted in 2016. These changes may be seen as a solution to the housing crisis but newly designated areas of Green Belt are purely arbitrary. They add the extra hectares but often wash over more land than is being taken away.

Green Belt was designed to restrain urban expansion and coalescence. It was not designed to increase in size. We have repeatedly seen the outer boundaries of Green Belt moving inexorably further out over currently undesignated countryside and farm businesses in order for urban areas to expand into what was Green Belt. Taking land from the inner edge for development and replacing it with a greater proportion of land on the outer edge does not fulfil the original purpose of Green Belt policy.

But, the desire to protect Green Belt (which is a planning policy and not an environmental designation), is at odds with the economic development needs of the countryside surrounding urban areas.

The consequence of the Government's decision broadly to protect the Green Belt inevitably means that housing land must be looked for elsewhere. This means housing development continues to be pushed out into areas of more biodiversity rich and attractive countryside, and it leads to even greater pressure on transport infrastructure as people have to "leap over" the Green Belt in order to get to their places of work.

2/ Farming and farm diversification
Green belt land is predominantly rural and much of the land is in agricultural use. The role of agriculture in green belt is well understood. However successive governments have advised farmers that they must diversify to find alternative sources of income other than solely from agriculture.

The NPPF at paragraph 28 (and draft revised NPPF paragraphs 84 and 85) supports the delivery of a prosperous rural economy and offers positive encouragement for farm-based diversification in relation to the re-use of farm buildings, and the need for new buildings.

Evidence from CLA members shows that there is a difference in planning approval rates for diversification schemes in green belt areas as compared to other rural areas. Many of the decisions for refusing farm-based diversification proposals cite the need to maintain the open aspect of green belt. In many refusals the appropriateness of the development in green belt is raised as a key issue.

These decisions appear to go against the explicit encouragement for on-farm diversification in NPPF para 28, and future paras 84 and 85, and its recognition for the need for new buildings. It is not the purpose of green belt designation to undermine the competitiveness of farming and diversified farming businesses.

Green belt policy must address these matters with explicit guidance on the importance of encouraging agricultural development and development that may be necessary for on-farm diversification.

A wider approach to sustainable development might include negotiation by means of planning agreements of conditions about, for example, landscape remediation or improvements to or the provision of usable green space. Sustainable rural development through on-farm diversification offers an opportunity to provide a better recreation and aesthetic resource for inhabitants of towns and cities surrounded by green belt designation, particularly given the lack of urban green spaces

There is no doubt that some form of urban containment and coalescence policy is required and one that is fit for purpose for today's needs. But we believe that a much more flexible green belt policy is required so that it delivers housing near to where it is needed and delivers more flexibility for farm diversification. This flexibility must deliver all three of the sustainable development objectives set out in paragraph 8 and new paragraphs 84-85. It is questionable whether current Green Belt policy achieves this. Wat is required is a review that considers the economic cost to society of the green belt planning policy.

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?

Yes, these are set out below:

1/ Planning for climate change

While some inclusions in the revised NPPF draft indicate an improvement in the high-level approach to encouraging renewable energy generation – namely paragraph 148 '…that planning policies should support measures to ensure the future resilience of communities and infrastructure to climate change', and paragraphs 150 and 151 – other revisions in the draft text regarding how to implement that approach act to discourage renewable energy generation in practice.

In particular, paragraph 153(b), which incorporates the Ministerial statement of 18 June 2015 on wind energy, will continue to have a detrimental impact on the granting of planning permission for small-scale wind generation in England. If renewable energy generation is, even on a small scale, considered to be a positive contribution and should be encouraged, then there must be greater degree of direction provided to planning authorities via the NPPF.

For instance, paragraph 153(b) states that 'local planning authorities should…approve the [renewable energy] application if its impacts are (or can be made) acceptable. For wind energy developments, this should include consideration of the local community's views.' While the local community's views should be included there is no indication of how 'impacts' can be made to be acceptable and in effect creates a situation where a lone voice of dissent from the community constitutes an 'unacceptable impact'. The revised NPPF text should be amended to address head on the challenges presented by minority community views posing an effective 'roadblock' to planning permission. Furthermore, in respect of off-shore wind, whilst often seen as an attractive option, carries with it substantial planning and associated impacts when cables come ashore.

2/ Planning and flood risk

While the revised text on sustainable drainage systems (SuDS) for major developments under paragraph 163 is supported, ongoing maintenance of SuDS should be addressed in the NPPF text. For instance, developments will be constructed with a drainage feature installed, say a pond. The developer may then go on to sell the various dwellings individually and a situation is created where the SuDS features deteriorate over time and become a liability instead of an asset. The NPPF text should guide planning authorities to address these concerns and ensure that unintended consequences are not created.

The clarity provided under paragraphs 158-162 regarding the exception test and development in areas with flood risk is welcome. The revised text under paragraph 155 which includes that the cumulative, as opposed to the individual, impacts of flooding should be recognised in strategic plans however, contains a lack of detail on taking into account cumulative impacts. More information and guidance are needed for planning authorities so as to avoid an overly-precautionary approach being taken to the detriment of development. While the detail provided regarding the exception test is beneficial because it provides certainty and a clear methodology, the inclusion of 'regard for cumulative impacts of flood risk' is vague

and will likely create confusion and inconsistent implementation across planning authorities.

The CLA response will reflect concerns about land managers who rely on land drainage/flood and coastal defences to protect their economic, social and environmental interests in land and buildings. We will also raise our concerns over the quality of the Environment Agency's data in their flood risk assessment maps.

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

Click here to enter text.

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

Yes, but this strengthening must not undermine the long sustainability of rural communities and businesses in designated areas. A properly balanced approach to delivering all three objectives of sustainable development must be taken by decision-makers. We make the following comments:

Paragraph 170 – The CLA has set out its continuing concerns over the application of the presumption in favour of sustainable development as it applies to designated areas, in our answer to question 2. Rural businesses and communities in designated areas cannot compete with their colleagues in undesignated countryside because planning policy in respect of new development is very restrictive. It is difficult to understand how rural businesses that happen to be located in designated areas can deliver landscape/biodiversity and other public goods and services required of them when they are subjected to very restrictive planning policies. Planning policies that limits the ability of a rural business to

invest in a sustainable and profitable future cannot afford to deliver public goods and services. The government should provide as level a playing field as possible.

If the three objectives of sustainable development are to be delivered in a balanced manner in designated areas, then planning policies must reflect a much more flexible approach.

The CLA supports the inclusion of a new sentence in paragraph 170 - “The scale and extent of development within these designated areas should be limited”. As long as rural business and community development are of appropriate scale in these areas, then rural economic development that supports jobs and homes, and possibly also services, must be granted permission. We hope this policy addition drive much needed sustainable economic and housing development into these areas. By more easily obtaining planning permission for alternative sources of income, the ability of land managers in these areas to deliver environmental public goods and services may become easier to achieve.

The outcomes of Paragraph 170 should provide for “balanced” communities with employment, housing, shops and services in designated areas.

The CLA agrees with the strong protection now provided for ancient woodland and aged or veteran trees.

Question 35

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

Paragraph 168(d) -The CLA has an established line on net environmental gain which will be sent separately to MHCLG officials.

Paragraph 180 - In paragraph 180, after *"music venues,"* and before *"and sports clubs"*, insert *"general aviation airfields,"*

180. Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (including places of worship, pubs, music venues, general aviation airfields and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where an existing business or community facility has effects that could be deemed a statutory nuisance in the light of new development (including changes of use) in its vicinity, the applicant (or agent of change) should be required to secure suitable mitigation before the development has been completed.

Chapter 16: Conserving and enhancing the historic environment

Question 36

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

From 2014, for the first time, the combination of the NPPF historic environment chapter and relevant parts of the Planning Practice Guidance (PPG) provided essentially-sound national planning policy for the historic environment.

The slightly-revised chapter retains that approach. We do however have several comments, some of which are very important:

Key gaps in the NPPF historic environment chapter

Firstly, and very importantly, by themselves the current or proposed NPPF historic environment chapters definitely do not provide sound national planning policy for the historic environment. They need to be read in conjunction with the PPG, especially the PPG's sections on 'conservation' (003), 'viable use' (015), 'substantial harm' (017), 'public benefits' (020), and 'non-designated heritage assets' (039-040). These points are at the core of NPPF historic environment policy, and it is impossible to understand this chapter, or use it effectively, without them.

Unfortunately, it is evident that many NPPF users – including local authority planners and even Planning Inspectors – are not doing this. For example, many seem to be simply unaware of PPG section 020, arguing in pre-application advice, planning refusals, and even in appeal decisions that a change to a heritage asset is 'incapable of being of public benefit' because it will not be physically visible to the public.

This is a fundamental error, because 'public benefit' is fundamental to the NPPF approach to heritage: it is the only basis on which 'harm' can be justified. Almost any change can be argued to involve at least some 'harm', however small, and much change (especially of course to interiors) is not publicly-visible. Without the PPG 020 definition of public benefit, that non-visible change would be impossible to justify. This basic error leaves a vast breach in the NPPF approach.

This therefore needs to be addressed:

(i) as noted elsewhere in this response, the NPPF as a whole needs to reference the PPG. It is astonishing that the new draft does not mention the PPG at all.

(ii) the core points need to be referenced more directly in the NPPF: it should be impossible for example to take decisions based on 'public benefit' without knowing that it is defined in the PPG.

(iii) it is of paramount importance that these key sections and definitions remain in place in the PPG, especially:

- the sections on the importance of use and viability;
- the clear message that 'public benefit' includes heritage benefits, and benefits from other parts of the NPPF, and does not require physical visibility to the public;

- the statement that 'substantial harm is a high test';
- the statement that "if from a conservation point of view there is no real difference between uses, the choice…is a decision for the owner" (which is commonsense, but a significant advance from traditional heritage policy).

Clarifying paragraph 185 (previously paragraph 128)

Secondly, and importantly, clarification is needed in the wording of paragraph 185.

It is of great importance to the heritage protection system (i) that those considering change first analyse (proportionately) the significance of heritage assets before beginning any design process, and (ii) that consent applications to local authorities contain a (proportionate) analysis of both significance and impact. This staged approach is core to the 'conservation' methodology which underlies the NPPF historic environment chapter. It benefits applicants (who are less likely to waste time on abortive work and delays), LPAs (who have the information they need to take decisions), and the public (who benefit from better outcomes on the ground).

Much evidence, and the new research carried out for Historic England published on 4 May, shows that the provision of sufficient information is rare. The consequences are that:

(i) most applicants are developing proposals without any substantive consideration of significance and setting. Even if this is considered later, by that time the proposals are largely-fixed and expensive to alter.

(ii) the LPA does not receive a sufficient analysis of significance and impact. This is a fundamental problem because LPAs do not have the resource to do this themselves.

Paragraph 185 therefore needs to set out these two points much more explicitly. It should state (a) that significance and setting should be analysed (proportionately) before any design work commences, and (b) that applications must include an analysis of significance and of impact, proportionate but sufficient to identify the impact. This is only a slight – but very important – change of wording. The change will not solve the problem by itself (which will require work by others, particularly Historic England and the Historic Environment Protection Reform Group, which has a number of proposals designed to achieve the 'step-change' required). But it is very difficult for Historic England in its advice, or the CLA in its member guidance, to convey the need for upfront analysis of significance and for analysis of impact if the NPPF – which is at the core of heritage planning policy – does not say this explicitly.
This change to the NPPF is therefore a vital first step.

Viable use

Thirdly, we are concerned about the removal of the 'optimum viable use test' in paragraph 192 when considering 'less-than-substantial harm' to a heritage asset. In these cases "securing its optimum viable use" was given as an explicit example of a 'public benefit' which could be weighed against any disbenefits of the change.

The problem is not the loss of the word 'optimum', and the core point about viable use is made in the opening paragraphs 182-3, and of course this should apply to all cases, not just those involving 'less-than-substantial harm'. But the change appears to dilute the emphasis in the NPPF on the need for viable use if heritage is to survive in the long term. Diluting that message is very dangerous, because buildings (or any heritage with significant maintenance costs) cannot survive in the long term without viable use.

'Substantial harm'

The distinction drawn between 'substantial harm' and 'less than substantial harm' creates a gulf where there should be a continuum. This caused problems, primarily (i) that many local authorities identified almost any change as 'substantial harm'; and also conversely (ii) that once 'harm' had been identified as 'less than substantial', some applicants and some LPAs seemed to feel that it should simply be nodded through. The first problem stalled much desirable change, and the second prompted much litigation.

The first problem was solved (at least in theory) in 2014 by defining 'substantial harm' in the PPG, and the second has probably been solved by six years of case law (it could thus be said that the problem has been reduced from causing substantial harm to causing less than substantial harm). But it remains confusing to outsiders, and every application and decision has to have text addressing this question, which does not seem a helpful use of resource.

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?

Yes, we have a number of comments which are set out below:

Minerals sites and associated supporting industries in remote rural areas provide important income streams for the local economy, and good quality full-time employment opportunities where often these are not available elsewhere: remoter rural communities can benefit from these opportunities.

Paragraph 199: The proposed wording in paragraph 199 downgrades the significance of mineral development to both the national and rural economies. It is essential to both, providing valuable mineral resources to the economy and much needed investment and employment opportunities in rural areas. The reference to 'essential' in the current NPPF (para 142) should therefore be retained.

It is regrettable that there is no clear link in the Framework between the supply of new housing and increased infrastructure delivery, and the provision of adequate mineral

resources. The two are quite clearly inextricably linked. Under the heading Maintaining Supply and Delivery, the first sentence of paragraph 74 should be amended to read: *Strategic plans should include a trajectory illustrating the expected rate of housing delivery over the plan period, consider the availability of construction materials/aggregate supplies and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites.*

Paragraph 200
(a) For completeness, the word 'sub-national' should be added after 'local.
(b) The aim to source mineral supplies indigenously is welcomed and supported. However, the lack of robust statistical information on secondary and recycled materials and minerals calls into question the effectiveness of this provision.
(c) The safeguarding of mineral resources is essential given that they are a finite resource.

Paragraph 201(a)
It is the CLA's opinion, and notwithstanding their special status, that greater emphasis should be placed on economic development within National Parks to reflect the stated objectives of the NPPF. For example:

- Chapter 6 para 82 '….significant weight should be placed on the need to support economic growth and productivity'.
  And
- Para 84 (b) '…planning policies and decisions should enable…..development and diversification of agricultural and *other land based rural businesses…'*

While Chapter 17 para 201 (a) states that '…as far as practical.' provision should be made for landbanks of non-energy minerals from outside National Parks' the introduction to Chapter 17, paragraph 199, acknowledges that minerals are a finite resource which can *'only be worked where they are found'* and goes on to say that *'best use needs to be made of them to secure their long-term conservation'.* We would argue that the current mineral policies within National Parks are so restrictive, conditions on extraction and output so excessive and planning consent correspondingly so expensive that mineral operators are often perversely incentivised to extract only the best quality stone on which they can make the greatest margins as quickly as possible whilst leaving perfectly usable stone on tips; if annual output is limited far below that which can be sold commercially it is logical to sell only the most profitable product. Similarly, in a situation whereby two operators are working quarries alongside each other safe working practise demands that a 'stand-off strip' remains between the two quarries, in effect sterilizing large reserves. Again, under current National Park policy guidelines it is not possible to release new reserves, resulting in large quantities are usable stone remaining unworked despite excavators working only metres away from it inside their strictly observed 'consented area.'

These points are obviously specific and detailed but they illustrate the point that the current unduly restrictive planning policy guidelines within National Parks not only prevent the working of new reserves but result in the wasteful working of existing ones. Certain minerals within National Parks, and AONBs, are sufficiently scarce, indeed unique, that National Policy guidelines should make special provision for their continued extraction.

One further point should be added which is that current policies do allow for highly restrictive consent for new reserves provided stone is sold 'locally'. Apart from denying what is clearly a national demand for a particular stone, constraining the output in such a way will impact on viability, bearing in mind planning costs, onerous (correctly) restoration conditions and health and safety requirements would render such enterprises completely economic and, therefore, unsustainable.

In summary, the CLA strongly suggests that mineral policy within National Parks, while accepting high restoration standards, should place a much greater emphasis on the economic benefits of continued mineral extraction, should build greater planning flexibility into existing quarries to allow the most efficient extraction of reserves within and immediately nearby those quarries and provide a clear framework which presumes continued extraction for relatively low output, high value minerals at a scale which would give confidence to operators and landowners to invest in ongoing business development. This would include the employment and training in stonemasonry and other vital skills, investment in new quieter, cleaner and more sophisticated cutting equipment and the development of new markets.

Paragraph 202
The general support for a managed aggregate supply system is welcomed however, it can only function if properly funded. If funding is not provided the aggregate working parties will cease to exist and they cannot function, as intended, if appropriate survey information is not available.

Paragraph 202(f)
The current NPPF contains paragraphs that provide for specific landbanks for certain industrial mineral operations e.g. 10 years for industrial silica sand sites, 15 years for cement for primary sources of supply (chalk and limestone) and secondary supplies (clay and shale) and 25 years for brick clay and cement (primary and secondary materials) where they are needed to support a new kiln. These have been deleted in the proposed draft and should be re-instated. In addition to these, a further provision of 25 years for industrial limestone operations should be included. The economic case in terms of levels of investment required to run and maintain such operations is well documented. The long-term continuity of supply of minerals is essential to justify such investment.

Furthermore, when planning authorities, including national park planning authorities, are looking to designate land for mineral extraction, they should judge supply of minerals from consented reserves rather than from the national resource so as to reflect deliverable mineral extraction.

Paragraph 190 (b)
Footnote 55 should be deleted as it attributes the same degree of protection to non-scheduled heritage assets as those that are scheduled. If a heritage asset is of equivalent significance to a Scheduled Monument it should be designated as such. If it isn't designated, it should not fall to the decision of some unspecified third party to determine whether it merits the same degree of protection.

Paragraph 186
Matters relating to the 'setting' of heritage assets can effectively sterilise large areas in the vicinity of the asset from future development. This is particularly true when medium/long distance views are being considered. Paragraph 186 should be extended by the addition

of the following sentence: *The condition of the heritage asset and distance from or to it are relevant considerations, when assessing significance*.

Paragraph 168 (d)
The minerals industry has the potential, and a history, of providing some of the most biodiverse sites in the country. A large proportion of SSSI's in the UK are the direct result of mineral extraction. Notwithstanding this, the industry gets very little or no recognition for newly planted habitats or those created and managed as part of the extraction process. Often ecologists expect any gain to be immediate, which is clearly unrealistic. The result is that there is invariably an immediate net loss (mathematically) in terms of biodiversity which, it is argued, in policy terms is contrary to para 168 (d) which reads:
Planning policies and decisions should contribute to and enhance the natural and local environment by:
(d) minimising impacts and providing net gains for biodiversity…….
Some recognition that any net gain will be delivered in the medium to long term and does not have to be immediate is required. Inserting the words …'over time' after net gain would achieve this.

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

As stated previously, minerals are essential to the economic prosperity of the country and, as such, should be an integral part of any overarching planning document that sets national parameters for development.

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

As stated previously, a managed aggregate supply system is supported. National and Sub-National Guidelines on future aggregates provision are an essential part of the MASS process.

Guidelines should continue to be produced at national level. Such an approach enables government to maintain a 'birds-eye' view as to national need and to the industry's overall contribution to the economy. National policy guidelines will also 'encourage' local authorities to release reserves.

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

Yes

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

Plans must make provision for gypsies and traveller sites who decide to settle in a community.

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

Click here to enter text.

Glossary

Question 43

Do you have any comments on the glossary?

Yes. The glossary should define what is meant by the rural economy. Rural areas are not just about farming, tourism and leisure. There are multi-diverse businesses operating in rural areas but too often these businesses are being undermined by restrictive planning policies and decision making that prevents them from investing in the future growth and productivity of these businesses. At the very least,

guidance must be provided in the online PPG about the true nature of the rural economy.