

Agenda Item No. 4(b)

**DERBYSHIRE COUNTY COUNCIL**

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND  
INFRASTRUCTURE**

**26 June 2018**

Report of the Strategic Director – Economy, Transport and Environment

**CONSULTATIONS ON DRAFT NATIONAL PLANNING POLICY  
FRAMEWORK AND SUPPORTING HOUSING DELIVERY THROUGH  
DEVELOPER CONTRIBUTIONS**

(1) **Purpose of Report** To agree the County Council's formal response to consultations by the Ministry of Housing, Communities and Local Government (MHCLG) on:

- Draft National Planning Policy Framework (DNPPF); and
- Supporting Housing Delivery Through Developer Contributions (SHDTDC)

(2) **Information and Analysis** As a follow-up to the consultations on the Housing White Paper, 'Fixing our Broken Housing Market' (February 2017), 'Planning for the Right Homes in the Right Places' (September 2017), and its subsequent commitments in the 2017 Autumn Budget, the Government stated consultation on a package of reforms for the planning system on 5 March 2018. These included both revisions to the National Planning Policy Framework (NPPF) and reforms to the developer contributions system. Both consultations canvassed responses to a wide range of questions on proposed changes to planning policy and developer contributions.

In formulating the County Council's responses on both consultations to meet MHCLG's deadline of 10 May 2018, extensive discussion and consultation took place at both Member and Officer level within the County Council. In particular, the DNPPF was discussed at a meeting of Derbyshire County Council on 11 April 2018, which primarily focussed on the revised policy approach in the Framework to the exploration and extraction of hydrocarbons, including unconventional hydrocarbons. At the meeting, a motion and subsequent amended motion was debated at length by Members and concluded that Derbyshire County Council formally objected to the proposed policy changes in the DNPPF relating to the exploration and extraction of hydrocarbons and unconventional hydrocarbons. The motion that was agreed

also indicated that Derbyshire County Council recognised that a wide range of proposed policy changes in the DNPPF (not limited to oil and gas exploration) were positive and that this would be drawn out in additional comments submitted by the County Council.

Derbyshire County Council's comments on the SHDTDC consultation were formulated in discussions between officers and individual members. Further details are set out in the report below and in full in the appendices to this report. Due to limited timescales available, a response has been produced to Government regarding the consultation. The Cabinet Member is now requested to endorse these responses as set out in this report.

### **Draft National Planning Policy Framework**

The existing NPPF was published by Government in March 2012. The consultation on the DNPPF includes a range of proposed changes to the development plan making and decision making processes, particularly aimed at meeting the Government's objective to significantly increase the supply of new housing. There is a much greater emphasis in the proposed policy changes towards strategic plan making, the need for local authorities to set out strategic policies in their development plans and particularly for local authorities (including county councils) to maintain effective collaboration to identify the relevant to be addressed through statements of Common Ground.

The consultation proposes amendments to the definition of sustainable development, split into the plan-making and decision taking functions. It includes new wording which emphasises that the adverse impact on protected areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in plan making and a clear reason for refusing development proposed in decision taking.

The consultation changes include a new chapter on the delivery of new homes, incorporating a new standard methodology to be applied by local planning authorities (LPAs) to assess their overall housing need, and a new Housing Delivery Test, which requires LPAs to prepare an action plan if housing delivery falls below 95% of their housing requirement over the previous three years. There is also greater emphasis on the importance of the identification of smaller sites for meeting a LPA's housing requirement. The economy section has been amended to include a requirement that planning policies should set out a clear economic vision and strategy for an area which positively and proactively encourages sustainable economic growth having regard to Local Industrial Strategies and other local policies for economic development and regeneration. Greater emphasis is placed on policies which support the rural economy and sustainable growth of all rural businesses, including those outside existing settlements that are not well served by public transport.

A new chapter has been included on promoting healthy and sustainable communities which places greater emphasis on the role that planning can play in promoting social interaction and healthy lifestyles. Amendments are proposed to the sustainable transport section that requires planning policies to support an appropriate mix of uses across an area, and within strategic site. The purpose of these changes is to help minimise the number and length of journeys needed for employment, shopping, leisure, education and other activities, including opportunities to increase densification of development.

The DNPPF retains an emphasis on good design with policy now being more specific about how good design should be achieved, for example, by the use of design codes and specific standards such as 'Building for Life'. The policy approach to Green Belt remains largely unchanged, although greater emphasis is placed on the priority which should be given to previously developed land that is well served by public transport.

The section on sustainable use of minerals has been amended to include a new specific policy section on oil, gas and coal exploration and extraction. The policy proposals require Minerals Planning Authorities (MPAs) to recognise the benefits of the exploration and extraction of hydrocarbons when deciding planning applications and to plan positively for them. It also requires that MPAs should recognise the benefits of onshore oil and gas development, including unconventional hydrocarbons for the security of energy supplies supporting the transition to a low carbon economy and put in place policies to facilitate their exploration and extraction.

In summary, the detailed officer comments on the DNPPF:

- support many of the proposed policy changes in the DNPPF, particularly the separation of the plan making and decision taking functions; the greater emphasis placed on strategic plan making and strategic policies and the enhanced role of county councils in both processes in working jointly with local authorities in setting the key strategic priorities of an area; the introduction of a standard methodology for calculating housing need; and the priority given to previously developed land, where Green Belt land release is deemed to be necessary;
- express concern that the Government has not taken the opportunity to incorporate planning policies for Gypsies and Travellers in the DNPPF, which will remain as a separate policy document;
- accept that the five year housing land supply test should be applied to the presumption in favour of sustainable development but oppose the inclusion of the Housing Delivery Test to the presumption due to its short term nature that may be subject to exceptional circumstances;
- consider that making viability assessments open to public scrutiny could lengthen the time taken to determine planning applications and that

local development plan documents are the most appropriate vehicle to set out the circumstances in which viability assessments should be submitted with planning applications;

- express concern that the economy section of the DNPPF only amounts to four paragraphs, when economic development is at the heart of sustainable development and given the importance placed on the economy by the Government in its consultation on the National Industrial Strategy. The policy approach appears to be very imbalanced when compared the other sections of the Framework which are extensively focussed on housing provision;
- express concern about proposed changes to retail policy, particularly the reduced timeframe for consideration of delivery of sites in the sequential test and that the Government should have taken the opportunity to clarify the approach to 'flexibility' in the assessment of sequentially preferable sites;
- express concern that the 'severe' test still remains in the Framework as the basis for the assessment of impacts of development on the highways network in determining planning applications as this can rule out the opportunity to secure developer contributions towards the mitigation of offsite impacts over the wider transport network; and
- support the inclusion of policies for minerals in the DNPPF but consider that national policies for waste should also be included in the Framework rather than in a separate policy document.

In addition to the comments set out above and in the Appendix, in further consultation with Councillor Trevor Ainsworth, it is also recommended that the County Council's response should include the following in respect of its comments on Chapter 13 and Question 30 of the consultation:

The County Council considers that the review of Green Belt boundaries is a key Duty to Cooperate and cross-boundary strategic matter. Section 13 of the Framework and particularly Paragraph 135 should make this clear and require local planning authorities in undertaking Green Belt reviews in their areas to work jointly with their adjoining local authorities and county councils to carry out such Green Belt reviews, particularly to establish the evidence base and agree a common Green Belt appraisal methodology to support such reviews.

### **Supporting Housing Delivery through Developer Contributions**

In its consultation on [Supporting Housing Delivery through Developer Contributions](#), the Government put forward its proposals to reform the existing system of developer contributions in order to address the complexity and uncertainty which affects the current system.

The Community Infrastructure Levy (CIL) is a planning charge introduced by the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver infrastructure to support development of their area. It came into

force on 6 April 2010, through the Community Infrastructure Levy Regulations 2010. Subsequent reviews of the Regulations have been undertaken and a report published in February 2017 found that the system of developer contributions (i.e. CIL/S106) was not as fast, certain or transparent as originally intended. In response, the Government has announced a number of reforms to make the system of developer contributions more transparent and accountable by:

- reducing the complexity and increasing certainty for local authorities, developers and communities;
- supporting swifter development;
- improving market responsiveness of CIL;
- increasing transparency over where developer contributions are spent; and
- introducing a new tariff to support the development of strategic infrastructure.

The issue of viability is also addressed through the consultation on the DNPPF.

The consultation posed 34 questions on the subject areas outlined in the above five bullet points. Consultation took place at both members and officers within the County Council, with the draft response being presented to Councillors King, Ford and Spencer prior to its submission. The response to these questions can be viewed in full in the appendix to this report. In summary, the main thrust of the County Council's response to Government:

- expressed concern that the three scenarios proposed by Government where the pooling restriction would be lifted would make the system more convoluted, less transparent and increase monitoring requirements. Currently, the CIL Regulations restrict the number of Section 106 obligations which can be pooled towards a project or item of infrastructure to five. The County Council recommended that if pooling were to be removed in its entirety, this would help to deliver the growth needed to support development in a timely manner, reduce the complexity of monitoring and reduce the incidence of challenge;
- agreed that the setting of a CIL and the amount of consultation required should be proportionate to allow a CIL charging schedule to be more reactive to market fluctuations;
- agreed that the Regulation 123 list (which lists infrastructure projects/ types of infrastructure that the Charging Authority intends will be, or may be, wholly or partly funded by CIL and for which Section 106 cannot be sought) should be removed and replaced with an Infrastructure Funding Statement (IFS). The County Council suggested that an IFS should list the infrastructure required to support development in a local plan over a five year period with a section to address longer term strategic projects

either within the plan period, or up to 10 years. The IFS would also indicate, but not bind the Authority, to how the infrastructure would be funded (i.e. CIL versus Section 106);

- agreed that Section 106 monitoring fees should be allowed to be charged and, where there are two tier authority areas, consideration needs to be given to fees for each authority;
- recommended the indexation of CIL should be via Building Cost Information Service (BCIS) All in Tender price as this takes account of build costs and not the Consumer Price Index as house price indices can fall as well as rise, whilst the construction cost of infrastructure generally rises; and
- welcomed the option to introduce a Strategic Infrastructure Tariff (SIT), however, this should not be limited to Combined Authorities and Joint Committees with strategic planning powers. It was strongly recommended that, as the delivery agent for large scale infrastructure, this opportunity should also be given to county councils to be an accountable body for a SIT in order to deliver strategic infrastructure.

It should be noted that the Government intends to continue to explore options for going further to the levying of developer contributions, with a potential option being for contributions to affordable housing and infrastructure to be set nationally and be non-negotiable. This, however, would require further consultation.

(3) **Financial Considerations** There are no financial considerations directly associated with this report.

(4) **Legal Considerations** The recommendation in this report is made in the context of the County Council's responsibilities and services under the provisions of the Localism Act 2011, the Planning and Compulsory Purchase Act 2004 and CIL Regulations (as amended) 2017.

(5) **Social Value Considerations** The relevance of social value in terms of social, economic and environmental wellbeing has been considered in the preparation of this report. Meeting the current and future needs of communities and the management of scarce resources (i.e. sustainable development) is central to the role of local and county planning authorities in preparing and implementing their local plans.

## Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(6) **Key Decision** No.

- (7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.
- (8) **Background Papers** Held on file within the Economy, Transport and Environment Department. Officer contact details – Steve Buffery, extension 39808.
- (9) **OFFICER'S RECOMMENDATION** That the Cabinet Member delegates authority to officers to send a formal response to the Ministry of Housing, Communities and Local Government on its consultations on the Draft National Planning Policy Framework and Supporting Housing Delivery Through Developer Contributions, as set out in this report and appendices.

**Mike Ashworth**  
**Strategic Director – Economy, Transport and Environment**

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Our Ref: Draft NPPF/PM/SB  
Your Ref:  
Date: 10<sup>th</sup> May 2018

Dear Sir,

## **MINISTRY OF HOUSING, COMMUNITIES AND LOCAL GOVERNMENT CONSULTATION**

### ***DRAFT NATIONAL PLANNING POLICY FRAMEWORK (DNPPF), MARCH 2018***

#### ***Derbyshire County Council (DCC) response***

The consultation on the Draft National Planning Policy Framework (DNPPF) was discussed at a meeting of Derbyshire County Council held on 11 April 2018 at County Hall, Matlock. Particular consideration at the meeting was given by the County Council's Members to the Government's specific proposed policy approach to the sustainable use of minerals and the DNPPF's proposed revisions which require Minerals Local Planning Authorities to recognise the benefits of the exploration and extraction of hydrocarbons when deciding planning applications and to plan positively for them; and that Minerals Planning Authorities should recognise the benefits of onshore oil and gas development, including unconventional hydrocarbons for the security of energy supplies supporting the transition to a low carbon economy and put in place policies to facilitate their exploitation and extraction.

At the meeting, a motion and subsequent amendment was debated at length by Members and concluded as follows:

That Derbyshire County Council welcomes the Government's commitment to reducing the amount of plastic in the environment and notes the Government's recent assurances about the long-term security of gas supplies from current sources but can see no justification for the proposed change to the DNPPF that would give preferential status to unconventional hydrocarbons by requiring mineral planning authorities to put in place policies to facilitate their exploitation and extraction. Therefore Derbyshire County Council formally objects to the proposed policy change in the DNPPF. A full copy of the motion and amended motion are attached at appendix 1 to this letter.

The County Council would advise that it is recognised that a wide range of proposed policy changes in the DNPPF (not limited to oil and gas exploration) are positive and this is drawn out in the detailed comments set out below.



## **Chapter 1: Introduction**

### **Q1: Do you have any comments on the text of Chapter 1?**

Yes. Paragraph 2 states that 'Planning law requires that applications for planning permission be determined in accordance with the development plan' ... Footnote 2 states that the development plan includes 'the local and neighbourhood plans that have been brought into force, and any spatial development strategies produced by combined authorities or elected mayors (see glossary)'. However, 'Development plan' in the glossary only includes adopted local plans, made neighbourhood plans and any made and published spatial development strategies together with any regional strategy policies that remain in force. DCC would suggest that such status should also apply to an informal agreed spatial strategy or framework produced by a county council in consultation with its boroughs/districts.

Paragraph 5 makes reference to the need for the Draft National Planning Policy Framework (DNPPF) to be read in conjunction with the Government's policy for traveller sites. DCC is disappointed that the Government has not taken the opportunity in the NPPF review to include planning policies for Gypsies and Travellers. Planning policy for Gypsies and Travellers already sits outside the existing NPPF published in 2012 as separate national policy guidance in Planning Policy for Traveller Sites (PPTS). This would have been an ideal opportunity to put planning policies for Travellers on the same national footing as policies for main stream housing, particularly given the sensitivities on traveller issues that many local authorities experience up and down the country. The fact that there is separate policy guidance for travellers causes a disconnect between it and the NPPF and there is always a temptation to assess proposals for gypsy and traveller sites in the more limited context of the PPTS rather than apply the much wider principles of sustainable development in the NPPF to proposals for traveller sites, particularly the social (and environmental) considerations, such as public health and well-being, which is now an enhanced policy area in the proposed revisions to the NPPF. It is particularly noted that paragraph 62 proposes to require Local Planning Authorities (LPAs) to set out policies to identify the type, size, and tenure of homes required for different groups, and specific reference is made to travellers in this context. This provides additional justification for policy on gypsies and travellers to be brought into the NPPF.

## **Chapter 2: Achieving sustainable development**

### **Q2 Do you agree with the changes to the sustainable development objectives and the presumption in favour of sustainable development?**

In paragraph 8b, the word 'local' has been removed from the original NPPF text of 'accessible local services'; this may be potentially acceptable in urban areas, where the service remains available elsewhere within that area and where public transport is available. However, in rural areas the lack of local services may result in higher numbers of vehicle trips to access them, might also disadvantage older and less affluent residents, and would therefore not fulfil the definition of sustainable development.

The proposed changes to paragraph 11 are largely supported. It is welcomed and supported that the test for the presumption in favour of sustainable development has been split into plan making and decision taking functions, which reflects the way and order these functions are carried out by LPAs in practice and provides greater clarity.



It is supported that the plan making aspect of sustainable development has been amended to make reference to 'strategic plans' and supported by footnote 5, which makes it clear that this includes local plans or spatial development strategies that contain policies to address the strategic priorities of an area. As set out in more detail below, DCC fully supports the revised approach in the DNPPF as a whole, which places more emphasis on strategic planning and strategic policies which are key to the delivery of the overall development strategy for an area, particularly housing and employment needs.

In this context, it is supported that the presumption in favour of sustainable development for strategic plans now explicitly includes reference to the need for plans to provide as a minimum for the objectively assessed housing and other development of an area, as well as needs that cannot be met within neighbouring areas. It is of concern, however, that this requirement does not make explicit reference to the employment land needs of an area. Indeed, it is of fundamental concern that the DNPPF as a whole only contains 4 paragraphs relating to policies for economic development, particularly given the importance placed by Government on the publication of its Industrial Strategy (see further comments below). The provision of sufficient employment land is crucial to the overall development strategy of an area and for creating sustainable development so that the housing and employment land needs of an area are balanced and intrinsically linked. This would ensure that sufficient homes are created to accommodate the growth in population to fill new jobs created in an area and meet the economic development aspirations of local authorities.

It is particularly welcomed that the plan-making and decision-taking sections of paragraph 11 now include a clear reference to the fact that policies in the DNPPF that protect areas or assets of particular importance provide a 'strong' reason restricting the overall scale, type or distribution of development and provide a clear reason for refusing the development proposed.

The test in the current version of the NPPF does not provide such clarity and as a consequence it has been extremely difficult for local authorities in Derbyshire to justify at local plan examinations to Inspectors that there are important environmental constraints, such as Green Belt, World Heritage Site, areas of high landscape value etc. which would provide justification to set housing targets that are below objectively assessed needs due to the plan being likely to be found unsound by Inspectors. It is welcomed that a list of types of protected areas is set out in footnote 7. However, it is of concern that World Heritage Sites are not specifically included in this list. The Derwent Valley Mills World Heritage Site (DVMWHS) is located in Derbyshire and covers an extensive area located within Derbyshire Dales District, Amber Valley Borough and Derby City. In recent years, the DVMWHS has been subject to growing pressure for new housing growth and has been subject to a number of applications for sizeable housing developments, which the County Council has opposed on grounds of the likely adverse impact on the Outstanding Universal Value of the DVMWHS. A number of those applications have been refused by the local planning authority and have recently been subject to appeals and inquiries.

The changes to the decision-taking section relating to protected areas are particularly welcomed, as the application of the five year housing land supply test to the existing presumption in favour of sustainable development has made it extremely difficult for local planning authorities (LPAs) to justify refusing planning permission for developments which have had an adverse impact on important environmental



protection areas. The explicit reference to the fact that this will be a 'clear' reason for refusing permission rather than 'restricting' development is welcomed and supported. It is not clear, however, why the wording in paragraph 11bi) refers to protected areas being a 'strong reason' for restricting development when paragraph 11di) refers to this being a 'clear reason' for refusing development. This could cause confusion and inconsistency in the approach to plan-making and decision-taking relating to the impact on protected areas.

In the context of the above, it is noted that proposed paragraph 75 in the DNPPF would now apply to the presumption in favour of sustainable development test. This relates to the absence of local authorities being able to demonstrate a five year housing land supply and the Housing Need Test where a local authority is delivering 75% below its housing requirement. Whilst it accepted that the five year housing land supply test should be applied to the presumption in favour of sustainable development, it is of serious concern that the Housing Delivery Test (HDT) will also apply. This is because the HDT is only based on a short period of housing delivery i.e. 3 years, which could be subject to exceptional or extreme circumstances in some local authority areas, such as the stalling of delivery on a key strategic site or sites, or fluctuations or exceptional circumstances in the local housing market. The HDT should not therefore be a consideration in the presumption in favour of sustainable development.

***Q3: Do you agree that the core principles section should be deleted, given its content has been retained and moved to other appropriate parts of the Framework?***

Yes. DCC agrees that this seems a sensible approach given that the content of the Core Principles section has been retained but included in other areas of DNPPF, and would give more emphasis to the core principles in the relevant topic chapters of the new NPPF.

***Q4: Do you have any other comments on the text of Chapter 2, including the approach to providing additional certainty for neighbourhood plans in some circumstances?***

Yes.

It is welcomed and supported that paragraph 13 now explicitly requires neighbourhood plans to support the delivery of strategic policies contained in local plans or spatial development strategies. DCC has been consulted on many neighbourhood plans since their introduction, and has been concerned that many of those plans are used by neighbourhood planning groups to attempt to restrict development rather than support growth identified in local plans, particularly for instance, where specific allocations have been made for housing development in local plans in a neighbourhood plan area and where such allocations have either been ignored or where clear support for their delivery is not set out in the neighbourhood plan. The policy approach should serve to encourage neighbourhood plans to be prepared positively and embrace the need for growth rather than restrict it.

Paragraph 14 is extremely confusing, particularly when read in conjunction with paragraph 75 of the DNPPF, and where a proposed development is in conflict with policies and allocations in a neighbourhood plan. This policy should be reworded to make it clearer. In the context of the comments made on Question 2 above, it is



considered that the HDT should not be a consideration in applying the presumption in favour of sustainable development where it relates to conflict with a neighbourhood plan for all the reasons set out above, particularly the short term nature of the test and its potential susceptibility to extreme or exceptional circumstances.

### **Chapter 3: Plan-making**

#### **Q5: Do you agree with the further changes proposed to the tests of soundness, and to the other changes of policy in this chapter that have not already been consulted on?**

Yes. The changes which have been made to the test of soundness to require plans to be positively prepared, justified, effective, and consistent with national policy, provide clarity to LPAs in what is expected of them in preparing their local plans.

It is welcomed that the 'positively prepared' test now requires local authorities to seek as a minimum to meet 'as much as possible' of the plan's objectively assessed needs, particularly for housing, and is informed by agreements with other authorities so that unmet need in neighbouring authorities is accommodated 'where it is practical to do so' is supported. There has been too much of an expectation from Local Plan Inspectors in applying the current NPPF that LPAs will be expected to meet their objectively assessed housing needs in full despite having significant constraints in their areas such as Green Belt, World Heritage Sites, areas of high landscape value, shortage of suitable land, etc. This has caused significant confusion and dismay to many communities who value the protection of such environmental assets. The proposed policy approach in paragraph 36 read in conjunction with paragraph 11, now gives LPAs appropriate justification for not meeting their objectively assessed housing needs in full where considerable environmental constraints and assets have the consequence of restricting the amount of land that is available for development, which is welcomed.

The requirement for housing needs to be informed by agreements with other local authorities is also supported as this provides an effective mechanism to ensure that local authorities fulfil the Duty to Cooperate on cross boundary housing matters, especially where a local authority is unable to meet its housing need in full and may require adjoining authorities to accommodate some or all of this unmet need. There has been a good level of joint working and cooperation between the local authorities in Derbyshire and with the County Council during the current round of plan making in seeking to resolve issues of unmet housing need. The mandatory requirements for statements of common ground to be prepared between upper and lower tier authorities should ensure that effective engagement on strategic matters takes place between local authorities.

It is fully supported that the 'justified' test refers to an 'appropriate' strategy and based on 'proportionate' evidence. As noted above, in many LPA areas there can be considerable environmental, physical or infrastructure constraints that would stop a LPA seeking to adopt an 'optimum strategy' or desirable strategy, and so the change to the requirement for an 'appropriate strategy' is welcomed as this would provide more justification to a LPA to take into account significant constraints in developing its overall development strategy for an area.

Local authorities in Derbyshire, including the County Council, have spent considerable amounts of money in the current round of plan making on assembling the evidence





base to support their local plan production due to concerns that the evidence base may be a reason for an Inspector finding a local plan to be unsound. Some evidence, particularly transport modelling evidence, can be very costly to commission, often running to several hundred thousand pounds. Due to such concerns, evidence has often become hugely complex, particularly Strategic Housing Market Assessments and objectively assessed needs assessments, which do not encourage the public to engage with the planning process because of this complexity. It is welcomed and fully supported, therefore, that paragraph 25 and the 'justified' test in paragraph 36 now require evidence to be 'adequate but proportionate'.

The new emphasis on, and policy approach to, strategic policies and their distinction from local policies is fully supported. Historically, DCC has been responsible for strategic planning policy development and implementation through successive Derbyshire and Derby and Derbyshire Structure Plans and more recently with the (former East Midlands Regional Assembly) in producing the East Midlands Regional Plan. Under the Duty to Cooperate, the County Council has developed a good working relationship with all the District and Borough Councils in the County in the current round of plan making and has been keen to ensure through this joint working that local plans contain strategic policies relating to key infrastructure requirements to support development. It has also worked in collaboration with many local authorities to ensure that key strategic growth sites are brought forward for delivery within the local plan period. The new emphasis on strategic planning and strategic policy in the DNPPF is therefore fully supported.

Paragraph 20 is particularly supported, which clearly sets out the key strategic policy matters that should be covered in development plans, especially requirements for infrastructure for transport, telecommunications, waste management, flood risk, minerals, and education facilities which are all strategic functions of the County Council and key considerations in the provision of sustainable development.

It is agreed that strategic policies should continue to look over a minimum of a 15 year time period from adoption. Large strategic sites, particularly on previously developed land, as is the case in much of Derbyshire, require significant remediation works and the provision of significant supporting infrastructure to enable their delivery, which can take a significant amount of time to put in place. A 15 year time- frame as proposed in paragraph 22 is therefore supported and provides such sites with more certainty in terms of their allocation in local plans.

In terms of effective cooperation, it is welcomed and supported that recognition is given in paragraphs 26 and 27 to the role of county councils in fulfilling the requirements of the Duty to Cooperate. As noted above, DCC has a long and successful history of working jointly with its local authority partners on strategic planning policy matters and has worked well with its partners in the current round of plan making to get the County Council's strategic priorities embedded in Local Plans and their policies, particularly relating to the need for key strategic infrastructure necessary to support growth. In this context, paragraph 28 is fully supported, which recognises the importance of local authorities working jointly to help determine where additional infrastructure is necessary. The explicit role and importance of the preparation of statements of common ground is supported as an effective mechanism to ensure local authorities cooperate and engage fully on strategic and cross-boundary matters. DCC has already started to engage with a number of LPAs in the County to prepare statements of common ground on strategic and cross boundary matters. They will also be an effective mechanism at local plan examinations to



demonstrate to Inspectors that the requirements of the Duty to Co-operate have been fulfilled.

**Q6: Do you have any other comments on the text of Chapter 3?**

Paragraph 17 states that a strategic plan can be produced by LPAs (working independently or in combination) or mayoral/combined authorities. The DNPPF appears to have omitted consideration of county councils as an experienced vehicle in areas where there is no combined authority to deliver strategic spatial plans. Specific mention of county councils in such areas would provide a joined-up approach to the delivery of development and the infrastructure for which counties are responsible in order to support that development.

The DNPPF proposes (paragraph 29) that:

‘In order to demonstrate effective and ongoing joint working, strategic plan making authorities should prepare and maintain one or more statements of common ground, documenting the cross boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in **national planning guidance**, and be made publicly available throughout the plan making process to provide transparency.

Furthermore, the DNPPF sets out (paragraph 36) the tests of soundness for local plans: For the ‘Effective’ test (c) it sets out that plans are ‘sound’ if they are deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground.

In addition, the Draft Planning Practice Guidance (DPPG, page 41) sets out that Mineral and Waste Authorities should prepare statements of common ground. It advises that, ‘authorities should work jointly with neighbouring authorities to address the need for, and distribution of, minerals extraction and waste facilities and impacts arising from these. This should be evidenced in a statement of common ground’.

However, for some minerals and waste streams, distribution, and therefore Duty to Cooperate requirements, involve a great number of authorities. Additionally, different minerals and waste streams involve a different group of mineral planning authorities. This will make it very difficult to define an area to which the statement of common ground would apply and could lead to the requirement for many statements of common ground. DCC would request, therefore, that further consideration is given, and additional guidance provided, as to how mineral and waste planning authorities should prepare statements of common ground.

**Chapter 4: Decision-making**

**Q7: The revised draft Framework expects all viability assessments to be made publicly available. Are there any circumstances where this would be problematic?**

It is appreciated that the Government is attempting to reduce the instances where viability assessments are required and therefore the number that may need to be assessed by a LPA. However, opening these documents up to public scrutiny could lead to a lengthening of the time taken to determine a planning application as assessments are often minutely interrogated by other stakeholders.



***Q8: Would it be helpful for national planning guidance to go further and set out the circumstances in which viability assessment to accompany planning applications would be acceptable?***

No. LPA development plan documents are a more appropriate vehicle to set out the circumstances in which viability assessment to accompany planning applications would be acceptable because they can take account of the characteristics and circumstances of the local area.

***Q9: What would be the benefits of going further and mandating the use of review mechanisms to capture increase in the value of a large or multi-phased development?***

A review mechanism on large or multi-phased developments is already often included in Section 106 (S106) agreements, but mandating its use to capture increases in value would be welcomed; however, it must be recognised that the contributions stated in the original S106 agreement would be the minimum payable.

In the proposed amendments to Planning Practice Guidance, review mechanisms for S106 agreements are to be included within local plan policies. This would result in amendments to the S106 agreements to help account for changes in costs and values over the lifetime of the development. The guidance regarding 're-apportioning or change to the timing of contributions' is a cause concern for those authorities where infrastructure projects are funded through S106 agreements. A S106 is required to make the development acceptable in planning terms. Where five S106 agreements are pooled to deliver infrastructure to support the development of a cluster of allocated sites, any changes to the income stream or potentially the amount available to fund the infrastructure would make the infrastructure undeliverable as no further S106 funds could be applied to the project. In changing the S106 agreement, this could render those developments unacceptable in planning terms, despite the fact that they still have a planning permission in place.

***Q10: Do you have any comments on the text of Chapter 4?***

Yes, particularly in relation to paragraphs 48 to 51 on determining applications.

It is welcomed that additional clarity has been provided on the weight to be given to policies in emerging local plans and particularly on the issue of prematurity. During the current round of local plan making in Derbyshire there have been a number of examples of planning applications for large-scale housing developments that the County Council has had fundamental concerns about due to their inappropriate and unsustainable location and their likely environmental impacts, and the likelihood that they could undermine the delivery of key strategic sites in emerging local plans. However, the current approach in the NPPF has made it difficult for the County Council to raise objection on grounds of prematurity even though these developments have been considered likely to undermine the emerging development strategy for an area. In this context it is welcomed and supported that paragraph 50a) now makes it clear that prematurity is a legitimate ground for refusal of an application if the development proposal is so substantial or its cumulative effect would be so significant that to grant permission would undermine the plan making process by predetermining decisions about scale and location of development that are central to an emerging local plan.



With regard to paragraph 58, it is welcomed that the phrase ‘competitive returns to a willing landowner and willing developer’ will not appear in the new version of the NPPF. However the fundamental shift towards focussing viability assessments at the plan making stage raises a variety of issues, not least the changes in land and property value over time, the additional time and cost required at local plan-making stage to undertake the viability assessments, and the detail required.

Revisions to the Planning Practice Guidance state that plan makers should engage with developers to secure evidence at the plan making stage. It is welcomed that this approach may reduce the impact of gaming by developers who make their sites appear viable to ensure allocation, but after a local plan is approved make the viability argument which often results in a reduction in contributions. It is noted that the local plan will define the circumstances where further viability assessments may be required at the planning application stage; however, if Government through the NPPF does set out the circumstances in which viability assessments should accompany planning applications, care needs to be taken in order to resist this gaming (Question 8 of the consultation).

It is also welcomed in the revisions to the Planning Practice Guidance that the inputs to a viability assessment are defined, including the calculation of the benchmark land value as Existing Use Value (EUV) plus a premium for the landowner whereby the purchase price of the land itself will no longer be a determining factor, even if it may give an indication of what the uplift (plus) to the EUV ought to be. This would also mean that the developer would have to take into account planning policy when considering the amount that she/he would be willing to pay for a site. This would put the onus of risk on to the developer, rather than having the impact of an inflated land purchase price which would result in reduced contributions and detrimental outcomes to council infrastructure provision finances.

## ***Chapter 5: Delivering a sufficient supply of homes***

### ***Q11: What are your views on the most appropriate combination of policy requirements to ensure that a suitable proportion of land for homes comes forward as small or medium sized sites?***

The proposed policy approach is broadly supported and provides for an appropriate balance to ensure that a suitable proportion of land for homes comes forward as small and medium sites. It has been a problem in Derbyshire in some areas that a small number of house builders dominate the local housing market, with either planning permissions for large scale housing sites or allocations that are not being brought forward for development. The increased emphasis in the DNPPF on the allocation of small and medium sites is therefore welcomed, which would encourage more small and medium sized house building companies to enter local housing markets; reduce the reliance on large scale sites to meet the housing requirements of a local authority area; and encourage more land to be built out more quickly for housing development. A 20% threshold for allocation of small and medium sites is considered to provide the right balance to help deliver the objective above, even though this threshold appears to be an arbitrary figure and not justified on the basis of any supporting evidence. A 0.5 ha definition of a small site also appears to be reasonable given that such sites might be expected to accommodate around 10 - 15 dwellings at a density of between 20 and 30 dwellings per ha, which is common in many housing schemes.

There is a discrepancy between the text in the NPPF Consultation proposals document (page 13) which states that LPAs should ensure that at least 20% of sites *allocated* for





housing in a local plan should be 0.5ha or less, as opposed to the wording in the draft NPPF which states that 20% of sites *identified* for housing in a local plan are 0.5ha or less (paragraph 69a). Identification may be through the delivery of windfall sites or sites included in the brownfield register, whereas allocation has a different connotation. The cumulative impact of smaller sites presents challenges for infrastructure delivery due to the S106 pooling regulations, and also in two tier areas where a CIL has been introduced, as the allocation of funding is at the behest of the charging authority and only part funds the infrastructure required.

***Q12: Do you agree with the application of the presumption in favour of sustainable development where delivery is below 75% of the housing required from 2020?***

No. Whilst it is accepted that the five year housing land supply test should be applied to the presumption in favour of sustainable development, it is of serious concern that the HDT will also apply. The HDT is only based on a short period of housing delivery i.e. 3 years, which could be subject to exceptional or extreme circumstances in some local authority areas, such as the stalling of delivery on a key strategic site or sites, or due to unusual fluctuations in the local housing market. As the HDT is only short-term, it should not therefore be a consideration in the presumption in favour of sustainable development.

Use of the HDT, and its triggering whether or not a local authority can demonstrate a 5 year housing land supply, does not necessarily result in good planning, and does not deliver the right homes in the right places which is the aim of Government. The HDT continues to penalise LPAs, which do not control housing delivery, and rewards developers for not building out sites, with the promise of securing further speculative development permissions in less sustainable locations. This would result in even slower delivery rates on allocated sites. DCC would therefore urge the Government to consider alternative ways of encouraging housing delivery.

***Q13: Do you agree with the new policy on exception sites for entry-level homes?***

Yes. The use of exception sites on land outside existing settlements for the provision of homes for first-time buyers is supported as long as there is a clearly identified need. It is welcomed, however, that there is a safeguard included in 72a) that such sites should be considered to be acceptable only if they are appropriate in scale and do not compromise the protection of areas or assets of particular importance in the Framework. This should ensure that such housing schemes are not disproportionately large and do harm to important environmental protection areas outside settlements, and could facilitate the development of an increased number of much needed homes for first time buyers.

***Q14: Do you have any other comments on the text of Chapter 5?***

Paragraph 61 makes reference to the minimum number of homes needed in strategic plans to be based upon a local housing need assessment conducted using the standard method in national planning guidance. DCC's officer comments on the standard methodology set out in its response to the 'Planning for the right homes in the right places' (PFRHRP) consultation are reaffirmed; namely, that the standard approach is welcomed in principle subject to the concerns below.



In DCC's experience, in recent years, assessments of objectively assessed housing need and / or strategic market assessments to inform local plan housing targets have become hugely complex and extensive pieces of evidence incorporating a wide range of assumptions and national and local data sources. Because of this complexity, members of the public do not usually engage in the debate on housing need, either through the local plan consultation process or subsequently at local plan examinations. Furthermore, because of this complexity, a huge amount of time is usually taken up at local plan examinations in public (EIPs) by LPAs and developers and their consultants arguing over the finer details of objectively assessed housing need studies and Strategic Housing Market Assessments.

In this context, the proposal for a more standardised, transparent, and streamlined approach to housing need is fully supported as set out in paragraph 61, which should considerably reduce the amount of time and resources taken up at local plan preparation and examination in determining a local authority's housing need.

The methodology, however, appears to exclude consideration of employment / economic growth as a contributing factor to assessing a local planning authority's housing need. The link between jobs and homes is clearly recognised in the Industrial Strategy Green Paper. In parts of Derbyshire, the need to stimulate and promote job creation, economic growth and regeneration is an important factor in the determination of a LPA's housing requirement over and above key demographic and market considerations. Although the PFRHRP consultation indicated that employment growth can legitimately be taken into account in the planning for a higher housing requirement than indicated by the standard methodology, it is considered that this connection should be made more explicit in the new methodology and reflected in paragraph 61.

Paragraph 62 makes reference to the need for planning policies to address the housing requirements of groups with particular needs in terms of type, size and tenure. It is welcomed that this policy approach has stopped short of requiring LPAs to disaggregate their overall housing provision requirements and identify specific numeric housing requirements for specific groups. This would have been very onerous and costly for local authorities in terms of assembling appropriate evidence and would have made the assessment of planning applications much more lengthy and complicated. The proposed approach, which only requires local authorities to identify the type, size and tenure of housing for specific groups, is therefore supported.

Paragraph 66 proposes to require strategic plans to set out a housing requirement for designated neighbourhood areas. This proposal is fundamentally opposed. One of the main concerns in relation to this issue is that demographic projections are only published at a sub-national geography and it is for these fundamental practical reasons that the disaggregation of a LPA's housing requirement to designated neighbourhood planning areas would not be a very robust or workable approach. In many cases it would be guesswork, very inaccurate, and based on simplistic assumptions. In addition, it is likely that the housing requirement may not take into account any key environmental constraints in the area, key infrastructure requirements, the availability of key services and facilities in the area that could support new housing growth.

It is considered that the most appropriate approach is for LPAs to set out a settlement hierarchy for their areas in local plans based on an analysis of the range of services and facilities, employment opportunities and public transport accessibility available within these settlements and then to apportion an appropriate scale of housing growth



to the various settlements in the hierarchy based on the sustainability credentials of the settlement, available land and available infrastructure to support new development. The level of growth attributed to a settlement or settlements in a neighbourhood plan area would provide a housing requirement for that area.

Paragraph 73 makes reference to the fact that the supply of new homes can often be best achieved through planning for larger scale development such as new settlements or significant extensions to existing towns and villages. The expanded policy guidance on this matter set out in paragraph 73 is supported. In all the LPA areas of Derbyshire a sizeable proportion of local plan housing requirements are met on large urban extension sites to existing towns and villages, often on greenfield sites that might otherwise be subject to countryside policies of constraint. The recognition therefore that large urban extensions can provide for a large number of new homes in sustainable locations with necessary supporting new infrastructure is welcomed and supported.

Paragraph 78, which proposes to give LPAs the ability to impose planning conditions on new housing developments with a timescale shorter than the default 3 year period and within two years, is fully supported. In many areas of the country, including Derbyshire, there is an ongoing problem with developers applying for and being granted planning permission for housing development, subsequently banking those permissions, and not bringing sites forward for development. The imposition of a two year permission would be more likely to encourage developers to bring their sites forward for development in a more-timely manner.

## ***Chapter 6: Building a strong, competitive economy***

### ***Q15: Do you agree with the policy changes on supporting business growth and productivity, including the approach to accommodating local business and community needs in rural areas?***

The broad policy approach to encouraging businesses in rural areas is supported in principle; so too is the recognition that sites to meet local business and community needs may need to be found outside existing settlements in rural areas. However, the indication that such development may be deemed to be acceptable in areas which are not well served by public transport is not supported. The availability of public transport in rural communities is vital in many areas to provide communities with accessibility to jobs and services for those who do not have a car. The policy approach as proposed could be likely to result in unsustainable and isolated types of business development in the countryside, and disadvantage those members of the community who may not be able to afford a car or have access to one.

Paragraph 84, which indicates that planning policies should enable the sustainable growth of all types of business in rural areas both through conversions of existing buildings and well-designed new buildings, is also of concern as written in the DNPPF. The policy as written, and paragraph 85 below, make no reference to the scale of such businesses, which will be a crucial factor in determining whether such developments are appropriate in rural locations. Certain types of business, for example, larger scale retail development, would be unacceptable in the countryside due to their likely adverse impact on local shops and services. There is also a growing trend for the establishment of very large-scale intensive farming practices to be developed in rural areas, such as pig farms, which can be disproportionately large and have an adverse impact on rural communities in terms of traffic impacts and impacts on amenity. The



policy approach in paragraphs 84 and 85 should therefore be amended to include reference to the need for new businesses in rural areas to be appropriate in terms of scale and nature to a rural area and the settlement to which they relate. The types of business that may be considered unacceptable in rural locations could be set out in the policy.

**Q16: Do you have any other comments on the text of Chapter 6?**

Yes. It is very disappointing that the economy section of the Framework amounts to only four paragraphs, given the fact that it is at the heart of sustainable development, and given the importance placed on the economy by the Government's Industrial Strategy consultation. Job creation and the identification of employment land is a crucial component of strategic policy in local plans to ensure sustainable patterns of development where housing growth and job creation are mutually dependent and balanced. The policy approach looks to be very unbalanced when compared to the previous sections of the DNPPF which are totally focussed on housing growth and provision.

It is noted that the policy issue of the re-use of employment land no longer sits within the economy section of the Framework and now sits within Section 11 on the efficient use of land. The use of employment land for housing purposes has become much more prevalent in recent years in Derbyshire and local authorities have come under increasing pressure to release employment land for housing, given the more positive policy approach to this set out in the existing NPPF. In recognition of this issue, it is considered that paragraph 121a) should be included in the economy section which encourages the use of employment land for housing in areas of high demand, provided this would not undermine key economic sectors or sites. However, the policy should also include the need to ensure that the loss of employment land would not undermine the whole development strategy in an area or result in a quantitative and qualitative shortfall of employment land therein.

**Chapter 7: Ensuring the vitality of town centres**

**Q7: Do you agree with the policy changes on planning for identified retail needs and considering planning applications for town centre uses?**

It is of concern that paragraph 86d) has been amended to indicate that a range of suitable sites in town centres should be allocated looking at least 10 years ahead. Many towns in Derbyshire and other areas of the country are smaller market towns where sizeable areas of land are not always immediately available due to the historic nature of how they have grown. In many cases, therefore, complex and lengthy land assembly and remediation may be necessary to bring forward sites of sufficient size to accommodate larger scale retail developments, particularly for new shopping centres incorporating a larger number of retail units. In this context 10 years is considered to be too short a timeframe and if a time threshold is to be identified in the Framework for this policy then 15 years should be applied to be consistent with the plan period / time horizon for local plans.

The proposed change to the sequential test in paragraph 87 is supported relating to the availability of town centre and edge of town centre sites for retail and other development and only allowing out-of-centre development if suitable sites are not available or 'expected to become available within a reasonable period'. DCC has been consulted on a significant number of retail planning applications in edge of or out-of-





centre locations since the introduction of the current NPPF in 2012, which have included retail impact assessments. In those assessments, retail consultants have tended to be dismissive of, or only given cursory consideration to, the availability of sites within town centres largely on the basis that such sites were not considered to be either immediately available or likely to become available but only looking over a short time period (one or two years). Given the issues highlighted above about the complexities of land assembly within town centres, a 'reasonable' time frame would more appropriately be considered as 5 years. For this policy change to be effective, therefore, it is considered that a 'reasonable' timeframe should be defined in the Framework and it is recommended that this should be within 5 years.

**Q8: Do you have any other comments on the text of Chapter 7?**

Yes. Since changes were made to the existing NPPF, and applicants were the required to demonstrate 'flexibility' on issues such as format and scale, the sequential test has become almost unworkable. National policy prior to the NPPF (Planning Policy Statement 6) required applicants to consider whether their retail schemes, (particularly larger schemes such as out-of-centre retail parks) could be disaggregated into their constituent parts (food, non-food, bulky goods, etc.) so that the availability of town centre sites could be truly considered.

Since the disaggregation requirement has been deleted from the sequential test, it has become easier, and is now common, for applicants to dismiss the availability of town centre sites purely on the basis of scale and that their schemes are too large as a single entity to fit into any town centre or, in other cases, edge-of-centre sites.

Whilst DCC recognised the difficulties with the application of the disaggregation test in previous national policy and accepted that the test needed amendment as it was becoming too onerous and unworkable for LPAs in the assessment process of planning applications, the existing approach in the NPPF, which is being repeated in the proposed revision to the NPPF in paragraph 88, has similarly become almost unworkable for LPAs which may wish to oppose out-of-centre retail developments. It is considered that the Government should investigate and review this aspect of the sequential test, possibly with a separate public consultation and /or commissioning an extensive study or research into the issue, to assess whether there is a more appropriate and workable approach to the flexibility / disaggregation issue, which addresses the fundamental weaknesses of both approaches. In particular, the Government should at least take this opportunity to seek to define what 'flexibility' is and how it should be applied by local authorities and applicants as currently no such definition exists.

The proposed changes to the retail impact test set out in paragraph 90b) are also of fundamental concern and are opposed. Currently the policy in the NPPF requires retail impact tests to consider the impacts of new edge-of-centre and out-of-centre retail developments on the vitality and viability of town centres within 5 years or, in the case of larger schemes 10 years, to account for consideration of the full impacts of schemes which may only become evident over a longer period. DCC fully supports the current approach as the potential impacts of larger retail schemes on town centres will not always be immediate and may take a much longer period for the full and true effects to become evident on the vitality and viability of town centres. This can often be up to 10 years, when the scale of trade diversion from town centre businesses as a whole can become of such magnitude and so severe that it can undermine the vitality and viability of the whole town centre.



The current approach to retail impact assessments where applicants assess the trade diversion impacts over 5 and 10 years taking into account the growth of available expenditure and likely turnover in a catchment area works very well and should be retained. There does not appear to be any justification, evidence or case studies put forward by the Government for the change in approach. The proposed change will inevitably make the retail impact test much easier to pass for applicants for large retail schemes, particularly in out-of-centre locations and would be likely only to perpetuate the current national decline in town centres all over the country.

## ***Chapter 8: Promoting healthy and safe communities***

### ***Q19: Do you have any comments on the new policies in Chapter 8 that have not already been consulted on?***

DCC welcomes the tenor and content of paragraphs 92-94. In particular, it is working towards the expansion of a wide reaching Key Cycle Network to connect settlements with destination points such as employment, education, recreational spaces and commerce centres. The network is also being developed to create well designed loops and promotional routes to encourage more active life styles and improve the visitor offer to drive economic regeneration through tourism and overnight stays within Derbyshire. A well-connected, off-road cycling network provides a realistic alternative to vehicle use which contributes to tackling increasing air pollution and congestion.

An essential element of this ambitious plan is to ensure the inclusion of well-designed and connected routes through and within development sites, provided as an integral part of the site design and layout, and constructed by the developer. It is also reliant on the inclusion of funding through S106 agreements or the CIL programme to allow for additional connected links to join these routes beyond the site boundaries to the existing or planned network nearest to the site. In addition, where increased use of the existing network can be determined through housing growth or employment and business use, a formulaic approach should assess contribution towards the upgrade and maintenance of these routes.

### ***Q20: Do you have any other comments on the text of Chapter 8?***

The DNPPF talks about rights of way, which include footpaths, bridleways restricted byways, and byways open to all traffic, but only mentions cyclists and walkers. However, in order to be a valid and fully inclusive document, it should also recognise other legitimate categories of users, such as horse riders and carriage drivers.

DCC would suggest the addition of 'horse riding' at the end of paragraph 92c.

DCC would suggest that paragraph 99 should be strengthened to include ...

'...protect and enhance public rights of way and multi-user access routes,....'

'...and making provision for connection to existing and additional multi user (walking, cycling and horse riding) or shared use (walking and cycling) paths.'

## ***Chapter 9: Promoting sustainable transport***



**Q21: Do you agree with the changes to the transport chapter that point to the way that all aspects of transport should be considered, both in planning for transport and assessing transport impacts?**

Yes. Paragraph 103 is welcomed, but could be strengthened to add ...

*‘...to ensure the delivery of cohesive and continuous traffic free path networks throughout the development area which connect to existing routes beyond the site.’*

The survey, design, planning application submission and construction of the walking and cycling route should form an integral part of the progression of the development site and should be balanced with other interests on the site e.g. ecology, heritage, trees etc.. The interface between walking/cycling routes and roads should also be considered to ensure that they adhere to TA 90/05, and are viable. The legal status and future maintenance of routes should be identified at an early stage to ensure that they are sustainable and not vulnerable to closure should there be a change in land ownership.

**Q23: Do you have any other comments on the text of Chapter 9?**

Paragraph 104 is welcomed.

Paragraph 105d is fully supported.

**Considering development proposals**

This section seems to be similar to paragraph 1.19 and the ‘relevant considerations for encouraging environmental sustainability’ of the Department for Transport’s now withdrawn ‘Guidance on Transport Assessment’ (GTA), March 2007, and is particularly welcome.

It is disappointing, therefore, to see the wording in paragraph 109 that:

*‘Development should only be prevented or refused on highways grounds if the residual cumulative impacts on the road network or road safety would be **severe**’.*

DCC would suggest that the word ‘severe’ sets the bar at too high a level. In most cases, the inability to define and demonstrate ‘severe’ would rule out any opportunity to secure developer contributions towards the mitigation of offsite impacts over the wider transportation network(s). DCC would therefore wish to see a return to previous policies whereby the Highway Authority sought to achieve ‘nil detriment’ (i.e. to be ‘no worse off’). For example, paragraph 4.51 of the GTA sought to ensure that development proposals strove to achieve ‘nil detriment’.

This is particularly important as the Government has recently made proposals to create, define and operate a Major Road Network, (albeit to be managed and maintained by the County Council). In addition, the Housing White Paper recognised that transport infrastructure would be the key to unlocking development. At the same time, the Government has acknowledged that road schemes can create new links between communities and workplaces which deepen local labour markets, connect housing developments to the network, provide new routes on city and commuter networks, or contribute to creating places that promote wellbeing through the management of congestion or the provision of public transport. Consequently, the securing of developer contributions is extremely important, not least in achieving the Government’s own transportation objectives.



Paragraph 110, parts a, b and c are fully supported.

Paragraph 111 is supported.

## **Chapter 11: Making effective use of land**

**Q25: Do you agree with the proposed approaches to under-utilised land, reallocating land for other uses and making it easier to convert land which is in existing use?**

Paragraph 118a and c, are supported. DCC would suggest the addition of the following:

*‘.....also give substantial weight to the value of using and remediating unused transport corridors such as railways (passenger or mineral), tramways, canals, and haul roads for the purpose of developing multi user paths as part of the highway network for use without cars.’*

*This inclusion would provide a significant benefit to aid the delivery of a well-connected traffic free network to encourage maximum numbers of journeys by foot and cycle, along with horse riding.*

## **Chapter 12: Achieving well-designed places**

**Q29: Do you have any other comments on the text of Chapter 12?**

DCC would suggest adding the following to paragraph 126e:

*‘.....support local facilities and transport networks, including walking, cycling and horse riding networks’.*

## **Chapter 13: Protecting Green Belt land**

**Q30: Do you agree with the proposed changes to enable greater use of brownfield land for housing in the Green Belt, and to provide for the other forms of development that are ‘not inappropriate’ in the Green Belt?**

Yes. It is fully supported that paragraph 137 has been amended to make clear that where it has been concluded that Green Belt release is necessary, development plans should give first consideration to land which has been previously developed and is well served by public transport. In Derbyshire, there are a number of sizeable former industrial developments within the Green Belt, which have been vacant and un-used for considerable amounts of time, which would be suitable for re-use for other purposes, particularly housing but which may require extensive remediation. The proposed policy change would make it more likely that such brownfield sites could be identified for Green Belt release in local plans and more effectively facilitate their delivery and possibly earlier delivery for housing and other purposes. It may also stimulate greater developer interest in brownfield sites within the Green Belt if developers have more certainty that such sites that are proposed for release are subject to a brownfield land first principle and are more likely to be confirmed through local plan reviews.





The public place great weight on Green Belts and their protection and as a consequence Green Belt release more often than not raises considerable public opposition, particularly when Green Belt land is also on Greenfield land. The re-use of brownfield sites within the Green Belt, which can sometimes have been vacant or derelict for some time, is much more likely to be favourably received by the public compared to Greenfield release within the Green Belt. Overall, therefore, the brownfield site first principle for Green Belt release is fully supported.

**Q31: Do you have any other comments on the text of Chapter 13?**

Yes. The policy change proposed in paragraph 135 which would enable changes to Green Belt boundaries to be made through neighbourhood plans is opposed. Green Belt and particularly Green Belt release has always been and should remain a strategic matter that is a responsibility for strategic / local planning authorities. In DCC's experience, neighbourhood plans are still evolving in terms of their quality and are still often seen by neighbourhood groups as a way of restricting development. Given the public sensitivities over Green Belt release, it is highly unlikely that a neighbourhood plan group would wish to address Green Belt release in their areas, and would be likely to be subject to considerable public opposition. It is much more likely that a neighbourhood plan would be used as a means to oppose any Green Belt release that has been demonstrated to be likely through a strategic plan. Green Belt release and the identification of new Green Belt boundaries are complex matters and require professional expertise to fulfil the requirements set out in the Framework. Such expertise is unlikely to be available within neighbourhood planning groups. For these reasons the proposed policy 135 is opposed, and Green Belt release should continue to be a matter only for strategic and local plans.

The proposed additional policy approach in paragraph 136 is fully supported. This much more clearly sets out the stages that LPAs should go through before considering Green Belt release and identifies three factors which should be taken into account before such release is deemed to be necessary including the availability of brownfield land; optimising density of development; and whether identified development needs can be accommodated in other local authority areas through statements of common ground. This is considered to be an appropriate and reasonable 'test' and would help reinforce the policy approach in Chapter 13 that Green Belt release should only be deemed necessary in exceptional circumstances.

The amendment to policy 141 which now specifically identifies the National Forest in Derbyshire as a resource that offers valuable opportunities for improving the environment around towns, by upgrading the landscape and providing for recreation and wildlife is fully supported and welcomed. It is also welcomed and supported that this policy indicates that the National Forest Strategy will also be a material consideration in preparing development plans and in deciding planning applications. Under the Duty to Cooperate, DCC works jointly with the National Forest Company, based in South Derbyshire District, on a range of planning policy and planning application matters and is a member of the National Forest Company Planning Technical Working Group with other authorities in Derbyshire, Leicestershire and Staffordshire.

**Chapter 15: Conserving and enhancing the natural environment**

**Q35: Do you have any other comments on the text of Chapter 15?**



**DCC would suggest the addition of ‘of ecosystem services’ in paragraph 168b as follows:**

*‘recognising the intrinsic character and beauty of the countryside, and the wider benefits of ecosystem services from natural capital – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;’*

## **Chapter 17: Facilitating the sustainable use of minerals**

**Q37: Do you have any comments on the changes of policy in Chapter 17, or on any other aspects of the text of this chapter?**

The comments below are set in the context of the County Council’s clear position of objection to the proposed policy changes to the preferential treatment of the exploration and extraction of unconventional hydrocarbons set out in the letter above.

### Industrial Minerals

It has been a long standing facet of national mineral planning policy to support the building and maintenance of major infrastructure used to process industrial minerals for use in the construction sector through the maintenance of ‘stocks of permitted reserves’. The current National Planning Policy Framework (NPPF) requires Mineral Planning Authorities (MPAs) to provide a stock of permitted reserves to support the level of actual and proposed investment required for new or existing plant and equipment as follows:

- At least 10 years for individual silica sand sites;
- At least 15 years for cement primary (chalk and limestone) and secondary (clay and shale) materials to maintain an existing plant, and for new silica sand sites where significant new capital is required; and
- At least 25 years for brick clay, and for cement primary and secondary materials to support a new kiln.

The DNPPF wording deletes reference to specific minerals or number of years and simply requires MPAs to plan for a steady and adequate supply of industrial minerals by maintaining a stock of permitted reserves to support the level of actual and proposed investment required for new or existing plant, and the maintenance and improvement of existing plant and equipment.

Reference to the ‘number of years’ worth of mineral required to be stocked is a simple but effective way of supporting new and existing investment. Without this simple method, the MPA would be unable to determine what constitutes a steady and adequate supply. DCC would suggest, therefore, that reference to ‘number of years’ worth of mineral required to be stocked should be retained in the new NPPF text.

The current NPPF makes specific reference to the need to maintain stocks of permitted reserves used in ‘construction’ i.e. brick clay and cement. The proposed new wording does not include any reference to specific minerals. It is unclear, therefore, whether the policy approach of maintaining a stock of permitted reserves now applies to all industrial minerals including, for example, industrial carbonates. Further clarification on this point would be helpful.

**Q38: Do you think that planning policy on minerals would be better contained in a separate document?**



One of the main reasons for introducing the NPPF and NPPG was to streamline and simplify national planning policy and guidance. Their introduction led to the revocation of a myriad of other policy statements. It is important that planning policy for minerals remains within the NPPF, and it would undoubtedly be more effective if the National Planning Policy for Waste were also to be incorporated into the same document.

DCC would suggest that the minerals section of the Planning Practice Guidance should be set out on the basis of the old Minerals Planning Guidance Notes/Mineral Policy Statements, which were minerals or subject based, thereby making it much easier to find detailed guidance on a particular aspect of mineral working.

***Q39: Do you have any views on the utility of national and sub-national guidelines on future aggregates provision?***

There would still seem to be an important role for the use of national and sub regional guidelines for aggregates provision. It provides part of the mechanism for helping to coordinate the aggregate provision figures which are included in the Local Aggregate Assessments (LAAs). Without this there would be no clear steer for the Aggregate Working Parties and the National Aggregates Coordinating Group when discussing figures included in LAAs. The guidelines are an important element in the overall system and for the continued effective operation of the Managed Aggregates Supply System.

**Transitional arrangements and consequential changes**

***Q41: Do you think that any changes should be made to the Planning Policy for Traveller Sites as a result of the proposed changes to the Framework set out in this document? If so, what changes should be made?***

The Planning Policy for Traveller Sites should be incorporated into the NPPF rather than being considered separately, because having separate guidance discourages consideration of Gypsy and Traveller issues alongside other planning and health issues (see comments on Q1 above).

***Q42: Do you think that any changes should be made to the Planning Policy for Waste as a result of the proposed changes to the Framework set out in this document? If so, what changes should be made?***

The National Planning Policy for Waste should be incorporated into the NPPF rather than being separate, because having separate guidance discourages consideration of waste alongside other planning issues, contrary to the advice in both documents. At the moment the National Planning Policy for Waste is not even on the same web page as the NPPF. While a comprehensive review of the National Planning Policy for Waste should be avoided until the proposed new UK Waste and Resources Strategy is in place, the existing guidance could be incorporated into the NPPF in the meantime, with only limited editorial changes necessary to make it fit into the NPPF format.

This would not stop the guidance on waste from being reviewed separately at a later date, once the new national waste strategy is completed. There is no practical reason to exclude the guidance on waste from the NPPF. The National Planning Policy for Waste is only nine paragraphs long (excluding appendices) and could be added at the end of the NPPF after Section 13 on minerals, so that the paragraph numbering of the rest of the document would not be affected by a subsequent review of this guidance. The paragraph numbering of Annex 1 could also be changed to A1, A2, A3, etc. so this would also be unaffected,



and Appendices A and B could be added between Annexes 1 and 2 of the NPPF and the Annexes/ Appendices re-numbered. This would mean that national policy guidance on all topics would be together in one place, which would be a significant improvement on the existing situation.

Sustainable waste and resource management solutions in line with aspirations around the circular economy can only be effectively delivered if decisions around all strategic infrastructure are taken in the round through a single policy mechanism.

Yours faithfully

Mike Ashworth  
Strategic Director Economy Transport and Environment



## Appendix 1

At a meeting of Derbyshire County Council held on 11 April 2018 at County Hall, Matlock a motion proposed by Councillor Anne Western was debated at length by Members as set out below:

“This Council welcomes the government’s commitment to reducing the amount of plastic in the environment.

The Council notes the recent government assurances about the long-term security of UK gas supplies from current sources.

The Council can therefore see no justification for the proposed change to the National Planning Policy Framework (NPPF) that would give preferential status to unconventional hydrocarbons by requiring minerals planning authorities to “put in place policies to facilitate their exploration and extraction”

The Council will object to this proposed change in its response to NPPF consultation and convey this objection to the relevant government ministers”

The motion was duly seconded.

An amendment to the motion was moved by Councillor Dale, duly seconded, that the motion be amended to read:-

“This Council welcomes the government’s commitment to reducing the amount of plastic in the environment.

The Council notes the recent government assurances about the long-term security of UK gas supplies from current sources.

The Council can therefore see no justification for the proposed change to the National Planning Policy Framework (NPPF) that would give preferential status to unconventional hydrocarbons by requiring minerals planning authorities to “put in place policies to facilitate their exploration and extraction”

The Council will object to this proposed change in its response to NPPF consultation and convey this objection to the relevant government ministers.

Whilst noting that the draft revised NPPF includes a wide range of proposals not limited to oil and gas exploration and the Council will respond to all aspects of the proposed changes, many of which are positive”

The motion was duly seconded.

At the request of Members, a recorded vote was taken and recorded as follows:-



For the motion (59) Councillors T Ainsworth, D Allen, R Ashton, N Atkin, Mrs E Atkins, S A Bambrick, N Barker, B Bingham, Mrs S L Blank, J Boulton, S Brittain, S Bull, Mrs S Burfoot, K Buttery, Mrs D W E Charles, Mrs L M Chilton, J A Coyle, A Dale, Mrs C Dale, J E Dixon, Mrs H Elliott, R Flatley, M Ford, Mrs A Foster, Mrs A Fox, J A Frudd, K Gillott, A Griffiths, Mrs L Grooby, Mrs C A Hart, G Hickton, R Iliffe, Mrs J M Innes, T A Kemp, T King, B Lewis, P Makin, S Marshall-Clarke, D McGregor, R Mihaly, C R Moesby, P Murray, G Musson, R A Parkinson, Mrs J E Patten, J Perkins, B Ridgway, C Short, P J Smith, S A Spencer, A Stevenson, S Swann, D H Taylor, Mrs J A Twigg, M Wall, Ms A Western, G Wharmby, Mrs J Wharmby, and B Wright.

The amended motion was therefore carried and represents Derbyshire County Council's formal position on the revised policy approach in the DNPPF.





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Email: [planningpolicy@derbyshire.gov.uk](mailto:planningpolicy@derbyshire.gov.uk)  
Telephone: (01629) 539667  
Our Ref: Developer Contributions/AR  
Your Ref:  
Date: 10<sup>th</sup> May 2018

Dear Sir,

## **MINISTRY OF HOUSING, COMMUNITIES AND LOCAL GOVERNMENT CONSULTATION**

### **SUPPORTING HOUSING DELIVERY THROUGH DEVELOPER CONTRIBUTIONS: CONSULTATION PROPOSALS**

The consultation is largely 'Yes/No' answers without the opportunity to express the reasons for the answer. If the 'Yes/No' answers are considered in isolation, the results would be likely to be misrepresented. DCC has therefore added reasoned comments in blue at appropriate places in its response.

#### **General**

The Government has expressed a wish to make the developer contributions system less complex and more transparent. However, a number of the proposals within this consultation, all of which concern pooling, would appear to make the system more convoluted, not less. Should authorities wish to continue seeking contributions via section 106 towards infrastructure (subject to Regulation 122) rather than introduce a CIL they should be allowed to do so without the issue of pooling rendering the delivery of infrastructure a large administrative burden.

In working closely with our Local Planning Authorities, issues have also been identified with regards to consultee responses especially from the health sector. More understanding and effective engagement is required from the CCGs with the Local Plan process to plan the delivery of health services in line with the allocations/population growth. This could be supported through developer contributions to enable the delivery of this infrastructure. Recognition is required by all levels of the Health Service that external funding needs to be accessed to deliver the primary healthcare infrastructure they require to support the additional facilities required to address planned growth.

Consideration also needs to be given to the operation of the developer contributions system in two tier authority areas where the Local Planning Authorities are responsible for planning whilst the county council delivers the large items of infrastructure, such as roads, schools, waste, and libraries. Planning applications are determined by the Local Planning Authority and the county councils during the planning process have no powers over the apportionment of Section 106 monies, or indeed the allocation of CIL, to projects which are meant mitigate the impact of development. Examples can be provided where public art contributions which are the remit of the Local Planning Authority have been approved at the expense of monies required for school places. The impact of this is a significant short fall in the contributions needed to fund local infrastructure in order to support sustainable development. It is noted however that the move towards the EUV

plus methodology for viability assessments as presented in the National Planning Policy Framework consultation and the updates to Planning Practice Guidance, may provide more viability in sites and thus drive down the instances where contributions are reduced or non-existent.

#### Question 1:

Do you agree with the Government's proposal to set out that:

- i. Evidence of local infrastructure need for CIL setting purposes can be the same infrastructure planning and viability evidence produced for plan making? ~~Yes~~/No
- ii. Evidence of a funding gap significantly greater than anticipated CIL income is likely to be sufficient as evidence of infrastructure need? ~~Yes~~/No
- iii. Where charging authorities consider there may have been significant changes in market conditions since evidence was produced, it may be appropriate for charging authorities to take a pragmatic approach to supplementing this information as part of CIL setting – for instance, assessing recent economic and development trends and working with developers (e.g. through local development forums) rather than procuring new and costly evidence? ~~Yes~~/No

#### Question 2:

Are there any factors that the Government should take into account when implementing proposals to align the evidence for CIL charging schedules and plan making?

With reference to Q1 above:

- i. The plan making process can be protracted, and whilst taking advantage of the viability assessments in plan making would enable savings to be made with regard to the assessment and calculation of CIL rates, the differing timeframes could render the CIL charging rate calculations outdated before they are examined and adopted. Whole Plan Viability Assessments can often be very broad and generalised assessments of viability often across a whole district (i.e. do not take account of potentially differing sub-areas, sub-markets etc within the district), sometimes based on a range of general assumptions and scenarios and focussed predominantly on affordable housing so they may not always be a robust basis for using to support the introduction of a CIL and CIL rates for differing types of development, particularly where it is proposed to vary rates in differing areas of the District

It is considered that it would be highly unlikely that the infrastructure required to support the delivery of a local plan would ever be fully funded. It has also been proven that CIL will only ever be able to make a minimal contribution towards addressing any infrastructure funding gap and in many cases it is only used to aid leveraging additional funding. The need, therefore, to demonstrate a significant funding gap is unnecessary. CIL fails to give upper tier authorities any security over the funding available to achieve the necessary growth in education infrastructure. At the very least, it places a significant burden on the authority to fund the development ahead of payments being received, and in reality it is likely to result in the authority being left to fund the infrastructure, contrary to Department for Education guidance.

Consideration also must be given to infrastructure which has no other alternative or additional funding streams to enable delivery. For example, match funding is unavailable for the creation of capacity through the extension of existing schools to provide places for children arising from housing development. The restriction of funding education via CIL, through its inclusion on the Regulation 123 list (or potentially any successor document), makes the funding and timely delivery of school places to mitigate development impossible because CIL income only partially funds this infrastructure. However, currently if education





is not included on the Regulation 123 list, there is no guarantee that a development can afford to fund extensions to school capacity through the residual monies available after CIL has been charged.

- ii. It is welcomed that CIL would be more responsive to market forces, however this implies that each time the rates are reviewed, the charging schedule would once again be subject to consultation and subsequent examination, thus creating further expense to the charging authority. Having a more easily set and market responsive rate might be beneficial, but this is offset by the administrative and financial burden and, as such, reviews are only likely to take place when there is a significant change in market conditions.

**Question 3:**

Do you agree with the Government's proposal to replace the current statutory consultation requirements with a requirement on the charging authority to publish a statement on how it has sought an appropriate level of engagement? **Yes/No**

**Question 4:**

Do you have views on how guidance can ensure that consultation is proportionate to the scale of any charge being introduced or amended?

It is welcomed that a more proportionate approach is under consideration. Where a CIL is being introduced for the first time within an authority area, legislation currently requires that the draft charging schedule progresses through both the Preliminary Draft Charging Schedule and Draft Charging Schedule consultation. This lengthy consultation can result in a protracted length of time expiring between rate setting and adoption, thus rendering the CIL charging schedule out of date before it is implemented. A more streamlined system would reduce this inequity, with guidance providing direction on the minimum required in each instance. This would also avoid lengthy discussions at examination over the scale of consultation as presented in the proposed consultation statement.

There can however be merit in having a two stage consultation process (Preliminary and Draft Charging Schedule) which allows the LPA the opportunity to address any fundamental issues raised to the proposed charges at an early stage and to re-consider their approach in the Draft Schedule prior to the Examination. The proposed 'Statement of Engagement' is reminiscent of Statements of Common Ground which are intended to detail the issues on which agreement has and has not been reached, but does not set out an action plan to resolve those issues. If the Statement of Engagement is to be meaningful, it will need to identify where fundamental objections have been raised by stakeholders and where the LPA has worked with the objector to address those objections and if not resolved, then clearly set out the reasons why the charging schedule should not be amended. However, that approach would seem to be predicated on a LPA publishing a charging schedule in some form for consultation the first place.

**Question 5:**

Do you agree with the Government's proposal to allow local authorities to pool section 106 planning obligations:

- i. Where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106 **Yes/No**
- ii. Where significant development is planned on several large strategic sites?  
**Yes/No**



## Question 6:

- i. Do you agree that, if the pooling restriction is to be lifted where it would not be feasible for the authority to adopt a CIL in addition to securing the necessary developer contributions through section 106, this should be measured based on the tenth percentile of average new build house prices? ~~Yes~~/No
- ii. What comments, if any, do you have on how the restriction is lifted in areas where CIL is not feasible, or in national parks?

In response to Q5 and Q6, regarding the adoption of CIL in areas where it is not feasible for a local authority to adopt a CIL based on low new build house prices, the use of the tenth percentile of average new build house prices appears to be an arbitrary figure. All development will generate infrastructure needs, irrespective of whether or not a district/borough has an adopted CIL. Where there is not an adopted CIL, should a district/borough stray into the 11<sup>th</sup> percentile, this effectively removes the ability to pool, but these areas still need the infrastructure to support new housing, which may not be able to be delivered in what effectively remains an area with low average new house prices.

Whilst some National Park Authorities (NPAs) have housing targets, it is not a requirement of national policy, and some national parks therefore use indicative figures for delivery rather than targets. Many of the more remote national parks have low housing delivery numbers and as such development has a proportionate impact. However, that said, the delivery of infrastructure could be severely curtailed should the pooling restrictions continue.

It is also noted that despite the proposal to remove the pooling restriction where an authority that has adopted CIL, this does not appear to have been addressed in this consultation and therefore does not fully review the Governments approach to the removal of the pooling restrictions.

## Question 7:

Do you believe that, if lifting the pooling restriction where significant development is planned on several large strategic sites, this should be based on either:

- i. A set percentage of homes, set out in a plan, are being delivered through a limited number of strategic sites: or
- ii. All planning obligations from a strategic site count as one planning obligation?

It is assumed that option (i) results in pooling being allowed across an authority area as per the description in para 106.

The allocation of strategic sites is particular to each authority and based on a wide raft of environmental, social and economic factors. To try and differentiate between authorities using statistics i.e. 'x% of homes being delivered on y number of strategic sites' over whether or not pooling can take place across the authority area is restrictive, and may even prejudice how development sites are identified in the next round of local plans. Again a one size solution may disadvantage local authorities, for example where there are cross boundary allocations, rural authorities or local authority areas partially covered by national parks. Authorities which only have a low number of relatively small strategic sites geographically distributed over a wide area in order to fit with its character, would be disadvantaged if arbitrary artificial definitions are imposed where pooling would and would not be acceptable, thus limiting the ability of authorities to deliver any meaningful infrastructure across their district.

If Option (i) were to be implemented, there are a number of issues to be considered, not least, how long the exemption from pooling would last, and how the non- delivery of a strategic site would affect a local authority's ability to pool section 106.



Paragraph 55 states that “lifting of the pooling restriction could significantly aid the funding of the infrastructure needed to support development”. It is considered that this should apply irrespective of whether or not an authority has CIL in place, given that infrastructure needs will still be generated as a consequence of development. Limiting an authority’s ability to deliver infrastructure to support development through pooling means that certain developments cannot be acceptable in planning terms. This reduces the level of housing approvals, which does not conform to Government policy on housing delivery.

Entering into a single section 106 agreement for a large site would be a difficult and drawn out process, given the numbers of landowners, developers and the multiple obligations both financial and non-financial which would be required.

With regard to Option (ii) even in instances where contributions towards an infrastructure project from a strategic site would only count as 1 obligation, this would not address the concern of DCC where a secondary school needs to be delivered to serve the growth around south Derby where there are a number / range of separate strategic sites all requiring to make contributions to this one key piece of infrastructure i.e. a new secondary school. As such proposal 7 ii) would not overcome DCC’s concerns about pooling. The key issue for DCC in the delivery of infrastructure across 8 District/Boroughs is that pooling restriction should be removed entirely for all sites/developments and not just in relation to ‘strategic’ sites to enable infrastructure to be delivered in a timely and appropriate manner.

#### **Question 8:**

What factors should the Government take into account when defining ‘strategic sites’ for the purposes of lifting the pooling restriction?

Many strategic sites, due to the on-site policy requirements, have reduced or zero CIL rates. The government should be particularly careful about defining a strategic site by its physical size or housing numbers. This ‘number’ may be appropriated by developers where they are promoting a large scale site not allocated in the local plan, in order to identify their site as strategic and avoid paying CIL at the appropriate rate.

Physical size or housing numbers should not be the only key determinate for a strategic site. It could also be based on its importance to the regeneration ambitions of a local authority for a particular area, such as regeneration priority area, and particularly the number of jobs created and not just housing numbers. In a more rural authority a strategic site may only be 40 or 50 houses but still be important to the overall development strategy for the area and its overall housing requirement. So a site’s importance to the overall development strategy of a district or sub-area within a district should be a key determinant too.

The Government should also note that section 106 agreements contain both financial and non-financial obligations and would be likely to be required.

#### **Question 9:**

What further comments, if any, do you have on how pooling restrictions should be lifted?

The Government has proposed lifting the pooling restrictions under three different scenarios, and states that it wishes to reduce complexity. However from a Local Planning Authority and County Council perspective, this would make the levying and monitoring of Section 106 a more complicated and arduous task with more potential for challenge.

In light of the uptake of CIL nationwide and the observations made in this response with regard to the three pooling scenarios proposed by Government, the additional layers of regulation would only add to the complexity and administration required to monitor and



implement these scenarios. This complexity could be negated should the Government remove the pooling regulation in its entirety.

**Question 10:**

Do you agree with the Government's proposal to introduce a 2 month grace period for developers to submit a Commencement Notice in relation to exempted development?

**Yes/No**

**Question 11:**

If introducing a grace period, what other factors, such as a small penalty for submitting a Commencement Notice during the grace period, should the Government take into account?

It is agreed that a grace period for the submission of the Commencement Notice would be appropriate as the loss of exemptions and instalments may be detrimental to the delivery of a development. However the Commencement Notice should be received by the Charging Authority/Collecting Authority at least the day before the development starts. Concerns have been expressed that the 2 month grace period could be open to abuse.

**Question 12:**

How else can the Government seek to take a more proportionate approach to administering exemptions?

No comment

**Question 13:**

Do you agree that Government should amend regulations so that they allow a development originally permitted before CIL came into force, to balance liabilities between different phases of the same development? **Yes/No**

No comment

**Question 14:**

Are there any particular factors the Government should take into account in allowing abatement for phased planning permissions secured before the introduction of CIL?

No comment

**Question 15:**

Do you agree that Government should amend regulations on how indexation applies to development that is both originally permitted and then amended whilst CIL is in force to align with the approach taken in the recently amended CIL regulations?

Yes, as the S73 provides for a new planning permission.

**Question 16:**

Do you agree with the Government's proposal to allow local authorities to set differential rates based on the existing use of land? **Yes/No**

CIL rates have historically been set at a level which accommodates the 'lowest common denominator' in order to cater for the least viable proposals, which subsequently leads to some developments paying proportionally less. In theory this would address this issue and help to



capture the uplift in land values from, for example, agricultural to residential or brownfield to residential. However, when this is applied to items on the charging schedule, i.e. separate rates for each land change permutation, this risks overcomplicating the process considerably.

#### Question 17:

If implementing this proposal do you agree that the Government should:

- i. Encourage authorities to set a single CIL rate for strategic sites? **Yes/No**  
Based on viability testing the CIL charging rate for strategic allocations should be set to ensure that the CIL rate does not impinge on the residual for which on site section 106/section 278 funding is required.
- ii. For sites with multiple uses, set out that CIL liabilities should be calculated on the basis of the majority existing use for small sites? **Yes/No**  
For smaller sites i.e. 10 and under it is not such an onerous task to define the existing land uses and if a charging authority has gone to the trouble of setting land use rates, it should use the rates as calculated.
- iii. Set out that, for other sites, CIL liabilities should be calculated on the basis of the majority existing use where 80% or more of the site is in a single existing use? **Yes/No**  
  
See comments in iv below.
- iv. What comments, if any, do you have on using a threshold of 80% or more of a site being in a single existing use, to determine where CIL liabilities should be calculated on the basis of the majority existing use?  
For sites of 11 and above, the existing land uses will have had to have been assessed in order to calculate whether 80% of the site is a single existing use. If the single existing use falls below 80%, CIL would be charged at the appropriate rates. There is no reason to have an arbitrary figure of 80% for sites with a single existing use.

#### Question 18:

What further comments, if any, do you have on how CIL should operate on sites with multiple existing uses, including the avoidance of gaming?

If an office building was being converted to residential, CIL will not be charged if there is no increase in floor area and the building has been in continuous lawful use for 6 months out of the 3 years before development is permitted. By demolishing this building, CIL would be liable on the whole development. However, if there was an extension to the building, CIL would be charged on the increase in floor area, at the brownfield to residential rather than office to residential rate, and this would be likely to be at a higher rate. As such it is difficult to see how gaming would take place.

Appropriate evidence should be provided to clearly demonstrate the mix of uses, that the building has been in continuous lawful use for 6 months out of the 3 years before development is permitted, and the proportion of floor space within each use class.

#### Question 19:

Do you have any preference between CIL rates for residential development being indexed to either:

- a) The change in seasonally adjusted regional house price indexation on a monthly or quarterly basis; or





- b) The change in local authority- level house price indexation on an annual basis.

CPI is constructed using the prices of a sample of representative goods and services bought by households. It is considered this index is not reflective of the housing market.

House price indices can fall as well as rise, whilst the construction cost of infrastructure generally rises. However when house prices fall, a corresponding fall in indexation would reduce contribution levels, impact on the monies available for the delivery of infrastructure to support the development, and expose infrastructure providers to increased costs. This is particularly an issue for Unitary and County Councils which generally provide the larger items of infrastructure such as education and highways. The current Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors methodology (although this is a subscribed service) takes account of full construction costs and is recognised as the leading industry standard.

If the Government intends to change the indexation type, as outlined in (b) above, one annual indexation would be a less onerous methodology; this would also then reflect the house price changes at a local rather than a regional level and better capture what can be significant variations within regions.

**Question 20:**

Do you agree with the Government's proposal to index CIL to a different metric for non-residential development? ~~Yes~~/No

The current BCIS methodology (although this is a subscribed service) takes account of full construction costs and is recognised as the leading industry standard. Using a different indexation for non-residential development adds a further level of complexity to the calculation of CIL liabilities.

**Question 21:**

If yes, do you believe that indexation for non-residential development should be based on:

- i. The consumer price index ~~Yes~~/No
- ii. A combined proportion of the House Price Index and Consumer Prices Index? ~~Yes~~/No

No – see response to Q20.

**Question 22:**

What alternative regularly updated, robust, nationally applied and publicly available data could be used to index CIL for non-residential development?

See response to Q20. it is considered that BCIS All in Tender price should continue to be used.

**Question 23:**

Do you have any further comments on how the way in which CIL is indexed can be made more market responsive?

No comment

**Question 24:**

Do you agree with the Government's proposal to:

- i. Remove the restrictions in regulation 123, and regulation 123 lists? Yes/~~No~~



- ii. Introduce a requirement for local authorities to provide an annual Infrastructure Funding Statement? Yes/~~No~~

Yes in principle, however many local authorities already publish information on their S106 income and expenditure through their Authority Monitoring Report (AMR).

**Question 25:**

What details should the Government require or encourage Infrastructure Funding Statements to include?

An IFS should include the infrastructure required to provide for the development in the local plan which is predicted to come forward within the following 5 years, along with a timeline of when the infrastructure would be needed to support the housing trajectory. The IFS would also indicate, but not bind the authority to how the infrastructure would be funded (i.e. CIL versus S106) and the lead organisation. It however should be considered that 5 years might be too short a time frame. There may be infrastructure projects which are a key priority in a district but that are likely to be delivered beyond 5 years, therefore a section to address longer term strategic projects either within the plan period, or up to 10 years may be a better benchmark.

There is a finite amount of contributions available from a development whether these contributions are provided through CIL and/or S106. For example if a new school is required and not enough residual funding is available through S106 after CIL has been charged, CIL could be used to ensure that infrastructure is provided in order to mitigate for and to serve the development. The IFS would be a dynamic document updated annually, in order to address the continual flux of development, and could form a chapter in the Infrastructure Development Plan (IDP).

In light of the issues with pooling as discussed above, the inclusion as suggested in paragraph 142 that the IFS will 'set out priorities for how a charging authority intends to use CIL and, where possible, section 106 contributions for the coming 5 years' is a difficult and time consuming task. With regard to education planning there are two issues:

- this is a fluid environment as the pupil projections are undertaken annually and can be influenced by demographics, school performance; and
- alongside issues of viability (which are addressed through the NPPF consultation) it is almost impossible to predict what section 106 monies would be forthcoming and how these could be allocated to projects in normal area schools if pooling applies. If pooling were to be removed in its entirety, this might help to deliver the growth needed to support development in a timely manner. As it is, projects can be stalled awaiting section 106 income for schemes where development is slow, awaiting reserved matters applications, or where approved schemes are not being delivered.

**Question 26:**

What views do you have on whether local planning authorities may need to seek a sum as part of section 106 planning obligations for monitoring planning obligations? Any views on potential impacts would also be welcomed.

The monitoring of S106 is becoming more complex in light of multiple trigger points in order to address the cost and income over the life of the development, and overage assessments with regard to viability. Administration fees are provided from CIL, so section 106 also needs to be brought into line. Although in the 2015 case of *Oxfordshire County Council v Secretary of State for Communities and Local Government* and others, the Court found that the monitoring fee was not required to make the development acceptable in planning terms, it did not go so far as to suggest that such fees could never lawfully be charged. It was submitted that in certain narrow circumstances additional resource might be required. As such clear guidelines are required in



order that a monitoring fee can be sought. Where there are two tier authority areas consideration needs to be given to fees for each authority.

**Question 27:**

Do you agree that combined authorities and joint committees with strategic planning powers should be given the ability to charge a SIT? **Yes/No**

Yes; however historically, county councils were responsible for the compilation and delivery of the County Structure Plans. With the Government's move towards strategic planning, and the move at county level towards strategic planning in conjunction with their constituent districts/boroughs, it is strongly recommended that this opportunity should also been given to county councils to be an accountable body for a SIT in order to deliver strategic infrastructure.

**Question 28:**

Do you agree with the proposed definition of strategic infrastructure? **Yes/No**

This definition of strategic infrastructure should only be applicable to a SIT.

**Question 29:**

Do you have any further comments on the definition of strategic infrastructure?

No comment

**Question 30:**

Do you agree that a proportion of funding raised through SIT could be used to fund local infrastructure priorities that mitigate the impacts of strategic infrastructure? **Yes/No**

**Question 31:**

If so, what proportion of the funding raised through SIT do you think should be spent on local infrastructure priorities?

This should not be artificially split because if the strategic infrastructure project were to raise additional external funding, the SIT could be spent on additional local infrastructure to support the strategic infrastructure.

**Question 32:**

Do you agree that the SIT should be collected by local authorities on behalf of the SIT charging authority? **Yes/No**

Yes. However, despite receiving a percentage fee for administration, authorities which do not already charge a CIL would require a substantial set up time and cost.

**Question 33:**

Do you agree that the local authority should be able to keep up to 4% of the SIT receipts to cover the administrative costs of collecting the SIT? **Yes/No**

**Question 34:**

Do you have any comments on the other technical clarifications to CIL?

No comment





Yours faithfully

Mike Ashworth  
Strategic Director Economy Transport and Environment

Copies:

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David Arnold, Head of Planning Services  
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Anna Chapman, Countryside  
Adam Lathbury, Conservation and Design  
Gary Ellis, Conservation and Design  
Graham Hill, Highways Development Control  
Jim Seymour, Economy Transport and Environment  
Graham Hill, Economy Transport and Environment  
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Claire Brailsford, Waste Management Service  
Sue Pegg, Childrens' Services  
Richard Lovell, Economy Transport and Environment  
Michael Reardon, Economy Transport and Environment  
Robert Rowan, Economy Transport and Environment  
Iseult Cocking, Adult Care  
Jane Careless, Adult Care  
Don Gibbs, Commissioning, Communities and Policy  
Jane Hicken, Adult Care

