

Cheltenham Borough Council

Cabinet

12 January 2016

Consultation on proposed changes to national planning policy

Accountable member	Leader, Councillor Jordan
Accountable officer	Tracey Crews – Director of Planning
Ward(s) affected	Potentially several
Executive summary	<p>The Government has launched a consultation on proposed changes to the National Planning Policy Framework (NPPF). There are clear and direct links to changes being proposed by the Housing and Planning Bill which is going through a second reading.</p> <p>This report sets out the key topics covered in the consultation that have a potential impact on Cheltenham Borough Council.</p> <p>Appendix 2 sets out the Council's response to DCLG's consultation.</p>
Recommendations	<p>1. To ENDORSE comments as set out in appendix two and delegate authority to the Leader to agree minor amendments prior to submitting the Council's final response to DCLG.</p>

Financial implications	<p>There are no known implications at this stage, however should these proposals succeed there are potential resource implications.</p> <p>The resource implications are primarily focussed on the Planning service however these implications could be corporate-wide including Commissioning, Financial Services, Democratic Services and One Legal.</p> <p>Contact officer: Nina Philippidis, Business Partner Accountant nina.philippidis@cheltenham.gov.uk, 01242 264121</p>
Legal implications	<p>There are no known implications at this stage.</p> <p>Contact officer: Michael Jones, <i>Michael.jones@tewkesbury.gov.uk</i>, 01684 272013</p>
HR implications (including learning and organisational development)	<p>There are no staffing or Trade Union implications.</p> <p>Contact officer: Julie McCarthy, <i>julie.mccarthy@cheltenham.gov.uk</i>, 01242 777249</p>

Key risks	<p>There are no known implications at this stage.</p> <p>Should DCLG proposal be adopted there are potential impacts on resources used to deliver local plan development documents (Joint Core Strategy and Cheltenham Plan).</p> <p>Should these proposals be adopted the Council should be minded to monitor the impact of Starter Homes on the delivery of other types of affordable housing and also monitor its impact on the delivery and safeguarding of land to meet Cheltenham's economic and employment needs.</p>
Environmental/Social/Equality Implications	<p>There are no known implications at this stage.</p>

1. Background

1.1 The Government has launched a [consultation on proposed changes to the National Planning Policy Framework](#) (NPPF). The consultation was due to close in late January, however DCLG has recently extended the consultation to 22nd February 2016. Unsurprisingly there are clear and direct links to changes being proposed by the Housing and Planning Bill which is going through a second reading¹.

1.2 This report identifies some of the key topics covered in the consultation that potentially impact the Council in its role as a local planning authority:

Broadening the definition of affordable housing to include Starter Homes

1.3 The current definition includes low cost home ownership models, such as shared ownership² and shared equity³, the government believes that this limits the current availability of home ownership options for households whose needs are not met by the market, and proposes to amend the NPPF definition to encompass a fuller range of products.

1.4 This could include 'discount market sales' (Starter Homes) and new models of rent-to-buy housing. These changes would allow CBC to secure Starter Homes as part of our negotiations on affordable housing.

1.5 The RTPI have expressed concern about this focus on the overall numbers of Starter Homes and the reclassification of affordable housing. Evidence submitted to the [House of Commons reading on the Housing and Planning Bill](#) noted a risk that homes for **social rent and shared ownership would be squeezed out and replaced by Starter Homes**, without any guarantee of a net increase in overall housing supply. They also noted that the Starter Homes discount brings additional money into the system which risks inflating land prices, except where public land is involved. Starter homes might cater for a different section of the population in housing need than social rent, for example the less vulnerable and more financially stable.

Increasing the density of residential development around commuter hubs

¹ See appendix 3 for further information.

² Shared ownership schemes are provided through housing associations. The buyer purchases a share of the home (25% to 75% of the home's value) and pay rent on the remaining share. The buyer will need to take out a mortgage to pay the share of the home's purchase price. Shared ownership properties are always leasehold.

³ Shared equity schemes give you a loan that acts as part of the deposit on a property. The buyer will still need to take out a mortgage on the remainder of the property price.

- 1.6 The NPPF currently enables councils to set appropriate density levels for new housing development based on local circumstances, resulting in a mixed approach to density policy across Local Plans. The government believes there are significant benefits to encouraging development around new and existing commuter hubs, including reducing travel distances by private transport, making effective use of private and public sector land in sustainable locations, and supporting local regeneration and growth.
- 1.7 The government is proposing a change to the NPPF that would expect councils, in both plan-making and in taking planning decisions, to require higher density development around commuter hubs wherever feasible. This section of the consultation seeks proposals for how this might be achieved, along with responses to the government's definition of a commuter hub⁴.

Supporting new settlements

- 1.8 The government proposes to amend the NPPF to provide a more supportive approach to planning for new settlements. This would seek to encourage councils to take a proactive approach to planning for new settlements and working with developers coming forward with proposals for new settlements, provided they meet the sustainable development objectives of national policy.

Supporting housing development on brownfield land and small sites

- 1.9 The government proposes to amend the NPPF to give substantial weight to the benefits of using brownfield land for housing – described as a form of '**presumption in favour of brownfield land**'.
- 1.10 The government makes clear that development proposals for housing on brownfield sites should be supported, unless overriding conflicts with the Local Plan or the National Planning Policy Framework can be demonstrated and cannot be mitigated.
- 1.11 This includes measures to ensure that all proposals for sustainable development on small sites (defined as less than 10 units) are strongly supported by national policy, provided they are within existing settlement boundaries and well-designed to promote or reinforce local distinctiveness.
- 1.12 This suggested policy change is in line with the JCS strategy, which identified brownfield capacity first, and then looked to allocate only need which could not be met in this way to green field and greenbelt sites.
- 1.13 The RTPi has informed the government it is clearly important to emphasise that brownfield sites should only be considered as suitable for sustainable development if they have good access to infrastructure and jobs. Many brownfield sites are so poorly located that their development would generate high volumes of car traffic and long commutes.

Ensuring housing is delivered on land allocated in plans

- 1.14 In order to speed up housing delivery, the government is proposing to amend the NPPF to **introduce a housing delivery test**. This would compare the number of homes set out in our Local Plan against the net additions in housing supply in our area. The government is seeking views on how this test would work. This suggested policy change will need to be taken into account when the JCS authorities review the mechanism by which the JCS supply is calculated, particularly on cross boundary sites.

⁴ DCLG propose that a commuter hub is defined as: a) a public transport interchange (rail, tube or tram) where people can board or alight to continue their journey by other public transport (including buses), walking or cycling; and b) a place that has, or could have in the future, a frequent service to that stop. DCLG envisage defining a frequent service as running at least every 15 minutes during normal commuting hours.

- 1.15 The government is also proposing to amend the NPPF to make clear that where significant under-delivery is identified over a sustained period, action needs to be taken to address this. One of the options proposed is to identify additional sustainable sites if the existing approach is demonstrably not delivering the housing required, for example through a **rapid and targeted policy review**, including appropriate consultation, so that additional land in sustainable locations can come forward.
- 1.16 Since April 2011 CBC has continued to grant sufficient planning permission to meet the JCS housing requirement of 9,100 dwellings or 455 per year. However we are only seeing approximately 260 dwellings built per year; this equates to a deficit of 195 dwellings each year or 780 dwellings since 2011.

Supporting the delivery of Starter Homes on unviable and underused commercial and employment land, within mixed use commercial developments, in rural areas, and in land designated as Green Belt

- 1.17 The government is proposing to amend the NPPF (para 22) to make clear that unviable or underused employment land should be released unless there is significant and compelling evidence to justify why such land should be retained for employment use. At a minimum, this would include an up-to-date needs assessment and significant additional evidence of market demand. They are therefore interested in views on the level and type of evidence which would justify retention of employment and commercial land.
- 1.18 A policy example is given and views sought: *We are considering the merits of expecting local planning authorities to adopt a policy with a clear limit on the length of time (such as 3 years) that commercial or employment land should be protected if unused and there is not significant and compelling evidence of market interest of it coming forward within a 2 year timeframe.*
- 1.19 On the one hand this suggestion is helpful as it finally defines what 'long term' means; however if this proposal succeeds it leaves little flexibility for the council when drafting a new safeguarding employment land policy. The Planning Policy team may, in these circumstances, need to look at other mechanisms outside of the planning system to help safeguard and promote the use of existing employment land.
- 1.20 The government also proposes to widen the scope of the current exception site policy for Starter Homes to incorporate other forms of unviable or underused brownfield land, such as land which was previously in use for retail, leisure and non-residential institutional uses. This would require greater clarity in the NPPF about the grounds on which development might be refused.
- 1.21 The government is seeking views on how Starter Homes might be encouraged within mixed use commercial development (e.g. town centres) and in rural areas (through inclusion in rural exemption sites).
- 1.22 The government would also like to **encourage local communities to consider opportunities for Starter Homes in their area as they develop neighbourhood plans, including on land designated as Green Belt**. While current NPPF policy considers limited affordable housing for local community needs as "not inappropriate" in the Green Belt, it does not give express support to neighbourhood plans which seek to allocate land in the Green Belt to meet housing need.
- 1.23 The government believes that this policy hinders locally-led housing development, and proposes to amend the NPPF so that neighbourhood plans can allocate appropriate small-scale sites in the Green Belt specifically for Starter Homes, with neighbourhood areas having the discretion to determine the scope of a small-scale site.
- 1.24 The government is also giving further consideration to the potential release of brownfield land in the Green Belt as part of their overall approach to delivering 200,000 Starter Homes.

- 1.25** They are proposing to change the current policy test in Paragraph 89 of the NPPF to support the regeneration of previously developed brownfield sites in the Green Belt. This would allow them to be developed in the same way as other brownfield land, providing this contributes to the delivery of Starter Homes and is subject to local consultation, to make it clear that development on such land may be considered “not inappropriate development” where any harm to openness is “not substantial”.
- 1.26** Again the RTPI make a good point and state previously developed sites in the Green Belt can be already be redeveloped provided the footprint is not increased, but allowing blanket redevelopment can mean that sites in remote locations and with very poor public transport access get overdeveloped. Proper accessibility to these sites should be a vitally important consideration.

Transitional arrangements

- 1.27** The government is also seeking views on the transitional arrangements for the changes set out, recognising in particular that a change in the definition of affordable housing in the NPPF will require local authorities to review and possibly amend Local Plan policies.
- 1.28** The government says that it does not intend for these policy proposals to slow down the preparation of existing Local Plans, nor require Local Plans now in the examination process to be revisited. Whilst this might not be the intention it is highly likely these changes will place extra duties on CBC as both the JCS and our local plan and are being produced within the timetable for implementation if these changes are adopted.

2. Relevant Council Policies and Strategies

- 2.1** The following plans are considered relevant:
- Cheltenham Borough Council Local Plan, Second Review (adopted July 2006)
 - Joint Core Strategy: Submission version (November 2014).
 - Emerging Cheltenham Plan (part one). Issues and Options consultation: June to August 2015.

3. Alternative options Considered

- 3.1** DCLG has invited the Council to comment on proposed changes to national planning policy, there are no suitable alternatives to consider.

4. Consultation and feedback

- 4.1** DCLG has invited the Council to comment on proposed changes to national planning policy, there is no requirement for the Council to consult on its comments.

5. Performance management – monitoring and review

- 5.1** The main consideration for the Council (as a local planning authority) is to ensure the principles of sustainable development are upheld. By engaging in this process the Council is active in this process.

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Appendices	<ol style="list-style-type: none">1. Risk assessment.2. Consultation response.3. Summary of the Housing and Planning Bill
Background information	Housing and Planning Bill – see appendix 3.

Risk Assessment

Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	There are no equality impact risks related to the document										
	There are no environmental risks related to the document										
	There are no legal risks related to the document										

Explanatory notes

Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

Likelihood – how likely is it that the risk will occur on a scale of 1-6
(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close

Cheltenham Borough Council's response to DCLG's consultation on proposed changes to national planning policy, December 2015

Q. Do you have any comments or suggestions about the proposal to amend the definition of affordable housing in national planning policy to include a wider range of low cost homes?

1. The key issue here is whether the inclusion of starter homes as a type of affordable housing will directly impact the delivery of other types of affordable housing. There is a risk⁵ that homes for **social rent and shared ownership could be squeezed out and replaced by Starter Homes**, without any guarantee of a net increase in overall housing supply. The government should be clear that this new type of affordable housing will complement rather than compromise CBC's ability to meet its full objectively assessed needs for affordable housing.

Q. Do you consider that it would be beneficial to strengthen policy on development of brownfield land for housing? If not, why not and are there any unintended impacts that we should take into account?

2. There is general support for proposals that can actively bring forward the reuse of vacant brownfield sites, however the pursuit of new homes on these sites should not undermine CBC's plans to safeguard land for other uses, in particular economic uses.
3. Should the 'presumption in favour of housing on brownfield sites', be adopted by the government this will have a significant impact on the CBC's and Gfirst LEP's ability to deliver the required economic growth.
4. Cheltenham is constrained by greenbelt land to the north, west and south and AONB to the east; it has consistently witnessed the loss of large amounts of employment land to housing over the past few decades. Within this context it is clear Cheltenham has limited land in which to deliver all development requirements placed upon it by the NPPF; the plan led system is the only real solution to ensure the right balance of uses are delivered. By placing substantial weight on a presumption in favour of housing on brownfield land this effectively undermines CBCs ability to plan positively for the town and its local communities.
5. Whilst the policy might have honourable intentions to speed up the redevelopment of vacant previously developed land this is already starting to have undesirable effects. For example CBC is already witnessing an increase in developers proposing houses on existing employment land. The Government should be very clear and directly state that economic uses (and the need to safeguard land for economic uses) should be an example where it is in conflict with the presumption in favour or/and substantial weight to be given to proposals.
6. There is a clear financial motivation for land owners to achieve housing development on employment land. These losses cannot be redeemed because there is a limit to the land

⁵ RTPI evidence submitted to the [House of Commons reading on the Housing and Planning Bill](#)

within urban areas which can contribute to balanced and mixed communities and allow workplaces close to where people live. Therefore any policy which directly or indirectly affects this issue must be extremely clear that employment land is not viable within a timescale which reflects local circumstances before considering its release for housing.

7. CBC questions the ability to achieve 90% of brownfield land suitable for housing to have planning permission. This commitment is quite vague to the point where it almost impossible to monitor or measure the government's achievement towards it. How does the government intend on establishing what brownfield land is 'suitable' and which isn't? If you propose to use Strategic Land Availability Assessments as the principle mechanism for identifying the suitability of brownfield land, the government should make this explicitly clear.
8. The lack of practical and detailed guidance impedes LPAs ability to plan in an expedient manner. It is unhelpful to developers and housebuilders if there isn't clear and objective definitions set by government..

Q. Do you consider that it would be beneficial to strengthen policy on development of small sites for housing? If not, why not? How could the change impact on the calculation of local planning authorities' five-year land supply?

9. CBC struggle to see what added benefit this will bring to existing policies already contained within the NPPF / PPG. The delivery of small sites has been not been hampered by the lack of a specific national policy.

Year	Total no. of net dwellings granted planning permission	Total no. of net dwellings granted planning permission on small sites (0 to 9 dwgs)	Small sites as a percentage of total sites	JCS housing requirement (9,100 dwellings over 20 years = 455 per year)	Total net completions
2011/12	474	124	26.2	455	36
2012/13	311	172	55.3	455	266
2013/14	664	139	20.9	455	413
2014/15	890	134	15.1	455	316
Total	2,339	569	24.3	1820	1031

Table one: Number of houses granted permission vs houses built.

10. The NPPF already provides for a presumption favour of sustainable development.
11. The term "presumption in favour" is overused. A small site (delivering less than 10 dwellings) will receive a presumption in favour of development, if the small site is also brownfield there would be a double presumption in favour; and then if the land owner proposes starter homes this would equate to a triple presumption. Surely paragraph 14's 'presumption in favour of sustainable development' is sufficient and there is little need to continually reemphasise the golden thread running through planning. It is difficult to know what weight a decision taker should place on a "double presumption" as opposed to a "triple presumption".
12. Furthermore, this policy doesn't add anything the NPPF doesn't already support; when would this policy apply? A possible concern for CBC is the impact on non-designated green spaces in Cheltenham that are not spatially defined on a proposals/policies map

but are covered by criteria based policy. Would the effect of this policy undermine and weaken the protection of small open and public spaces in Cheltenham?

13. DCLG should be very clear when specific policies in the NPPF restrict the presumption in favour; the starter homes policy would not act as an exception.
14. Sites immediately adjacent to settlement boundaries should be carefully considered and written. LPAs have given due consideration to the implementation of development boundaries, this policy undermines local and neighbourhood development plan policy and the will of local communities. Over time this policy could have large cumulative incursions on the urban edge of settlements, especially in rural locations.
15. To state small site development would only be considered and supported if they are sustainable is too vague. It is recommended that a similar caveat as per NPPF footnote 9 is referred to clarify this position.
16. Paragraph 47 and its accompanying footnotes should be clear that planning permission in principle for new homes on suitable brownfield sites should count towards an LPA's 5YHLS. Ambiguity causes uncertainty in the planning system.

Q. Do you consider that national planning policy should set out that local planning authorities should put in place a specific positive local policy for assessing applications for development on small sites not allocated in the Local Plan?

17. No, CBC struggle to see the added benefit of this policy beyond that already provided for by the NPPF's presumption in favour of sustainable development. This type of policy has the potential to cause unintended (or worse intentional) loopholes and undermine the principles of sustainable development. It is recommended this proposal be seen in the context on NPPF para 154 (3rd sentence), where it states: *'Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.'*

Q. We would welcome your views on how best to implement the housing delivery test, and in particular

- **What do you consider should be the baseline against which to monitor delivery of new housing?**
 - **What should constitute significant under-delivery, and over what time period?**
 - **What steps should be taken in response to significant under-delivery?**
 - **How do you see this approach working when the housing policies in the Local Plan are not up-to-date?**
18. Proposals for a new test to ensure housing is delivered on site allocated in local plans could lead to an expansion of the local plan-making process and increase new site opportunities for land owners and developers. We welcome proposals that are looking at steps to define persistent under delivery - which has meant inconsistency in appeals. The Council believes the test should put greater weight on the number of approvals granted by the LPA in relation to their 5 year supply need (see table one). Looking only at delivery allows developers to gain the benefits of the presumption whilst not building the permissions they are granted.

19. The NPPF talks about “a record of persistent under delivery” (in para 47) whereas these proposals talk about “significant under-delivery”. If these are to have different meanings further guidance is required, the lack of clarity will slow the planning process.
20. A similar sanction already exists in the NPPF where it requires an additional 20% buffer to be applied to a LPAs 5YHLS figure where persistent under delivery is identified. This will add yet a further level of sanction on CBC. By defining under delivery over two years offers it is highly likely local plan will need to updated/reviewed more regularly or as the some commentators are saying a “rolling review”.
21. A continual local plan review is not going to be a quick process and it seems to ignore other reasons as to why developers are taking so long to build out sites. Overall this has the effect of expanding the plan-making exercise at a time when LPA resources are tight⁶.
22. In the absence of further guidance (to support quick local plan reviews) as well ignoring other non-planning issues such as skills and resources available to increase house building, land banking and the role of major house builders in the housing market, this approach is ultimately flawed and only serves to undermine the principle of local authority plan making / decision taking and the principles of localism.

Q. What evidence would you suggest could be used to justify retention of land for commercial or similar use? Should there be a fixed time limit on land retention for commercial use?

23. CBC share the concerns of the RTP1. Of particular concern is the likely impact on failing to meet local housing need should affordable rented products be squeezed out and replaced by Starter Homes. CBC’s Strategic Housing Market Assessment (SHMA) details the proportion of affordable rented, shared ownership and discount market accommodation that is required over the coming years to create a balanced housing market. Any future provision of starter homes should be in accordance with our evidence of need to create a balanced housing market, as detailed within the SHMA. Should CBC be required to provide Starter Homes that go beyond this, and to the detriment of affordable rented provision in particular, then the consequences will be longer waiting lists for households in housing need and on low incomes and increased pressure on homelessness with fewer homelessness preventions (as about a third of CBC’s homelessness preventions are achieved by housing low income households within social housing stock before they become homeless).
24. In addition, the proposals to remove the ‘in perpetuity’ requirement will serve only to remove that dwelling as an affordable housing product automatically after a given period of time, with the result that future families in housing need will fail to benefit.
25. The proposal to make it a requirement to plan for the housing needs of those who ‘aspire’ to home ownership should also be approached with caution. Aspire to own is not the same as having an ability to own, and future SHMAs may become distorted if those who aspire to home ownership are subsequently unable to meet their aspirations for home ownership as a result of low income, increasing house prices or other economic factors. Moreover the ability for Tenants to exercise their Right to Buy already enables low

⁶ <http://www.cheltenham.gov.uk/budget>

income households, whose financial circumstances improve for the better.

Q. Should starter homes form a significant element of any housing component within mixed use developments and converted unlet commercial units?

26. Allowing unlet commercial units to become starter homes is likely to cause amenity issues and is highly likely to undermine employment provision in Cheltenham.

Q. Should local communities have the opportunity to allocate sites for small scale Starter Home developments in their Green Belt through neighbourhood plans?

27. Parish councils or Neighbourhood and community groups are very unlikely to be able to harness the resources to undertake a green belt review of sufficient scale and depth, as this is challenging for local authorities. In most locations their willingness to enact a plan which means green belt removal for starter homes is likely to be minimal.

The government published the Housing and Planning Bill on 13 October 2015. The Bill will create an entirely new form of planning permission in England called 'permission in principle' (PiP). The consent will not be capable of implementation until 'technical details consent' has also been granted. The new type of permission appears to work in a manner similar to an outline planning permission, which requires a reserved matters approval to be in place before it can be implemented. It is intended that these powers will primarily be used to make it easier to develop on brownfield sites.

An [explanatory note](#) accompanying the Bill states the government initially intends the use of PiP to be restricted to land in allocated in development plan documents, neighbourhood plans and a new statutory register of brownfield land suitable for housing development (page 41, para 251). PiP would come into effect when the relevant document was adopted or revised to allocate the land (page 41, para 252).

The explanatory notes explains (in paras 262 to 271) what might constitute a brownfield land register. **The important point to note here is the Bill grants the Secretary of State to prescribe the description of land and to prescribe any criteria which the land must meet for entry in the register.** An example is given of the possible criteria the SoS could include: *“land must be available already or in the near future for housing development, that it must not be affected by physical or environmental constraints that cannot be mitigated and that it must be capable of supporting five dwellings or more”* (para 263).

Another example is given where the SoS might, *“require the register of brownfield land to be kept in two parts: the first part could list brownfield land suitable for housing which meets certain prescribed criteria, and the second part could list land from the first part of the register which the local planning authority considers is suitable for a grant of permission of principle and which has additionally been through a process of consultation”* (para 264).

There are quite a few unknowns at the moment and a lot of detail left for the SoS to provide following royal assent of the Bill.

The following planning websites offers some guidance and possible outcomes to watch out for: <http://www.planningresource.co.uk/article/1370695/constraints-will-limit-automatic-permissions-allocated-sites>; and <http://www.out-law.com/en/articles/2015/october/housing-bill-provides-for-permission-in-principle-and-government-intervention-in-planning-process/>.

Planning Policy note, November 2015.