



WHITE PAPER: *PLANNING FOR THE FUTURE*

Ministry of Housing, Communities & Local Government Consultation

Date: 29 October 2020

Response submitted on behalf of the:

COUNTRY LAND AND BUSINESS ASSOCIATION

The 28,000 members of the Country Land and Business Association (CLA) are individuals, businesses and charities who collectively manage and/or own over half of all rural land (10m acres) in England and Wales and run some 250 different types of rural businesses (including agriculture, forestry, tourism, hospitality, retail and residential lettings). They generate jobs; they provide land and buildings for investment, and housing for local people. Most objectives for the countryside - economic, social and environmental - rely on land owners and managers for their success, and frequently bring them into contact with the planning system

By Fenella Collins, Head of Planning (full details at end of document)

SUMMARY

1. The CLA is very supportive of the Government's aims and objectives to simplify the planning system. The CLA has been lobbying for greater simplification for many years.
2. **Land-types** – the CLA is very concerned about the use of the word “Protect” as it may be applied to open countryside as well as those areas that are already protected in one form or another. The use of the word “protected” is likely to undermine the Government's simplification agenda and will, without doubt, be devastating for economies and communities in rural areas, as well as harming the ability to improve and enhance environment and landscape. The CLA provides its reasoning for why ‘open countryside’ should automatically default into the Renewal Area land-type.
3. **Heritage reform** - A set of proposals to improve the heritage consents regime has been put together by the heritage sector and must be implemented as part of the aims to simplify the heritage consents process.
4. **Rural housing** - The standard method for assessing housing need completely overlooks the need to deliver housing in smaller rural settlements. There must be greater use of cross subsidy on rural exception sites to deliver more affordable housing in rural settlements.
5. **Infrastructure levy** – The CLA has found that the Government is already receiving nearly 60% of the uplift in the value of land. A new levy must ensure that land value capture delivers a competitive return to a willing seller.

1. What three words do you associate most with the planning system in England?

Disproportionate/Obstructive/Opaque

2. Do you get involved with planning decisions in your local area?

[Yes / No] Yes, when lobbying on local planning policies for rural economic development in every rural local authority area.

2(a). If no, why not?

[Don't know how to / It takes too long / It's too complicated / I don't care / Other – please specify]

Part of the CLA's membership package includes the provision of advice. The complexity surrounding the planning system consistently makes up the largest number of advice queries the CLA handles every year. CLA members are SMEs, generally with a farming business. Whilst we provide as much advice as possible to assist them in navigating the system, more often than not they have to employ a professional adviser to act for them when dealing with the planning system. This is a huge cost that eats into their capital, as it has to be funded from fluctuating farm incomes, or a bank loan.

3. Our proposals will make it much easier to access plans and contribute your views to planning decisions. How would you like to find out about plans and planning proposals in the future?

[Social media / Online news / Newspaper / By post / Other – please specify]

Online news, social media, newspaper and email alerts.

As access to broadband in rural areas is still very poor there is a continuing need to publicise public consultations concerning local plans, planning applications, article 4 directions, Local Development Order consultations, Neighbourhood plan consultations etc. and these should continue to be published in newspapers and via emails as now.

Furthermore, if social media and online news is the only way of receiving notifications, this will mean that people would have to keep looking at these platforms' day in day out. Many of our members are sole traders and they do not have the time or management capacity to do this.

4. What are your top three priorities for planning in your local area?

[Building homes for young people / building homes for the homeless / Protection of green spaces / The environment, biodiversity and action on climate change / Increasing the affordability of housing / The design of new homes and places / Supporting the high street / Supporting the local economy / More or better local infrastructure / Protection of existing heritage buildings or areas / Other – please specify]

Supporting economies across all rural areas
Meeting housing need across all rural settlements through organic, incremental growth
Delivering environment, biodiversity and effective action on climate change

5. Do you agree that Local Plans should be simplified in line with our proposals?

[Yes / No / Not sure. Please provide supporting statement.]

Yes. The CLA supports the proposals set out under Pillar 1 for a simplified and faster local plan regime.

However, the CLA is very concerned about the unintended consequences that the third area-type, currently named as “Protected” areas, could have on the sustainability of economic development.

It is to be expected that having identified land for growth or renewal areas, local plans would then “protect” everything else. Whilst this approach may be similar to how local plans are created today, a more nuanced and flexible approach must be considered for ‘open countryside’.

We set out concerns and suggestions in more detail in question 9a and 9b below.

6. Do you agree with our proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally?

[Yes / No / Not sure. Please provide supporting statement.]

Yes. The proposals would simplify the system considerably. There would less need to read and reconcile two layers of policies, i.e. NPPF and Local Plan, which are often duplicated. One set of development management policies, set out in the NPPF, should provide more consistency in decision-making.

The CLA’s recently published Rural Powerhouse Planning policy paper¹ provides a full explanation of what makes up the economy of rural areas, together with a business case. The CLA is keen to work with MHCLG to ensure the NPPF correctly reflects the diverse and differentiated nature of rural economies and positively encourages investment in existing and new rural businesses.

7(a). Do you agree with our proposals to replace existing legal and policy tests for Local Plans with a consolidated test of “sustainable development”, which would include consideration of environmental impact?

[Yes / No / Not sure. Please provide supporting statement.]

Yes. The test replacements are to be welcomed. Local plans will become much more important especially for growth and renewal areas. This suggests less focus at examinations on the way planning authorities reach their decisions on their plan, or how they compared options. There would have to be more focus on assessing economic, social and environmental impacts of

¹ [CLA Rural Powerhouse – A planning system designed for the rural economy](#)

specific area-based proposals based on the more details policy standards that determine what is proposed in each location and/or land type. This may make plans easier to get through public examinations. However, it also might lead to examinations becoming a series of mini-hearings where objectors and plan-makers argue about the merits of proposed allocations and parameters on individual sites. The proof will be in how the tests will be interpreted by the local authorities and Planning Inspectors and this will depend on Government guidance

Government will need to properly promote and resource examinations.

7(b). How could strategic, cross-boundary issues be best planned for in the absence of a formal Duty to Cooperate?

Don't know. The white paper appears to suggest voluntary arrangements for strategic, cross-boundary issues. This may mean that that strategic planning exercises are likely to be voluntary/informal and will have to be completed within the first three years of each five-year local plan cycle to set the framework for their subsequent Local Plans.

8(a). Do you agree that a standard method for establishing housing requirements (that takes into account constraints) should be introduced?

[Yes / No / Not sure. Please provide supporting statement.]

Not sure. The proposed “binding” housing requirement figure for each planning authority is distinct from the current standard method for local housing need. The former appears to be a return to a top-down imposed housing requirement figure, whilst the latter was a local derived housing needs assessment.

The standard methodology calculation may well lead to more land being released for housing development.

However, whichever method is introduced, it is unclear if it will make any difference to the delivery of critically needed small quantities of new housing of all types and tenures in thousands of rural villages, especially those of less than 3000 inhabitants. The CLA’s Strong Foundations policy statement² was specifically aimed at the challenges faced by rural communities to deliver organic incremental growth. It found that more than 2000 villages across England are overlooked by the local planning process as they are judged to be “unsustainable” due to a lack of public services such as post offices or access to banks. These so called “unsustainable villages” are not allocated housing and have very limited development options to improve their sustainability, leaving them in a permanent cycle of decline.

Sustainability assessments measure villages against a range of services and amenities more akin to how previous generations lived and used services. Access to post offices is assessed by 98% of local authorities, access to banks by 48%, but access to broadband by a mere 18% of local authorities! This flies in the face of COVID-19 experience, which has showed how much economic and social activity can still take place even as physical retail is limited.

² [CLA Strong Foundations – Sustainable Villages](#)

Local authorities, including in designated and protected areas, must be required to factor current and emerging technological development into their assessments, and central government must address the housing needs of all communities by requiring and funding planning authorities to conduct Housing Needs Assessments in any community not allocated housing in the local development plan.

The needs of so called “unsustainable” villages for jobs, homes and modern services must be catered for, rather than ignored. It is only by delivering small quantities of new dwellings, of all types and tenures and including for elderly people, that sustainable development can be seen to be taking place for rural communities.

8(b). Do you agree that affordability and the extent of existing urban areas are appropriate indicators of the quantity of development to be accommodated?

[Yes / No / Not sure. Please provide supporting statement.]

No. The current standard method for assessing local housing need takes into account local authority wide figures and calculates the requirement accordingly. This means that housing need on a smaller scale, for example in rural settlements, is entirely overlooked.

The CLA has long called for local authorities to undertake a housing needs assessment in all settlements which are not allocated housing, so that local housing need can be met at a local level.

Rural areas are suffering from an affordability crisis. In 2019, only 9% of rural dwellings were affordable compared to 19% of urban dwellings. In addition, in 2018, the average house price was 8.8 times the average earnings in rural areas compared to 7.5 times in urban areas. If affordability is an indicator of the quantity of development to be accommodated, it must include and allow for organic incremental growth in smaller rural settlements, rather than meeting that need elsewhere.

9(a). Do you agree that there should be automatic outline permission for areas for substantial development (*Growth* areas) with faster routes for detailed consent?

[Yes / No / Not sure. Please provide supporting statement.]

Yes. However, we are concerned that the growth/renewal areas and the protected areas approach appears binary. In growth and renewal areas development is welcomed, but in protected areas the inference is that no development will be allowed at all.

The CLA understands the term “protected” may not be the final title for this third area and that the government is likely to take a more nuanced approach in practice. It is indeed essential that a more nuanced approach is taken. We have set out our concerns in more detail in our answer to question 9 (b).

In Growth and Renewal areas we support the need to avoid unintended consequences for heritage.

9(b). Do you agree with our proposals above for the consent arrangements for *Renewal and Protected areas*?

[Yes / No / Not sure. Please provide supporting statement.]

Protected areas

NO

We find the concept of “protected areas” deeply worrying:

Firstly, they seem likely to cover at least 90% of England, and virtually 100% of rural England. Although the white paper implies that they are just a summation of the NPPF list at para 11b and specific environmental and cultural characteristics, they will in fact by definition cover practically everything that is not placed in a Growth or Renewal area; the white paper states that “protected” areas could also include “areas of open countryside”.

Many local authorities, and almost all rural authorities, will remain under intense lobbying pressure from some residents to minimise Growth/Renewal areas and to maximise protected areas in order to stop development pressures.

Secondly, if no development is allowed, being classified as a “protected” would be devastating for the economy, communities, and for the environment and heritage of an area. This would be regressive and would leave rural businesses and communities in an even worse position than they are today.

Paragraph 1.16 bullet 1 implies (as the name suggests – “development will be restricted”) that policy will be tighter than now, and it seems likely that, as the counterpart to “growth/renewal” areas, these would be ‘no-growth’ areas in which local authorities would default to “protecting” everything, meaning ‘preserving unchanged’. Restricting development in open countryside and many of those areas listed in NPPF para 11b footnote 6, would have highly destructive consequences especially in the medium to long term for (i) the economy, especially the rural economy, (ii) communities which needs homes, and viable schools, pubs and other public services, and (iii) for the environment and heritage, which need continuing viability and a flow of income if they are to be funded and to survive, and which will deteriorate if the sympathetic changes needed to ensure a sustainable future, become even more difficult in future than they are now.

To the general public it will seem as though the Government has designated all open countryside as “protected”. This must not be misconstrued by planning authorities, planning Inspectors and the general public as “preserving in aspic” all open countryside and preventing change.

The CLA, represents some 250 different types of rural business and owners of heritage buildings. Open countryside, including designated landscapes and protected areas, contains rural communities, farms, estates and other land-based and non-land-based businesses and provides an attractive backdrop for tourism and leisure activities. But rural economies have become increasingly diverse and differentiated with diversification into other business types,

many of which have become important enterprises in their own right through substantial earnings and job creation.

The hopes and needs of rural communities, including in designated and protected areas, for better jobs, housing, transport, services and leisure are similar to those of people in urban areas. Yet many in the countryside have long felt that successive Governments do not fully understand the relationship between business, rural life and environment nor do they feel they are benefiting from economic growth.

This could be exacerbated by the fact that the economy in rural areas is entering a period of significant change, perhaps the biggest since the UK entered the Common Agricultural Policy almost 50 years ago. The loss of the Basic Payment Scheme, the UK's departure from the European Union and the new trading relations this will generate, create both opportunities and risks. These changes come alongside new expectations and perceptions about what the countryside is for and the nature of make-up of the economy in rural areas.

The economy in rural areas has lagged behind urban areas. The traditional image of rural economies as dominated by primary industries (such as agriculture and forestry) is increasingly anachronistic, when in fact the sectoral composition is similar to that in urban areas. For example, it is concerning that the white paper makes no mention of minerals and other land-based assets. The business base in rural areas is growing and becoming increasingly sophisticated, creative and innovative, despite the issue of broadband delivery (even more so as a result of CV19). In spite of this rural areas have an 8% lower productivity compared to urban areas (excluding London), and face continuing skill shortages. If this productivity gap were to be closed an additional £20bn could be added to national GVA per annum

Our open countryside is managed, and its visual appearance, beauty, biodiversity and natural capital etc depend on farmers and land managers actively maintaining it. It is an important resource that must not be 'concreted over'. But there is a cost associated with managing open countryside and its communities, businesses and environment. 'Preserving it in aspic' will not deliver adequate monetary resources to continue its long-term management.

In this context a planning system that seeks to achieve its objectives for rural communities and the environment by restricting economic development, through ill-thought through planning and zoning policies, will fail the businesses, communities and the environment it is intended to support. The white paper's proposals mean that rural areas are at risk of being classified as 'protected' by default, with economic, social and ultimately environmental (no money for maintenance of natural assets) consequences.

A transformed planning system (both policy and regulation) that recognises the importance of the broader economy in rural areas and which provides a more level playing field for appropriate and sustainable business and housing development in open countryside (whether designated/protected or not), and which seeks to deliver environmental and natural capital improvements and enhancements will all be part of the solution towards achieving biodiversity net gain and net zero targets.

The policy for 'open countryside' in the NPPF and elsewhere needs to state unequivocally that these are not no-go areas for change, and especially that sympathetic and properly-considered change which keeps the economy, communities and the environment and heritage valued and

viable should not merely be permissible but should be strongly encouraged by the NPPF and in Local Plans.

More generally, a considerably more nuanced approach to the proposed 'zoning' is needed or perhaps more or different kinds of 'areas'.

The CLA suggests that we need to aim for an approach that does not prevent the commercial and economic decision-making process for all types of businesses located in open countryside, and which positively encourages investment in existing and new rural businesses, and sustains rural community needs too.

For the reasons set out above, the default position for all open countryside must be that it automatically falls into the 'Renewal area' land-type. This would require planning authorities to map all the open countryside in their administrative areas as Renewal area status. It would then be up to planning authorities and local residents to argue, with supporting evidence, why an area of open countryside should be classified as a Growth or Protected area.

Protected area status, which is settled planning policy in NPPF current footnote 6, may apply in Growth and Renewal areas where protection is particularly justified.

The current list of protected areas set out in NPPF footnote 6 must not be enlarged to include anything else.

The CLA also suggests that:

- It is essential that words like "Protect" are used with caution so that they do not undermine reforms to simplify the planning system
- The NPPF policies for rural areas especially in relation to rural economic development and rural housing will need to be expanded to pick up the diverse and differentiated nature of the rural economy so that the policies reflect the different businesses types and diversification that is currently found in a lot of Local Plans. This expanded policy must be applicable for all open countryside including in protected areas
- The nature of planning applications for rural economic development are reconsidered so that the cost of submitting surveys, reports etc (which eats in to fluctuating farming incomes/capital) are either removed or pushed back in the process. The CLA's proposal set out in our *CLA Rural Powerhouse – a planning system designed for the rural economy* recommends that the permission in principle concept be extended to rural economic development proposals
- The white paper should cover Minerals - the white paper must cover both land assets and property assets. The *CLA Rural Powerhouse – a planning system designed for the rural economy* provides a mineral planning policy commentary. The CLA will provide a dedicated minerals submission within the next month
- The white paper does not mention Green Belt planning policy. In simplifying the planning system and planning policy it's unclear why Green Belt planning policy has not been included as part of the white paper. The 70-year-old policy requires review to make it fit for purpose within the proposed simplification aims and objectives of the white paper.

The CLA will be happy to work with the government to find a more nuanced and flexible approach whereby business growth and renewal in open countryside is accepted and indeed encouraged in national and local planning policies, including in designated and protected areas.

9(c). Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime?

[Yes / No / Not sure. Please provide supporting statement.]

No. It is unnecessary. Other legislation is already available for the creation of new settlements. The NSIP regime can deliver housing as part of an infrastructure development. The NSIP regime is designed to deliver infrastructure not for delivering housing on its own.

The CLA has used this question to provide its comments about two alternatives to facilitate the delivery of new developments:

New settlements

The revised NPPF could frame its support for large scale developments. However, it may require longer plan periods of 15+ years. Also, gradations in types of growth allocations for future growth (e.g. delivery in years 6+) but without the necessary detail associated with the grant of planning permission, establishing the principle of the strategy and giving promoters and funding bodies the confidence to do further work on its deliverability and master planning/parameters as required. This would then enable an LDO, Development Corporation or DCO to come along subsequently to give the allocation the necessary permission; a subsequent plan review to elevate the broad location allocation into a full Growth area allocation establishing the necessary outline permission; and if there is still uncertainty or issues cannot be resolved, the planning authority has the ability to reallocate it or change its approach in the next plan review.

Land pooling

The Government has talked of the need to build significantly more homes in order to keep up with population growth and to tackle years of under-supply. Amongst other things, in its Housing White Paper the Ministry of Housing communities and Local Government asked how land pooling could make a more effective contribution to assembling land and wanted views on any barriers inhibiting greater take up, and how those might be addressed and in our response we raised the issue of the tax barriers to land pooling which are set out below.

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*³ 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 first raised this matter with MHCLG during the Housing White Paper 2017 consultation and have been discussing the matter with HMRC/HMT since. The CLA and other organisations have provided evidence to support the need for change, and it would be helpful if MHCLG were to promote this idea to HMT.

10. Do you agree with our proposals to make decision-making faster and more certain?

[Yes / No / Not sure. Please provide supporting statement.]

Yes. The CLA has long been calling for greater use of technology within the planning system. There are huge opportunities to use technology and process re-engineering to improve every part of the planning application process, ensuring that the right information is available at the right times and that activities are triggered at the right times to ensure that the process runs much more effectively. 1APP (though incomplete) has shown how much the first stages of the process can be improved. The greater use of technology needs to be carried through the entire application process from the validation list to the decision, to the discharging of conditions, and to the planning appeals process too.

This is about greatly increasing the efficiency of the process whilst maximising the productivity of inevitably limited resource, but just as importantly it is also about improving user experience and outcomes.

On the Heritage front, to give just two examples, applicant failure to provide (say) heritage analysis in an application would be much easier to detect at validation if there is a specific input box requesting this, with an explanation of what that means, making the provision of information much surer and the determination of applications much easier; and those who comment on

³ <http://www.bailii.org/uk/cases/UKFTT/TC/2009/TC00291.html>

planning applications could be automatically kept informed of the subsequent outcome of the application, rather than being demotivated by being ignored as often happens now.

It is important that this is a thorough re-engineering of the whole system (i.e. it is not just a social media or 3D visualisation project) which is taken forward and implemented.

The CLA is encouraged by the white paper's statement that "validation of applications would be integrated with the submission of the application". For too long the issue of validation lists and the planning officer demands for ever greater quantities of reports and surveys to accompany planning application has plagued planning applications for rural economic development. The costs involved are prohibitive and are all required at the front end of the application process – this together with the uncertainty about the outcomes has led to put many rural businesses simply not bothering to attempt to apply in the first place. Changes to the validation requirements/list would be hugely welcomed and the CLA hopes that the proposal to standardise technical supporting information will cover much more than local highways, flooding and heritage.

The CLA supports the proposals concerning time limits both at application and appeal stages.

Of course, whilst the greater use of technology is laudable, some rural areas continue to experience unsatisfactory broadband connectivity which will restrain their ability to use new technologies. This factor must be taken into consideration.

11. Do you agree with our proposals for accessible, web-based Local Plans?

[Yes / No / Not sure. Please provide supporting statement.]

Yes. But effective public engagement is essential. Better use of technology will not by itself be enough to ensure that.

The white paper (like the BBBBC final report and the Demos report *People Powered Planning*) makes the point that public engagement, in practice, tends now to be dominated by a relatively narrow demographic - older, wealthier, often retired, which tends to oppose development, and that those who might benefit from development, especially the younger, the poorer, and non-homeowners, seldom get involved not least because they will not have the time to be able to do so or the inclination. This is especially true in rural areas (and profoundly so in National Parks and AONBs). As suggested by the BBBBC final report and Demos, specific engagement tools (like, perhaps, citizens' assemblies selected from the electoral roll) are likely to be needed to ensure much wider participation. Technology could help to some extent, but by itself will not be enough to achieve the "radical and profound reinvention" (p16) the white paper seeks. This is not an area of CLA expertise, but we know others are investigating this. Unless there is a radical increase in engagement, the same limited and mainly-anti-development demographic will continue, especially, but not only, in rural areas, to put sustained pressure on local authorities at the Local Plan and planning application public consultation stages, to prevent the changes the white paper envisages, lobbying to minimise Growth areas, minimise housebuilding, and minimise change elsewhere.

12. Do you agree with our proposals for a 30-month statutory timescale for the production of Local Plans?

[Yes / No / Not sure. Please provide supporting statement.]

Yes

13(a). Do you agree that Neighbourhood Plans should be retained in the reformed planning system?

Yes / No / Not sure. Please provide supporting statement.]

Yes. Neighbourhood Plans (NP) are an essential part of engendering community engagement within the planning system. The NP system, if used correctly to deliver housing and employment space that will be required in that settlement over the plan-period, can deliver long term sustainable development for that community. However, more recently it is clear that some are using Neighbourhood Planning to actively restrict development in their communities which is unhelpful and doesn't help to promote the NP concept. The CLA regularly receives queries from CLA members who are concerned that large housing developers continue to pick off large areas of land in the vicinity of villages that are creating neighbourhood plans. This type activity does not help to promote Neighbourhood planning in a positive light; communities wonder why they are bothering to spend huge amounts of time developing a Neighbourhood Plan in these circumstances.

13(b). How can the neighbourhood planning process be developed to meet our objectives, such as in the use of digital tools and reflecting community preferences about design?

Greater use of technology and local design codes and public engagement are all important. Better use of technology will not by itself be enough to ensure that. We would refer to our answer to question 11 above.

14. Do you agree there should be a stronger emphasis on the build out of developments? And if so, what further measures would you support?

Yes / No / Not sure. Please provide supporting statement.]

No. As far as rural economic developments are concerned, the issue of build out rates of new farm buildings, farm dwellings, affordable homes on rural exception sites, change of use of farm buildings to dwellings or commercial uses and so on, are directly affected by fluctuating farm incomes and the higher cost of materials and labour. The submission of planning applications for small-scale rural economic/housing development are funded from farm incomes or a bank loan. The huge upfront cost of submitting a planning application for a small-scale development proposal in rural areas can lead to a lack of cash available to undertake the 'build-out'.

Please ensure that whatever measures you might introduce for build-out rates work for small rural developments too. At the very least a *de minimis* threshold should be included in the

measures so that small developments are excluded from any negative measures that might be imposed on larger developments.

15. What do you think about the design of new development that has happened recently in your area?

[Not sure or indifferent / Beautiful and/or well-designed / Ugly and/or poorly-designed / There hasn't been any / Other – please specify]

Member feedback is that ugly and poorly designed developments are ruining market towns and some villages. The rush to deliver new housing, but also to cut costs, means paying little or no attention to design.

On the other hand, new housing on rural exception sites can be well-designed as the rural landowner who is actively delivering the housing has made sure that design is of a high quality.

16. Sustainability is at the heart of our proposals. What is your priority for sustainability in your area?

[Less reliance on cars / More green and open spaces / Energy efficiency of new buildings / More trees / Other – please specify]

Responding to community needs – the hopes and needs of rural communities for better jobs, housing, transport, services and leisure are similar to those of people in urban areas. Yet many in the countryside feel that they are not receiving the benefit of economic growth and that Government does not fully understand the relationship between rural businesses, rural life and the environment. Sustainability in rural areas is about achieving new jobs, new homes and rejuvenating environment and natural capital.

17. Do you agree with our proposals for improving the production and use of design guides and codes?

[Yes / No / Not sure. Please provide supporting statement.]

Yes, we would encourage these

18. Do you agree that we should establish a new body to support design coding and building better places, and that each authority should have a chief officer for design and place-making?

[Yes / No / Not sure. Please provide supporting statement.]

No. there are plenty of existing bodies who could handle design coding and building better places.

19. Do you agree with our proposal to consider how design might be given greater emphasis in the strategic objectives for Homes England?

[Yes / No / Not sure. Please provide supporting statement.]

N/A

20. Do you agree with our proposals for implementing a fast-track for beauty?

[Yes / No / Not sure. Please provide supporting statement.]

Yes. However, areas designated as “protected” will not benefit from the fast track process, nor will areas such as Conservation Areas and Green Belt etc. There are likely to be similar restrictions limiting development within the vicinity of listed buildings and other heritage assets. As such the fast track route may be more limited than it first seems, which would be a missed opportunity, and prevent ‘levelling up’ in rural areas.

Green Belt in particular includes agricultural land, farm buildings and villages. Rural villages in Green Belt would benefit enormously from new housing, especially affordable housing, and thus the fast track for beauty must be made available in these circumstances.

The CLA asks that the use of the fast track process is extended to small scale housing developments in rural villages including in designated and protected areas and Green Belt with restrictions on its use within the vicinity of heritage assets and listed buildings. This would encourage more land to be brought forward for critically needed new housing (of all types and tenures) in rural areas including in Green Belt and designated and protected areas.

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PROPOSAL 15: Amending NPPF for climate change and environmental benefits mitigation

PROPOSAL 16: Simpler framework for assessing environmental impacts and enhancement opportunities

The CLA is working closely with DEFRA on biodiversity net gain, ELMs, local nature recovery programmes etc and climate change mitigation. We have provided input into the DEFRA review of EIA/SEA. We will be happy to bring our experience to future discussions on these matters.

PROPOSAL 17: Conserving and enhancing our historic buildings and areas in the 21st century and

PROPOSAL 18: To complement our planning reforms, we will facilitate ambitious improvements in the energy efficiency standards for buildings to help deliver our world-leading commitments to net-zero by 2050

The white paper does not include a specific question on proposals 17 or 18. We set out below our comments in respect of both proposals 17 and 18. The CLA represents the largest number of owners of listed buildings and heritage assets in England and Wales.

Proposal 17 - Improving the heritage consent system

We welcome, in general terms, the endorsement of the heritage protection system in Proposal 17. But of course, there is widespread acknowledgement that in practice the system is not working well, especially at current levels of resourcing: a system set up in the 20th century on the assumption that there are five conservation officers in every borough is unlikely to work well now that there is about one - or, in many cases, none. Clearly there will not be five conservation officers in every borough, and it is essential to review the system to ensure that it can work - better than now - with the resourcing which will actually be available in practice. We therefore welcome the undertaking in 3.31 that Government “will review... the planning framework for listed buildings and conservation areas...; [and] explore whether there are new and better ways of securing consent for routine works...”.

This is of course not new: it carries forward the undertaking in the Government’s *Heritage Statement 2017* (p14) to “continue to explore opportunities to streamline heritage consent processes, maintaining the current level of protection... but reducing burdens on owners... and... local planning authorities...”. That in turn carried forward the undertaking in the March 2013 Government *Update on the implementation of the Penfold Review* to make changes to improve the listed building consent system.

Improving the system is a heritage sector as well as a Government objective. Changes are a heritage sector as well as a Government objective: The Heritage Alliance’s *Heritage Manifesto 2019* says “the system can be enhanced by making it easier for owners to make sensible changes without drowning in red tape... [alongside] improved local authority capacity”.

The heritage sector has already largely carried out such a review, in particular via the Historic Environment Protection Reform Group (HEPRG) set up by the cross-sector Historic Environment Forum in 2014. HEPRG first reviewed the system, and then in 2014-20 developed a series of proposals to improve it which explicitly aim to increase (not merely maintain) heritage protection. These are set out [here](#) (see the 2016 ‘Summer Consultation Paper’). They are concerned (i) with improving consent processes; and also (ii) with incentivising the use of skills and heritage analysis in order to improve both proposals and the quality of applications so that they are much easier to process; and (iii) with increasing the effectiveness of planning resourcing in LPAs - this third group of proposals tie in with overlapping proposals in the WP (especially in Proposal 6).

These HEPRG proposals thus already exist, were designed to address the problem, and have been (at least in outline) consulted on, but only small parts have been implemented so far.

Government should help the sector with the careful and staged implementation of the three parts of the HEPRG proposals as above.

These mostly require little input from Government, other than ensuring that they do happen, and some changes to planning guidance (especially amending NPPF paragraph 189).

Additional primary legislation is not a significant part of the solution, and the HEPRG proposals do not require primary legislation. But if there is to be primary legislation, the opportunity should be taken to replace the anti-change core term “preservation” in the Listed Buildings (etc) Act

1990 with the more neutral or positive term “conservation”; and to deal with an obvious natural justice flaw in the Act, by creating statutory rights of consultation before heritage designation, with interim protection, and rights of appeal (the absence of these was criticised by the Supreme Court in its hearing of the *Dill* case in March 2020).

Proposal 18: Decarbonisation, not ‘energy efficiency’

Our other primary concern is the contention in the white paper that decarbonising buildings is only a matter of ‘energy efficiency’, and (in Proposals 17-18) that it requires normal NPPF approaches to be suspended to allow ‘energy efficiency’ works.

Firstly, NPPF policy already takes climate change fully into account as a major factor in planning and LBC decisions. There is therefore no need to suspend normal NPPF policies or procedures.

Secondly, ‘energy efficiency’ is only part of decarbonising buildings. Crude retrofitting based only on ‘energy efficiency’ often has perverse consequences, pumping in high-carbon perverse consequences, inserting short-life interventions which use high-carbon materials like glass, plastics, and metals, failing even to achieve the fuel-use savings claimed, and causing physical damage to buildings and occupier health.

The planning system needs to strongly encourage the re-use of existing buildings rather than carbon-intensive ‘short-life’ new build; few current new buildings are likely to last more than 50-100 years, so this is as correct as any prediction of the future can be.

But the main solutions lie outside the planning system: above all getting the inputs and calculations right, and on a whole-life, circular-economy basis, so that EPCs and the underlying SAP methodology, finally, for the first time, measure buildings and physical measures correctly, taking full account of all carbon impacts, not just fuel costs, and recommend and achieve outcomes which are both effective and physically safe. The current policy has not succeeded, and policy (including that outlined in the current *Improving the energy performance of privately rented homes consultation*) will not succeed until these changes have been made.

21. When new development happens in your area, what is your priority for what comes with it?

[More affordable housing / More or better infrastructure (such as transport, schools, health provision) / Design of new buildings / More shops and/or employment space / Green space / Don’t know / Other – please specify]

Other

In rural areas:

- More rural housing (all types and tenures)
- More landowner provision of rural housing
- Greater use of cross subsidy on rural exception sites
- Increased creation of better-quality jobs

- More and better infrastructure – digital comms, schools, health provision, transport, use of renewables
- Design of new buildings
- More employment spaces

22(a). Should the Government replace the Community Infrastructure Levy and Section 106 planning obligations with a new consolidated Infrastructure Levy, which is charged as a fixed proportion of development value above a set threshold?

[Yes / No / Not sure. Please provide supporting statement.]

Not sure. If the aim of the combined infrastructure levy is to make the entire levy system simpler and understandable, then we would agree to the replacement. However, the white paper contents raise more questions than answers.

Section 106 planning obligations provides flexibility. The white paper is unclear how infrastructure needed as part of a development would be mitigated for. Section 106 planning agreements are used to deliver this mitigation.

The proposals in the white paper suggest that flexibility is being removed from the system in the name of certainty. It is proposed that the Infrastructure levy will be charged on the final value of development, or an assessment of sales value where the development is not sold. This pushes the valuation to a different part of the process which might lead to uncertainty especially when undertaking the initial residual valuation.

Given the proposed changes to the levy, it will not be taking account of viability, this change may lead to uncertainty as a developer will not know, until first occupancy or sale of a dwelling, how much infrastructure levy they will have to pay. Rural landowners, selling productive farmland for housing/other development, may be reluctant to enter into agreements when the land price they may receive is completely unknown.

The new levy will be calculated on the final value of a development (or an assessment of the sales value where the development is not sold). This would suggest that it would not take into account the often-higher costs of delivering brownfield sites. This would make it more attractive for green field sites.

When the valuation takes place, it must be a “Red Book” valuation to provide certainty about the valuation methodology.

If the decision is made to combine CIL and section 106 planning obligations into one combined infrastructure levy, the government must not abolish section 106 itself as it will continue to be used to make other development acceptable e.g. for a rural worker dwelling that is the subject of an occupancy condition.

22(b). Should the Infrastructure Levy rates be set nationally at a single rate, set nationally at an area-specific rate, or set locally?

[Nationally at a single rate / Nationally at an area-specific rate / Locally]

Nationally at an area-specific rate. Given the huge amounts of time planning authorities have had to devote to consultations and examinations of their CIL charging schedules, a nationally set area-specific rate should deliver a faster outcome. However, the rates set should be the subject of public consultation.

A one size fits all rate will not work given the difference in development values across the country. An area specific rate sounds like elements of the local infrastructure tariff proposed by the 2016 CIL Working Group, and which were rejected by the government at the time so it is interesting to see this come back to the table.

The proposed Infrastructure Levy will not take account of viability, which leaves a question mark over how the rate could reflect local circumstances, including the benchmark land values used to judge what is necessary to encourage a willing landowner to make a site (i.e. productive farmland) available for development.

It's worth noting that at the point of payment, the white paper commentary suggests that the rate to be paid could reflect values from up to, say, three years earlier if the life of planning permissions remains the same. In Growth areas, outline planning permission will be granted by the local plan, which has a 10-year life. It's unclear in the white paper, but presumably in this instance the value would be fixed when the developer has gained an implementable planning permission, rather than on the date the local plan was adopted. This requires clarification.

New farm buildings

The CLA has for many years been lobbying MHCLG to recognize that new farm buildings on an established agricultural unit are not buildings into which the public normally go. These buildings are used to house livestock, grain, vegetables, hay and straw and farm machinery etc. There are biosecurity and health and safety issues.

For this reason, we have been lobbying to provide an exemption for new farm buildings from the Community Infrastructure Levy (CIL) (Regulation 6 of the 2010 Regulations). We now pursue this objective in respect of the proposed combined Infrastructure Levy.

It is an area that the CLA is keen to see reformed, as it is hampering the growth of farm and rural businesses.

Agricultural buildings are typically not built to sell or keep as an investment, but to improve the productivity or viability of an established agricultural business, so do not see the any uplift that CIL sets out to capture from commercial or domestic dwellings. Although CIL varies across planning authorities, those areas where a CIL charge is levied on new farm buildings, the requirement to pay a substantial CIL charge has actually stopped farm development from taking place, we have seen examples of charges up to £150,000.

Post-Brexit, farming businesses will need to make much more innovative investment in order to improve their competitiveness and we are concerned that any infrastructure levy charge on new

farm buildings will have an inhibiting effect that is likely to outweigh the economic gains achieved.

As the proposed Infrastructure Levy is developed, we would suggest that now is the time to consider this matter again. The CLA would be happy to continue our discussions to achieve a satisfactory conclusion.

22(c). Should the Infrastructure Levy aim to capture the same amount of value overall, or more value, to support greater investment in infrastructure, affordable housing and local communities?

[Same amount overall / More value / Less value / Not sure. Please provide supporting statement.]

Less value. The CLA has found that the Government captures nearly 60% of the uplift generated by planning permission. This percentage relates to the sale of productive farmland for development purposes. In the majority of cases the Government receives more from the grant of planning permission than the landowner.

The CLA would therefore advise against increasing the amount taken by the Government from land value uplift for the following reasons:

- In reality rural landowners do not receive anywhere near a x100 multiple of land value; that is only available to large scale developments where services have already been installed; these are very costly and will usually be undertaken by the developer.
- Existing mechanisms (CIL, section 106 planning obligations and capital taxes) already capture increases in land value. The level of land value capture (by the Government) is closer to 60% on the basis of our findings.
- Obtaining planning permission is a long, costly and uncertain process. It's right that the risks taken by farmers and landowners putting land up for sale are recognised in the price, alongside the income foregone in perpetuity from use of the land for other purposes, for example farming.

Land value capture must deliver a competitive return to a willing seller.

22(d). Should we allow local authorities to borrow against the Infrastructure Levy, to support infrastructure delivery in their area?

[Yes / No / Not sure. Please provide supporting statement.]

Yes. This may allow better support for the timely delivery of infrastructure. Planning authorities would be able to forward-fund critically needed infrastructure to open up a site for development and as such reduce the delays associated with bringing forward strategic development sites. However, this approach could expose planning authorities to levels of financial risk as the rate of receipt collections would be linked to the performance of the wider property market and the deliverability of a long pipeline of development. In strong market locations with a good pipeline of

development this may be positive, but in areas where the market is more fragile, or with lower rates of housebuilding, the security of borrowing would be lower.

The forthcoming Devolution Bill agenda, which includes a smaller number of larger unitary authorities, who should have a bigger base and pool of potential development, may assist this proposal.

23. Do you agree that the scope of the reformed Infrastructure Levy should capture changes of use through permitted development rights?

[Yes / No / Not sure. Please provide supporting statement.]

No. There must be a rural vs urban distinction built into the reformed Infrastructure levy.

Change of use farm buildings to commercial or residential use

Permitted developments for the change of use of farm buildings to commercial uses or to dwellings provide a marginal return on investment. These are generally single units of development relating to one or possibly up to three farm buildings which are converted using permitted development rights. The cost of labour and materials in rural areas is much higher because of the economies of scale are not available for the development. In urban areas, where a block of offices is converted into dwellings, the return on investment will be higher.

Furthermore, we question the assumption that there will be an increase in impact on infrastructure in rural areas through a change of use of farm building to office or dwelling. If a dairy building is converted to an office or a dwelling, the level of impact on infrastructure will be greatly reduced as vehicle movements to a dairy farm on a daily basis are very high (for example milk tankers, feed and fertilizer lorries, veterinary visits and so on).

The proposal to charge the infrastructure levy on changes of use of buildings must consider and provide for a distinction between the use of permitted development rights in rural vs urban areas.

24(a). Do you agree that we should aim to secure at least the same amount of affordable housing under the Infrastructure Levy, and as much on-site affordable provision, as at present?

[Yes / No / Not sure. Please provide supporting statement.]

Not sure.

Rural exception sites

Planning authorities do not use the full extent of cross subsidy on rural exception sites as they should. If they did, more affordable rural housing (of all types and tenures) would be delivered.

24(b). Should affordable housing be secured as in-kind payment towards the Infrastructure Levy, or as a 'right to purchase' at discounted rates for local authorities?

[Yes / No / Not sure. Please provide supporting statement.]

Not sure. It's not clear if the Government is proposing to put in place a mechanism to make development acceptable aside from the developer including the infrastructure within the planning application. In view of the reference to in-kind payments (albeit only in respect of affordable housing) here it is to be hoped that the many elements of the CIL regime that are not mentioned in the consultation will be able to continue. This would allow for the mitigation of unplanned development, but also to allow the developer to be in control of the delivery of infrastructure that are considered to be essential.

24(c). If an in-kind delivery approach is taken, should we mitigate against local authority overpayment risk?

[Yes / No / Not sure. Please provide supporting statement.]

Not sure

24(d). If an in-kind delivery approach is taken, are there additional steps that would need to be taken to support affordable housing quality?

[Yes / No / Not sure. Please provide supporting statement.]

Not sure

25. Should local authorities have fewer restrictions over how they spend the Infrastructure Levy?

[Yes / No / Not sure. Please provide supporting statement.]

No, it must be spent on infrastructure required in the area.

25(a). If yes, should an affordable housing 'ring-fence' be developed?

[Yes / No / Not sure. Please provide supporting statement.]

N/a

26. Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?

No.

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