
Decision Maker: **DEVELOPMENT CONTROL COMMITTEE**

Date: **Thursday 24 September 2020**

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **'PLANNING FOR THE FUTURE' CONSULTATION**

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Chief Officer: Director of Housing, Planning, Property and Regeneration

Ward: (All Wards);

1. Reason for report

The government has published a consultation entitled "Planning for the Future" which runs from 6th August 2020 to 29th October 2020. The consultation seeks views on each part of a package of proposals for *"reform of the planning system in England to streamline and modernise the planning process, improve outcomes on design and sustainability, reform developer contributions and ensure more land is available for development where it is needed"*. This report proposes the Council's formal responses to the consultation.

2. **RECOMMENDATION(S)**

That the responses proposed below be agreed as the Council's formal response to the government's "Planning for the Future" consultation.

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council Quality Environment Vibrant, Thriving Town Centres Regeneration:
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Financial

1. Cost of proposal: No Cost: Response within existing resources
 2. Ongoing costs: Costs if proposed measures are taken forward are unknown at this stage
 3. Budget head/performance centre: Planning
 4. Total current budget for this head: £1.785m
 5. Source of funding: Existing revenue budget 2020/21
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Personnel

1. Number of staff (current and additional): As existing
 2. If from existing staff resources, number of staff hours: 10
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Legal

1. Legal Requirement: Non-Statutory - Government Guidance
 2. Call-in: Not Applicable
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

- 3.1 The government published a consultation on 6th August 2020 entitled “Planning for the Future”. This seeks views on each part of a package of proposals for *“reform of the planning system in England to streamline and modernise the planning process, improve outcomes on design and sustainability, reform developer contributions and ensure more land is available for development where it is needed”*.

The full consultation document due to its size is not appended to this report but can be viewed at <https://www.gov.uk/government/consultations/planning-for-the-future>

- 3.2 The consultation comprises a number of questions, for which proposed responses are set out below. There are also areas around which specific questions are not set in the consultation but for which additional response text is being suggested.

- 3.3 The consultation sets out the issues that the government perceives with the current planning system. These are:

- It is too complex
- Planning decisions are discretionary rather than rules-based
- It takes too long to adopt a Local Plan
- Assessments of housing need, viability and environmental impacts are too complex and opaque
- It has lost public trust
- It is based on 20th-century technology
- The process for negotiating developer contributions to affordable housing and infrastructure is complex, protracted and unclear
- There is not enough focus on design, and little incentive for high quality new homes and places
- It simply does not lead to enough homes being built

- 3.4 The proposals are intended to:

- be more ambitious for the places we create
- move the democracy forward
- improve the user experience of the planning system
- support home ownership
- increase the supply of land available for new homes where it is needed
- help businesses to expand
- support innovative developers and housebuilders,
- promote the stewardship and improvement of our precious countryside and environment
- create a virtuous circle of prosperity in our villages, towns and cities

- 3.5 The proposals are summarised in the consultation in five main areas as follows:

1. Streamline the planning process with more democracy taking place more effectively at the plan making stage;
2. Take a radical, digital-first approach to modernise the planning process. This means moving from a process based on documents to a process driven by data;
3. Bring a new focus on design and sustainability;
4. Improve infrastructure delivery in all parts of the country and ensure developers play their part;
5. Ensure more land is available for the homes and development people and communities need, and to support renewal of our town and city centres.

- 3.6 The consultation is presented under three headings described as ‘Pillars’ and the questions asked under each pillar are set out below along with proposed responses. Since the questions are written for a broad range of respondees, some questions are less relevant or unsuitable for a Local Planning Authority response and in some cases no comment is suggested. Proposed responses are in italic.

Pillar One: Planning for development:

Overview:

- 3.7 Q1: What three words do you associate most with the planning system in England?

No response proposed

- 3.8 Q2: Do you get involved with planning decisions in your local area? Q2(a). If no, why not?

Yes, we are the Local Planning Authority

- 3.9 Q3: 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?

We support a range of consultation and notification options for applications and policies, including social media and online; however we are keen to ensure that all those affected are notified and it is difficult to envisage how this could be achieved for planning applications if the existing letter and/or site notice approach is scrapped.

- 3.10 Q4: What are your top three priorities for planning in your local area?

These are set out in our Local Plan.

Proposal 1: The role of land use plans should be simplified. We propose that Local Plans should identify three types of land – Growth areas suitable for substantial development, Renewal areas suitable for development, and areas that are Protected.

- 3.11 Q5: Do you agree that Local Plans should be simplified in line with our proposals?

We do agree in principle, however we would like reassurance that local designations such as Areas of Special Residential Character, as well as the mentioned national designations such as Conservation Areas, could be suitably protected from unsuitable development. Additionally, the use of permission in principle should be carefully controlled so as not to undermine local character.

We are not sure there is a clear distinction between Growth and Renewal areas, and a system of Design Codes and permission in principle has potential to become more complex than the current system.

Proposal 2: Development management policies established at national scale and an altered role for Local Plans.

- 3.12 Q6: Do you agree with our proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally?

We would welcome the removal of duplication of regional / national policies in Local Plans and the streamlining of development management policies but only where this process would not remove the ability of Local Planning Authorities to set specific policies in their Local Plans to protect the unique characteristics of their area. For example Bromley has a long established

local policy requiring a minimum one metre sidespace for new residential development over one storey in height and this has created a high quality spacious character to the Borough which is not a feature of other areas.

Proposal 3: Local Plans should be subject to a single statutory “sustainable development” test, replacing the existing tests of soundness.

- 3.13 Q7: 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? 7(b). How could strategic, cross-boundary issues be best planned for in the absence of a formal Duty to Cooperate?

We agree with the proposal for a single statutory test, which is essential if there is any chance of LPAs meeting the proposed new statutory deadlines for Local Plans. We do have some concerns that a slimmed down approach might not reduce delays to Local Plans, as plans will still need to be prepared to address relevant environmental and equalities legislation, otherwise it will be at risk of legal challenge.

We support the removal of the Duty to Co-operate, but would welcome detail on how any replacement process would work, particularly given the strategic planning role of the Mayor of London. The issue of housing targets is a particular relevant issue and a common bone of contention with the Duty to Co-operate; any replacement procedure needs to ensure that there is a democratic process for identifying such targets, particularly where it involves unmet need from other authorities being imposed on an LPA.

We do not agree with the alternative proposal to identify reserve sites which could come forward for development if needed. Such sites would be likely to undermine important designations and may provide an incentive for developers to deliberately delay other sites in the hope of bringing reserve sites forward.

Proposal 4: A standard method for establishing housing requirement figures which ensures enough land is released in the areas where affordability is worst, to stop land supply being a barrier to enough homes being built. The housing requirement would factor in land constraints and opportunities to more effectively use land, including through densification where appropriate, to ensure that the land is identified in the most appropriate areas and housing targets are met.

- 3.14 Q8: Do you agree that a standard method for establishing housing requirements (that takes into account constraints) should be introduced? 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?

We support the standard method subject to a system of numerical allocation that effectively takes account of existing constraints. Bromley has a vast area of Green Belt, numerous Conservation Areas and other high quality residential suburbs with distinctive character all of which provide serious constraints to significant new development / redevelopment. There are areas of the Borough which are capable of redevelopment and/or intensification, however housing requirements should be realistically based on the availability of these areas rather than arbitrarily calculated based on a national or regional split.

Recent housing targets set regionally for Bromley have been unrealistically based on not releasing any protected land (primarily Green Belt) and have led to appeals being allowed for housing on protected land (Metropolitan Open Land, Urban Open Space).

However, the proposal to take into account the relative affordability of places (so that the least affordable places where historic under-supply has been most chronic take a greater share of

future development) is flawed because under supply is usually related to important constraints that prevent further supply being delivered such as Conservation Areas, Green Belt, public transport and school capacity etc.

A focus on urban areas also risks increasing the pressure on existing infrastructure. Bromley has a number of urban areas and if significant development is focused in these areas without appropriate infrastructure improvements, this could have a significant impact on the Borough.

Proposal 5: Areas identified as Growth areas (suitable for substantial development) would automatically be granted outline planning permission for the principle of development, while automatic approvals would also be available for pre-established development types in other areas suitable for building.

- 3.15 Q9: Do you agree that there should be automatic outline permission for areas for substantial development (Growth areas) with faster routes for detailed consent? 9(b). Do you agree with our proposals above for the consent arrangements for Renewal 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?

Subject to a suitable process for designating Growth Area a faster route for consent for these areas would be a logical and positive step.

For the Renewal areas we are not reassured at this point that local people would have sufficient input to the process as they do at present and we are not sure that there is sufficient difference between Growth and Renewal areas so as to require two categories in addition to Protected areas. It is not clear if the reference to 'automatic' permission is a different route to PiP or outline permission. If the intention is that automatic permission is the grant of PiP through Local Plans, this would support the creation of a single category rather than separate growth and renewal categories.

New settlements should be brought forward through planning consent rather than via the Nationally Significant Infrastructure Projects regime as this is designed for infrastructure rather than new settlements which are far more complex in their design and needs and how they interact with the areas around them.

Proposal 6: Decision-making should be faster and more certain, with firm deadlines, and make greater use of digital technology

- 3.16 Q10: Do you agree with our proposals to make decision-making faster and more certain?

The planning application process is slow and cumbersome and LPAs do not have access to the technology and resources they need to improve this. We support faster and more certain decision making and greater use of digital technology subject to appropriate consultation methods and time for input from local people. However, any changes to the system should not create further pressure on local authority revenue budgets and impact on local council tax payers. It is therefore imperative that additional appropriate resources are provided to enable LPAs to set up and administrate new systems.

However, deemed planning permission based on timescale is a fundamentally unacceptable concept which can lead to approval being given for inappropriate non-development plan compliant development on a technicality. LPAs should also not be required to pay back fees as it is likely that under-resourced LPAs would be the ones most likely to take more than the target time period to determine applications this would further erode their ability to make good decisions on time and undermine the planning system.

A proposal to take money from LPAs either from failure to determine applications within a timescale or for losing appeals, and giving it to developers, alongside radical proposals to improve the operation of LPAs and improve the use of technology is also unacceptable and entirely incompatible and illogical as reducing LPAs financial resources will prevent improvements and further disrupt and delay planning processes.

We do support greater use of technology, standardising templates and digitising the processes, but LPAs will also need considerable help in the form of financial input and technological support for most of the ideas mentioned. There are a wide range of software solutions currently in use and these would need to be standardised. There is limited scope based on current fee income to achieve the aims for technological improvement.

A new interactive, web-based map standard for planning documents

Proposal 7: Local Plans should be visual and map-based, standardised, based on the latest digital technology, and supported by a new template.

3.17 Q11: Do you agree with our proposals for accessible, web-based Local Plans?

We agree with the improvements to Local Plan processes and accessibility subject to the availability of suitable resources.

Proposal 8: Local authorities and the Planning Inspectorate will be required through legislation to meet a statutory timetable for key stages of the process, and we will consider what sanctions there would be for those who fail to do so.

3.18 Q12: Do you agree with our proposals for a 30 month statutory timescale for the production of Local Plans?

The lack of flexibility of Local Plans and the time it takes for a review are fundamental problems with the planning system – plans are often out of date by the time they are fully adopted and cannot adapt to rapidly changing circumstances such as COVID-19. We welcome these proposals again subject to suitable resources being available. This is also linked to the supply and availability of professional planners as well as sufficient resources being available to LPAs.

Any sanctions must allow for exceptional circumstances to be put forward by LPAs. Even a simplified planning system, with tightly legislated plan preparation stages, could still be subject to delays beyond the control of an LPA, for example due to resourcing issues or legal challenges. It would be unfair for LPAs to be penalised for such delays.

Proposal 9: Neighbourhood Plans should be retained as an important means of community input, and we will support communities to make better use of digital tools

3.19 Q13: Do you agree that Neighbourhood Plans should be retained in the reformed planning system?

We have not had any neighbourhood plans in Bromley, however the ability to plan for very small Neighbourhood Plan areas, as well as a simplified process for adopting plans, may alter this. The ability for local group to set out detailed local design codes may also be a strong incentive. Neighbourhood plans may be a suitable way to achieve the input at an earlier stage of local people into a streamlined planning process. We do not have any objection to their retention in principle but we would highlight the need to resource LPAs accordingly so they can fulfil the duty to support neighbourhood forums preparing plans, particularly advice on how a neighbourhood plan would link with a Local Plan

Proposal 10: A stronger emphasis on build out through planning

- 3.20 Q14: Do you agree there should be a stronger emphasis on the build out of developments? And if so, what further measures would you support?

We support stronger emphasis on build out as extant but unimplemented planning consents create difficulties in assessing housing supply and at present many developers seem to seek planning consent without any intention of implementation – for example for increasing land value. We do not have any suggestions for incentives to achieve this, however we do consider that LPAs should not be held responsible for ensuring that schemes are built out, and perhaps where there is evidence of delays to build out due to developer behaviour and business models, the LPA should potentially get an allowance to count towards delivery test for schemes that would ordinarily have been expected to have completed. At present the 5 year housing supply in Bromley is in part being disrupted by large sites with permission but which are not being built out.

Pillar Two – Planning for beautiful and sustainable places

Overview:

- 3.21 Q15: What do you think about the design of new development that has happened recently in your area?

No comment.

- 3.22 Q16: Sustainability is at the heart of our proposals. What is your priority for sustainability in your area?

Priorities are set out in our Local Plan.

Proposal 11: To make design expectations more visual and predictable, we will expect design guidance and codes to be prepared locally with community involvement, and ensure that codes are more binding on decisions about development.

- 3.23 Q17: Do you agree with our proposals for improving the production and use of design guides and codes?

We support this proposal with the suitable involvement of local people as this will help ensure a design vision for a particular area is fulfilled and provide applicants with a strong steer on design which is an area many LPAs lack expertise in at present. As noted in response to earlier questions, this support is also predicated on the availability of sufficient resources for LPAs.

We do note a potential concern related to the proposal to limit the length of consultation stages to allow for community input. This may affect the ability of LPAs to bring forward design codes in conjunction with Local Plans

Proposal 12: To support the transition to a planning system which is more visual and rooted in local preferences and character, we will set up a body to support the delivery of provably locally-popular design codes, and propose that each authority should have a chief officer for design and place-making.

- 3.24 Q18: 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, LPAs need support in this area. It would be a positive step to ensure each LPA had a chief officer for this subject to additional funding being made available, however some LPAs may be lacking in appropriately skilled staff to fulfil this role.

Proposal 13: To further embed national leadership on delivering better places, we will consider how Homes England's strategic objectives can give greater emphasis to delivering beautiful places.

3.25 Q19: Do you agree with our proposal to consider how design might be given greater emphasis in the strategic objectives for Homes England?

Yes. In London, there needs to be clear guidance on how these objectives relate to any regional guidance produced by the Mayor, in order to avoid confusion for London LPAs.

Proposal 14: We intend to introduce a fast-track for beauty through changes to national policy and legislation, to incentivise and accelerate high quality development which reflects local character and preferences.

3.26 Q20: Do you agree with our proposals for implementing a fast-track for beauty?

We do support good design which improves places, however beauty is a difficult concept on which opinions differ widely, including the interpretation of whether something might meet a 'beauty' criteria in a published document. We do not agree that this is a tangible enough area to make subject of a fast track procedure and we believe there will be excessive debate and uncertainty which will potentially undermine the process.

We do not agree with the expansion of permitted development rights based on beauty. Permitted development has been extended to a point where it fundamentally undermines aspects of the planning system (such as developer contributions and Green Belt policy) and has led to very poor quality development, disenfranchising local communities and reducing support for the planning system as a whole. There would be no need for further permitted development if the planning process is improved. We do not see how a proposal for form-based PD rights will interact with the proposal to zone areas and grant PiP subject to a design code; the proposed PD rights would surely undermine locally prepared design criteria. We would argue for a vast reduction in the current permitted development regime, which does not meet the objectives and aspirations of the planning system or indeed the system envisaged by this consultation.

Proposal 15: We intend to amend the National Planning Policy Framework to ensure that it targets those areas where a reformed planning system can most effectively play a role in mitigating and adapting to climate change and maximising environmental benefits.

Proposal 16: We intend to design a quicker, simpler framework for assessing environmental impacts and enhancement opportunities, that speeds up the process while protecting and enhancing the most valuable and important habitats and species in England.

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

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 commitment to net-zero by 2050.

Pillar Three – Planning for infrastructure and connected places

3.27 Q21: When new development happens in your area, what is your priority for what comes with it?

Our priorities are set out in our Local Plan.

Proposal 19: The Community Infrastructure Levy should be reformed to be charged as a fixed proportion of the development value above a threshold, with a mandatory nationally-set rate or rates and the current system of planning obligations abolished.

3.28 Q22: 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? 22(b). Should the Infrastructure Levy rates be set nationally at a single rate, set nationally at an area-specific rate, or set locally? 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? 22(d). Should we allow local authorities to borrow against the Infrastructure Levy, to support infrastructure delivery in their area?

Without detail it is difficult to properly determine the merits of the proposal and we would be concerned if the single levy was set at a rate that did not at least equate to the investment value currently gained from the current system. However, we support the principle of a single Infrastructure Levy (with some concern about the inclusion of affordable housing, noted below) and believe that such a levy should be set locally as for CIL at present, to reflect local circumstances and to ensure that it does not stifle development. The proposed threshold should also be set locally. Given the different types of development and their delivery models – and the differing strength of their markets in different parts of the country (and even in adjacent LPAs in London), it is difficult to see how a standard tariff could apply.

Basing the levy on the final value of proposals could create risk for developers, particularly relating to development finance, if the levy amount is not known until late in the development process. If the charge is levied on occupation, this makes it more difficult for LPAs to determine the trigger point for payment. On commencement, this can be easily assessed (for example, through building control records). In general, we support giving LPA's the option to borrow against the Infrastructure Levy; however, payment on occupation may also dissuade LPAs from utilising the potential to borrow against the levy, as there will be significant uncertainty about when, or even if, levy payments will be received. If a charge is levied on commencement, funds would be received at an earlier stage of development which would create more certainty for borrowing.

The ability for local planning authorities to agree bespoke, site specific contributions through a mechanism like S106 agreements should be retained.

Proposal 20: The scope of the Infrastructure Levy could be extended to capture changes of use through permitted development rights

3.29 Q23: Do you agree that the scope of the reformed Infrastructure Levy should capture changes of use through permitted development rights?

Yes, all permitted development should contribute to local infrastructure in the same way that other development does. The proposed changes should also consider rectifying the current issue with CIL collection on such sites (where it is required to pay CIL) as it is not always possible to determine when a liability has been triggered on PD schemes.

Proposal 21: The reformed Infrastructure Levy should deliver affordable housing provision

- 3.30 Q24: 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? 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? If an in-kind delivery approach is taken, should we mitigate against local authority overpayment risk? If an in-kind delivery approach is taken, are there additional steps that would need to be taken to support affordable housing quality?

Yes, we consider that determining affordable housing requirements, and the level it should be secured at, should remain the judgement of the Local Planning Authority. As a basic aim, levels of affordable housing should be no less than current provision, but this is a low bar in areas where affordable housing has been under-delivered. The requirements for affordable housing should be linked to locally identified need with a strong presumption that affordable housing is provided. On-site provision of high-quality affordable housing must continue to be strongly prioritised. Off-site contributions for affordable housing should only be allowed in exceptional cases, to be determined by the LPA.

We consider that local authorities should be permitted a range of options for affordable housing delivery. This should include the current approach to secure on-site delivery via S106 agreements which specifically ring fences affordable housing delivery from other aspects of infrastructure delivery. There is a risk that in-kind payments such as that proposed through the new levy could diminish contributions for other infrastructure, as it relies on accurate assessments of market value at the point of application. In-kind mechanisms are rarely utilised through the existing CIL mechanism for this reason.

Proposal 22: More freedom could be given to local authorities over how they spend the Infrastructure Levy

- 3.31 Q25: Should local authorities have fewer restrictions over how they spend the Infrastructure Levy? 25(a). If yes, should an affordable housing 'ring-fence' be developed?

We would support further flexibility being introduced, although consider it is important that any levy is targeted to infrastructure required to deliver the local plan, rather be assumed to replace other existing sources of funding.

Proposal 23: As we develop our final proposals for this new planning system, we will develop a comprehensive resources and skills strategy for the planning sector to support the implementation of our reforms.

Proposal 24: We will seek to strengthen enforcement powers and sanctions

- 3.32 Q26: 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

- 3.33 It is not proposed to add any further comments in addition to the responses set out above to the questions in the consultation.

4. POLICY IMPLICATIONS

The proposed reform of the planning system could have significant policy implications for the Council depending on what the outcome of this consultation is. Changes to planning policies

could have a wider impact on the Council's other policies, e.g. housing, however it is not possible to predict these at this point in the process.

5. FINANCIAL IMPLICATIONS

The proposals set out in the consultation potentially could have significant financial consequences which are currently not quantifiable. The main impacts are as follows:

- future levy income for investment in infrastructure and affordable housing compared to the existing S106 and proposed Borough CIL sources;
- the cost of setting up and administering any revised system and reform of the planning system in general; and
- the impact on planning revenue income, including the potential of repaying application fees.

The progress of this consultation will need to be closely monitored, including the Government's position regarding providing adequate resourcing to implement and administer a future system. Any financial impacts will be reported to Members.

6. PERSONNEL IMPLICATIONS

The reform of the planning system could affect staffing requirements positively or negatively, and the extent of this is not yet known.

7. LEGAL IMPLICATIONS

The Council's statutory functions and powers as Local Planning Authority may be changed as a consequence of the proposed reforms.

8. PROCUREMENT IMPLICATIONS

There may be procurement of additional staff / services or consultants as a result of these reforms but the extent is not yet known.

Non-Applicable Sections:	IMPACT ON VULNERABLE ADULTS AND CHILDREN
Background Documents: (Access via Contact Officer)	Planning for the future consultation https://www.gov.uk/government/consultations/planning-for-the-future Bromley Local Plan 2019