

CLC Submission on the CMA Working Paper on Planning

About the CLC

The Construction Leadership Council (CLC) brings together representatives from across the built environment: from housebuilders, to contractors, to architects and engineers, planners and materials suppliers.

We work in partnership with Government and organisations of all sizes across the industry to ensure the construction sector has the voice, support and resilience needed to grow, improve productivity, attract and retain talent, and successfully transition to Net Zero. The CLC is co-chaired by Mark Reynolds, Group Chairman and CEO of Mace and Nusrat Ghani MP, Minister of State for Industry and Economic Security at the Department for Business and Trade and Minister of State for the Investment Security Unit at the Cabinet Office.

The CLC's remit is for England, so our response to the CMA's working paper addresses the planning system in England and not in Scotland and Wales.

Introductory remarks

There is much that we agree with in the CMA's analysis of the planning system in England and the implications it has for the delivery of housing.

Like the CMA, the CLC recognises that the planning system's role is to mediate between enabling necessary development, such as the supply of new housing, and the achievement of other societal objectives.

The issue is not this principle, but the functionality of the system and how, crucially, it regulates the supply of land for development and affects the business climate for home builders of all sizes.

While there are longer-term policy and other measures that could be taken to improve the performance and outcomes of the planning system, it is important to recognise that there are also non-legislative shorter-term measures that could improve the performance of the planning system. We agree with the CMA, however, that no individual measure on its own would be sufficient to make a material improvement to the current position. A considered and coherent package of shorter-term measures is therefore desirable: a series of steps that could be taken quickly and would collectively improve the functionality of the system.

But it is also vital to address the resource issue – the resource needed both to operate development management services efficiently and for producing the local development plans themselves in a timely and effective manner. It is very widely recognised that the staff resources available to planning authorities are

inadequate and have been significantly denuded over the last decade. A solution to this problem must be found.

In addition, we note that Statutory Consultees also lack the staff resources to play their part in the planning system effectively - another system constraint that needs to be addressed.

The need for an improved planning system for national infrastructure must also be acted upon if housing delivery is to be improved. Such infrastructure investment is often important for unlocking and supporting residential development projects without which both growth and housing objectives cannot be successfully met.

In its recent report on productivity in the construction sector – "[Creating a Productive Environment for UK Construction](#)" - the CLC highlighted its concerns relating to the deterioration in the timescales involved in planning decisions for infrastructure projects. (The report sets out that since 2012 consenting times for Nationally Significant Infrastructure Projects have increased by 65%, moving from 2.6 to 4.2 years.)

CLC called on the Government to adopt the National Infrastructure Commission report recommendations around accelerating the NSIP process and for a number of other steps to be taken to improve strategic planning for infrastructure. It is vital therefore that the Government's announcement in the Autumn Statement of a new "ministerially led forum" to "drive" delivery, publishing spatial data on such schemes and confirming a one-year "fast-track" route for certain infrastructure developments is taken forward and built on for the future.

Reducing uncertainties

Reducing uncertainties is key. The CMA's analysis of the impact of uncertainty is sound and compelling.

Policy change managed in the wrong way creates perverse incentives for Local Planning Authorities (LPAs) to put the production and adoption of up to date local plans on the back burner. That in turn weakens the internal drivers for LPAs to invest in their planning services.

At the national level, it is also important to point out that the Government's commitment to achieving a housing supply of 300,000 homes a year in England by the mid-2020s is not set out in national policy. A coherent national policy on housing supply, with clear minimum all tenure housing targets, would however inform strategic and local policy making, producing more robust local plans and decision taking.

At the LPA level, the first requirement must be the timely production and adoption of local plans, supported as far as possible by consistency and continuity of policy.

Means to achieve this requirement include the provisions of the Levelling Up and Regeneration Act (LURA) on plan-making. Importantly, the production of local plans has been made mandatory under section 15C of Schedule 5 of LURA.

CLC supports this legal requirement and the objective of quicker and more effective local plan-making. The 30-month timetable for local plan production proposed by the Government is supported, but this requirement will be a challenge for LPAs to meet if they lack sufficient resources for plan-making. The Government has therefore to recognise that LPAs need adequate funds in order to be able to produce their plans on time.

In this context, it is vital that, as well as increasing public investment in the planning service, other measures are taken that could help LPAs meet the 30-month timetable for the production of local plans.

One key step will be for the Government to proceed as a matter of urgency to draft and implement the proposed National Development Management Policies (NDMPs).

CLC is very supportive of the introduction of NDMPs. At present too much effort is expended in the development of local plans in effectively reinventing the wheel on policy. The provision of a set of agreed national policies as a key element of local plans will both save LPAs time and resource and reduce uncertainty and risk for home builders (though clearly in drafting the NDMPs it will be necessary to consider the boundaries of what they should cover and what may more practically be matters of specific local circumstance.)

Another measure that would assist LPAs in producing their local plans faster and more efficiently - and which would also improve the development management service - is the full digitisation of the planning service and plan-making process. This would not require legislation, but it will need a concerted push or delivery programme from Government supported by the necessary public investment.

In addition, a consistent set of national rules on the delegation of authority to officers on planning decisions is desirable. At present there is enormous diversity amongst LPAs in their rules on the delegation of authority. In some instances this entails what are, objectively, excessive levels of decision-making by LPAs' planning committees on relatively minor and/or uncontroversial planning applications.

More specifically, no scheme of delegation currently takes into account whether or not the principle of development has already been established. However, the threshold at which an application on an allocated site or one consistent with the local plan is taken to committee should undoubtedly be considerably higher than an application that might not be consistent with a plan.

We would therefore propose a national provision for delegated approval for schemes below a certain threshold for allocated sites. There should also be delegated approval for more Reserved Matters and Discharge of Conditions.

A consistent set of national rules on delegation of authority for planning decisions should be based on such considerations.

A consequence of the current uncertainties is that too many applications lead to appeals which both delay or inhibit housing delivery and themselves may carry a degree of uncertainty. The measures we have proposed above should help to reduce the incidence of appeals, but additional measures could also be considered to this end. For example, a mediation service could be established to reduce unnecessary appeals, with mediation advice being a material consideration in any subsequent appeal.

CLC would also propose an improved appeals service - with, for example, schemes below a certain (SMEs) threshold afforded a fast track. A fast-track appeals procedure should also be considered for schemes where the site is allocated, or permission granted – for example, where it has reserved matters or a discharge of conditions appeal. A Rosewell type review of Hearing and Written Reps procedures should also be considered to improve the efficiency of the appeals service.

Finally, given where we are in the current cycle of reform, we also need to see the latest revision of the NPPF in place and the Government's response to the consultation on its plans for the new Infrastructure Levy as soon as possible.

The current policy vacuum in respect of both of these key elements of national policy for the planning system is directly contributing to the slackening of LPA activity on the production of up to date local plans and greater levels of risk and uncertainty being faced by all sizes of home builder.

Other sources of risk

It also needs to be recognised that there is an increasing threat that public bodies may impose some form of moratorium on development locally.

This is most notably illustrated through Natural England's 'Nutrient Neutrality' requirements which have seen 150,000 homes blocked across 74 local planning authority areas. This is despite the fact the occupancy of new homes accounts for just 0.29% of total nitrogen emissions each year and 0.73% of total phosphorus (nitrogen and phosphorus make up 'nutrients')¹.

Natural England has, in addition, imposed restrictions in other areas citing 'water neutrality' and 'recreational impact' concerns relating to new development.

The sudden introduction of such restrictions often sees home builders effectively ransomed into finding solutions to wider societal or infrastructure challenges including, in these instances, regional water shortages or pollution generated by other sectors. These one-off shocks to businesses imposed often via the planning system would carry enormous risk for any sector of the economy, but home building is particularly exposed to them. Such shocks are not replicated across the rest of the economy.

Given the detrimental impact on housing delivery resulting from the sudden introduction of such restrictions, there is an urgent need for the future for the

¹ Brookbanks/HBF, The extent to which housebuilding contributes to nutrient pollution across watercourses in England, November 2023.

Government and relevant public agencies, following discussion with economic stakeholders, new procedures that are focused on agreeing information-sharing and forward-planning mechanisms to avoid such planning shocks in future.

Cost, length and complexity of the planning application process

We agree with the CMA that this is a major concern. The cost, length of time required and the risk involved in seeking planning permission for developments is inhibiting housing delivery for all sizes of home builder. It also constitutes a significant barrier to market entry and a real constraint on the survival and growth of existing SME developers.

The CMA's analysis sets out very clearly the consequences of the current position. This affects housing delivery across the board, but the CMA is correct to identify the disproportionate impact of the current system on SME home builders. It is worth adding to the CMA's analysis, however, that the business impact of the time and risk involved for SMEs is heightened by the link to finance issues. Many SMEs – particularly those operating on a project finance basis – are often unable to secure funding for a new development until they have obtained planning permission. This means they may have significant capital at risk until permission is obtained and this clearly affects their scope to operate and grow.

To tackle the problems of cost, length and complexity of process for all applicants, a combination of measures should be adopted by Government.

The adequate funding and resourcing of the planning service, simplifying and speeding up the local plan production process (for example, through the adoption of NDMPs as mentioned above), and the implementation of a revised and sounder standard method for assessing housing need would all have a role to play in achieving this objective.

As the CMA observes, incentives for LPAs to produce up to date local plans in an efficient and timely way and to improve their development management services should also be considered.

Strong incentives to maintain a deliverable 5-year land supply to meet local housing requirements should be maintained under the NPPF. In this regard changes proposed to the NPPF by the Government in its consultation at the start of 2023 do raise concerns that incentives may be weakened or become less clearly focussed.

The CLC would also suggest that the Government adopt positive incentives for the timely production of local plans and for the achievement of local housing delivery requirements – for example, by linking access to public infrastructure and regeneration funding to the record of LPAs. A form of Planning Delivery Grant funding pot could also be introduced to reward good performance or Councils with up to date plans could benefit from a Planning Fee increase or other incentives relating to business rates or the new homes bonus.

Rules-based approach

The CLC understands the CMA's rationale for proposing a rules-based approach to planning for housing. However, although such an approach has its attractions, the Government has moved away from it in policy terms.

The debate about the rules-based approach stimulated by the proposals for 'Growth, Renewal and Protection Areas' in the 2020 Planning for the Future' White Paper demonstrate the difficulties associated with a wholesale restructuring of the system in this way. It should also be recognised that all rules-based planning systems (usually found in civil law jurisdictions) also have to have lots of discretion to work.

We would suggest therefore that the CMA's objectives in proposing a rules-based approach could be achieved at least in part by other measures – for example, the increased delegation of powers to planning officers on a consistent national basis and through the implementation of a clear and robust set of National Development Management Policies which simplifies the local plan-making process and provides more clarity and certainty for applicants.

Statutory consultees

We agree that a list of priority or key consultees might be set out to reduce the inertia resulting from current arrangements. Parish councils might be one consultee that becomes a lower priority under such an approach.

Statutory consultees also face resource issues, as mentioned above. Their resources should ideally therefore be bolstered to meet requirements. However, statutory consultees could also seek to introduce their own systems for identifying the parts of the country or types of development that are the most important for the discharge of their responsibilities and then tailor their procedures to ensure that their resources are allocated on clear and rational risk-based criteria. This would result in a more efficient overall use of their resources by ensuring that all responses to planning applications that they consider receive the attention that is appropriate in order that all responses are made on time. We understand that Natural England is moving in this direction and would propose that other statutory consultees should adopt similar strategies.

Another step that could be taken would be for statutory consultees to be included in performance measurement arrangements. And where Planning Performance Agreements are used, it would be logical to include specific performance obligations for consultees as well as the LPA. It is suggested that their performance obligations should extend after discharge of conditions to address current delays associated with S278/S38 procedures and adoptions.

At a more strategic level, the lack of involvement of Statutory Consultees in the production of development plans means more uncertainty and delay at the planning application stage with requests for additional technical information that should have informed the plan. Often an unreasonable and disproportionate level

of evidence is sought to justify permission for an allocated site. An improvement in process for the local plan development process should therefore be considered.

Insufficient clarity, consistency and strength of LPA targets, objectives and incentives to meet housing need

We agree that it is necessary to revise the Standard Method for determining housing requirements in local plans. A more reliable and fair approach could be a stock-based one.

A stock-based assessment determined on a nationally consistent basis could provide the key first step in determining the local plan's housing requirement. The second step would then be to apply local considerations to the base figure which could result in a higher or lower figure than that in the base requirement depending on the relevant local factors.

Adopting the existing housing stock in a LPA area would produce a more empirical and stable baseline than the current standard method. An agreed minimum annual stock growth rate could set a floor for every LPA to work from whilst retaining a tangible relationship to the size of a community. According to work undertaken for the HBF by Turley, a minimum growth rate of 1.0%, for example, would collectively amount to a national floor of 250,000 homes per annum, which would be more evenly distributed around the country. Policy and guidance could then identify the parameters to be taken into account locally when determining whether need is higher or lower than this starting point.

Factors that should be taken into account for this second stage of determining local plans' housing requirements might include:

- the local economic context and scope for growth,
- the level of unmet need for affordable homes, growing housing waiting lists, overcrowding, or homelessness,
- whether there is a need to diversify the housing stock of an area to meet needs for larger or family homes,
- rates of household formation,
- rates of vacant property,
- the balance between homes and jobs within a city region, town or community,
- any agreement with a neighbouring area to accommodate housing needs,
- significant environmental constraints of national importance (AONB, National Park, or SSSI)

Bearing in mind the CMA's analysis of the proportion of planning permissions that are not implemented for various reasons, it is also important that the number of plots that are consented allows for the likely proportion of non-uptake. That would mean that a 120% stock of consents against targets would be needed to achieve a 100% delivery of the target on a consistent basis.

Adoption of a revised Standard Method could also be backed by the use of effective sanctions for LPA plan making. Increased use of SoS recovery powers

and incentives could be used to place a duty on LPAs to review and adopt up to date plans and accommodate housing need in these unless exceptional circumstances exist. Costs could be recovered from LPAs in such circumstances.

Plan reviews can be undertaken in a fast and light touch way – for example, through Site Allocations DPD Review where delivery and supply are failing. A wider review would only be required if there was significant impact on infrastructure and services. There should be triggers introduced for such reviews – such as the 5-year Housing Land Supply, Delivery Test.

Bearing in mind that housing requirements or targets in local plans are minimum delivery figures, decision taking on planning applications should have regard to addressing housing need in order to significantly boost the supply of homes. This approach to decision-making should be supported by a strong presumption in favour of the sustainable development of allocated sites and a wider presumption in favour sustainable development unless any adverse impacts would significantly and demonstrably outweigh the benefits. The wider presumption would apply to policy-compliant applications where relevant policies are up to date and could support SMEs in particular where they are reliant on windfall sites.

Greater than local delivery

Given that genuine delivery constraints will apply to certain LPAs and that other LPAs may have more opportunity for growth, there is a clear need to find an effective replacement for the Duty to Co-operate. The introduction of a strategic, sub-regional or regional planning tier or mechanism is needed to allocate housing numbers between LPAs in order to prevent the constraints facing certain LPAs leading to an inevitable under supply of housing for the sub-region or region as a whole. This is a short-term requirement, with a new mechanism needed before the Duty to Co-operate ends in 2025.

Barriers to market entry and growth of SMEs

We fully agree with the CMA's analysis about the barriers that the current planning system can create for market entry and for SMEs to survive and grow.

The CLC has recently proposed to DLUHC officials that the following measures could be considered to improve the position for SMEs:

- In the context of the wider consideration of measures to boost planning resource, looking at the benefit in creating specific planning teams to help SMEs navigate the planning system.
- In addition, consider the need to develop practical guides to assist consultees and planning committee members understand better the planning system.
- Look at the scope for a 'fast track' application determination system for SMEs.
- Consider the scope for encouraging collaborative development between councils and SMEs – for example, through councils providing serviced land to the market.

- Consider scaling back and simplifying the evidence required at the initial outline permission stage.
- Give further consideration to expanding the existing Permission In Principle rules to larger sites of 10-150 homes.
- Consider the case for reducing fees for smaller sites and guidelines for doing so. This should be looked at as part of a wider consideration of how to introduce more proportionality into what is required to accompany applications from different sizes of development, so that small sites of, say, 10-30 homes aren't caught up in the same requirements as very large sites.
- Greater use of brownfield registers allied to the expansion of permission in principle.
- Amendment of the NPPF to require LPAs to demonstrate specifically the role that small and medium-sized sites will play in meeting their housing requirements with a suitably evidenced based numerical target.

Additionally, consideration needs to be given to the application of the new Biodiversity Net Gain (BNG) requirements to SME developers. There will be particular challenges for SMEs in meeting the legal requirement for 10% BNG on smaller sites and the rules for the new regime need to ensure that there are accessible means for SMEs to meet their BNG requirements offsite where onsite provision is only possible to a lesser degree than 10% so that compliance to the BNG regime does not become a further barrier to market entry and SME growth.

In terms of land and site supply for SMEs, further consideration could also be given to how future applications for the development of large sites could be asked to identify plots or small sites for SMEs within the overall development. The Letwin Review of Build Out in October 2018 made proposals on the diversification of large sites to this end, although it was recognised that more work would be required on the details of any such planning rules to avoid any risks to overall housing delivery in such instances.

Uncertainty over the cumulative costs of policy and regulatory changes represents a significant risk to development viability and delivery generally. This must be addressed through robust consideration of viability challenges both in the production of the local development plan and in decision making on individual planning applications. These cumulative costs represent a significant barrier to SMEs and this needs to be recognised and allowed for in decision-making.

A further change that would assist SMEs would be to revise the category of "major development" to increase the numbers covered by this above 10 units.

The funding and resourcing of the planning service

Planning is a key public service affecting the delivery of economic, social and environmental goals for the country.

Its value to national welfare should be recognised by increasing public funding to resource properly the plan-making and development management services of LPAs - in combination with a suitable level of planning fees paid by applicants.

Applicants are willing to pay suitable fees if the service delivered is efficient and accessible, but in recent experience increases in planning fees have not led to improved service levels. Forms of incentives linking fee levels to development management service levels should be further considered, building on experience of Planning Performance Agreements and the Government's recent proposals for a Premium Service.

An important proviso to this is that CLC strongly advocates that powers should be taken to require Council ringfencing of fees for planning services and training.

In the short to medium term, however, and despite the funding for planning announced by the Government in the "Plan for Housing" this summer, the gap between planning fee income and the cost of running the service is too big to be credibly bridged by an increase in fees alone. There should therefore be additional public funding from Central Government to enable LPAs to deliver the services and plan-making performance that is required. Such funding could include incentives such as a new form of Planning Delivery Grant, as mentioned above.

To assist recruitment of suitably qualified professionals to the service, the Government should continue to invest in the planning apprenticeships scheme and bursaries to support those considering a planning degree and career. A percentage of the income from PPAs and application fees could also be reserved for supporting apprenticeships, skills and staff development.

Our proposals for measures to improve the funding and resourcing of the planning service also need to sit within fresh and improved arrangements for the oversight of LPA performance by DLUHC. There should be active monitoring by DLUHC of LPA performance against KPIs for the development of local plans and the operation of development management services, backed by intervention where LPAs are clearly falling short of the performance expected.

In conclusion – moving quickly

In view of the seriousness of the accumulated shortfall in housing supply over many years, it is essential that the practical steps that can be taken to improve the performance of the planning system are implemented as quickly as possible.

The timescales for change need to be minimised and in that regard we consider that the CMA's proposals for its primary recommendations are not ambitious enough. For example, allowing 4 to 5 years for target setting, associated reform and enforcement seems unambitious and an insufficient response to the importance of the issue.

In our response we have set out a range of proposals on how we think the planning system – both the production and adoption of local plans and the operation of development management services – could be improved in the

shorter rather than the longer term and we would commend the active implementation of these proposals to the CMA for its consideration.