

## **DCLG consultation: Building more homes on brownfield land**

**March 2015**

1. This response is submitted by the Local Government Association (LGA).
2. The Local Government Association (LGA) is here to support, promote and improve local government. We will fight local government's corner and support councils through challenging times by making the case for greater devolution, helping councils tackle their challenges and assisting them to deliver better value for money services.
3. The LGA is an organisation that is run by its members. We are a political organisation because it is our elected representatives from all different political parties that direct the organisation through our boards and panels. However, we always strive to agree a common cross-party position on issues and to speak with one voice on behalf of local government.

### **LGA response**

Ensuring the effective use of land is a key objective for councils and they share the government's ambition of bringing forward brownfield land as a priority wherever possible. Eighty per cent of councils already have a published Local Plan and therefore identify land, including brownfield land, that is suitable for housing and working with developers bring development forward.

The use of Local Development Orders (LDOs) is one of a number of planning tools that councils already use to incentivise development in a way that meets a whole range of locally specific policy objectives and to show developers that they are 'open for business'.

It is likely that the vast majority of brownfield sites which meet the definition of brownfield in the NPPF and the additional criteria in the consultation document (that they are: deliverable; free of constraint; capable of development and capable of supporting five or more dwellings) will already be allocated as housing sites in local plans. This should already provide certainty to developers and effectively de-risk the sites. Therefore it is unnecessary to introduce a government performance regime for the introduction of LDOs on those sites. Such a regime would also be contrary to the spirit of localism.

Where these sites are not being brought forward for development, there are usually other underlying reasons, unrelated to the planning process, such as the cost of remediation or funding for the necessary infrastructure to support new housing. Therefore, it is unlikely that LDOs will be the solution for bringing development forward on those sites.

We are concerned about mandatory exemptions to the Community Infrastructure Levy (CIL) on certain types of brownfield land. The cumulative impact of this will be to significantly reduce the amount of funding to invest in critical infrastructure needed to facilitate development and increase community opposition to new housing.

We do not agree with the proposals to introduce national targets for the introduction of LDOs on brownfield sites or the sanctions for councils who do not meet those targets. However, if government are minded to take forward the proposals outlined in

the consultation there are number of issues that must be addressed before these are taken forward.

Our key concerns are:

- The effectiveness of the proposals in tackling barriers to the use of brownfield land.
- Funding and resources to put LDOs in place
- Measures to underpin the government's proposals

#### Use of LDOs to tackle barriers to the use of brownfield land

Local Development Orders (LDOs) are one of the planning tools that councils across the country are already using to bring forward development and we welcome the funding being made available and the package of support being provided by the Planning Advisory Service (PAS) to encourage councils to put in place LDOs for housing sites.

However, LDOs by themselves will not address all the issues restricting the use of brownfield sites. A national target will result in a focus on quantity rather than targeted use of LDOs to where they will be most effective and a focus on process rather than outcomes.

Therefore we are concerned by the government's proposal to introduce an arbitrary performance target based on the percentage of LDOs that councils put in place on 'suitable' brownfield sites. It should be for councils to decide which sites they target and prioritise the use of LDOs on, noting that LDOs may not be the most appropriate tool to ensure development commences on brownfield land in all cases.

We are concerned about the upfront costs for councils to put LDOs in place and how these will be funded, given that government are only making a limited amount of 'incentive' money available for this new policy that will not cover the full costs to councils in putting in place all the LDOs required. If government are minded to take forward their proposals of mandatory targets for LDOs on brownfield sites, then the full costs incurred by councils in identifying 'suitable' brownfield sites and delivering LDOs on them should be fully funded through the new burdens regime. Appropriate safeguards would also need to be in place to ensure that considerations like good design and appropriate site-specific infrastructure are taken into account.

Finally, putting in place LDOs on sites also provides no guarantee that those sites will ultimately be built out – this could result in abortive work and costs to local authorities and ultimately to the UK taxpayer.

#### Other proposals for bringing forward brownfield sites

As outlined above, whilst councils welcome the additional support being made available to support introduction of LDOs, they will not address the issues restricting the use of brownfield sites in every case.

Where these sites are not coming forward, Government should look at strengthening and simplifying the tools available to local planning authorities, rather than the measures set out in the consultation.

We recommend the introduction of a sequential test for brownfield land. This would assist councils in ensuring development of brownfield land was prioritised and would

be a consistent with the approach set out in the NPPF for flooding and for development of town centres.

Councils need improved compulsory purchase powers and stronger incentives for developers to build out sites. All powers should be enabling and should allow for exemptions in exceptional circumstances. For example, in cases where developers bought land as part of a wider regeneration scheme which has itself stalled or been withdrawn through no fault of the developer.

Assessment of viability for land suitable for housing can also be a contentious issue that is often subject to challenge. That is why we have been calling for a more transparent, simplified and consistent approach to viability that is widely understood by all the stakeholders.

The level of profit achieved by developers should be commensurate to the level of risk they take in putting forward and building out schemes, which in many cases will be higher on brownfield than greenfield. Current house builder business models are predicated on profit margins frequently cited at 20 per cent. Where schemes have been de-risked, for example through site allocations in local plans or through the use of Local Development Orders, or are in general low risk, developers should accept a lower level, which could help to fund required infrastructure to support new build homes and the surrounding area.

We would also like to see funding for infrastructure devolved to local areas – this would further support the delivery of land for housing and other development key for delivering local economic growth.

#### Publishing data on suitable brownfield sites

Local government is already the most efficient, transparent and trusted part of the public sector and already publishes a number of data sets in a standard format. The LGA has supported councils with this through its management of the local government open data breakthrough programme and its ongoing development of the LG Inform Plus service (formerly known as esd-toolkit).

As the consultation points out councils already publish assessments of housing land availability as part of the evidence base for their Local Plans. However, we agree that publishing data on brownfield land available and suitable for housing in a standard format (e.g. site reference, size, number of homes the site would be likely to support, planning status and ownership) could be helpful in supporting local councils' existing efforts in incentivising investment in housing and bringing forward land for development. The consultation proposes that this data should be reviewed and updated annually. However rather than introducing an additional review process within councils this should fit in with existing mechanisms and timescales for review of Strategic Housing Land Availability Assessments and strategic site allocations.

Our understanding from the consultation is that publication of this data would not be mandatory, which we welcome in principle, however the consequence of non-reporting could be designation (or the application of the alternative policy measure proposed in the consultation). It is not clear how government can introduce a mandatory performance measure on a data set which councils are not mandatorily required to report/publish. We would welcome clarification from the government on this point. If government is minded to introduce a performance measure for non-reporting/publication of a data set, then new burdens funding should be provided to

fully cover the costs of councils preparing and publishing this information in the standard format required.

Alternatively, government might want to consider an alternative proposal whereby rather than introducing a performance measure that they instead make funding available, such as that offered through the Open Data User Group's incentive scheme<sup>1</sup>. This offers payments to councils for publication of data on specific themes in a simple standardised format. The scheme currently applies to data on planning applications, public toilets and premises licensing, but with the right level of funding could be extended to brownfield site data. This scheme is currently delivered through the LGA's LG Inform Plus service.

This would enable a broad range of individuals and groups to access data on suitable brownfield sites in a standard format across the country and encourage the development of innovative new on-line services e.g. brownfield 'apps', whilst at the same retaining councils' local flexibility to determine which sites they prioritise/target for LDOs.

### Measures to underpin the government's proposals for LDO's on brownfield sites

The consultation outlines two options for enforcing the nationally-set LDO targets on brownfield sites where councils do not meet the targets – namely designation or a policy-based intervention where councils that do not meet the brownfield objective cannot claim the existence of an up-to-date five year housing land supply, and therefore the presumption in favour of sustainable development would apply.

We do not agree with either of the proposals. As we have earlier outlined, whilst LDOs are one of a number of planning tools that councils can use to bring forward development, and it should be decided locally where it is most appropriate to put LDOs in place. Therefore it is not appropriate for government to bring in arbitrary targets and then effectively remove their local democratic decision-making powers if they are not met.

The LGA has long opposed the use of planning designation powers by the government, which we believe are counter-productive and lead to a focus on process targets rather than quality outcomes. It sits at odds with the government's acknowledgement of the damage caused by blunt targets in other areas of policy. A designation measure will fundamentally expand the scope and role of the Planning Inspectorate and remove the ability of local people and businesses to comment on decisions that affect them.

Moreover, changing the national definition of a five year housing land supply in order to achieve an arbitrary government target risks disrupting progress with local plans, undermining communities' trust in the process and would be an unhelpful precedent of instability in requirements of the NPPF. This will cause uncertainty in the housing market and is likely to lead to reducing confidence, at a time when developers are increasing the supply of houses

Government should publish further information on the evidence base that supports the proposed interim arbitrary target of 50 per cent of suitable brownfield sites having LDOs in place, or the final 90 per cent target being proposed. In addition, we are concerned that this appears to be a return of a performance indicator not dissimilar to

---

<sup>1</sup> <http://incentive.opendata.esd.org.uk/>

the previous Best Value Performance Indicator (BVPI) and then National Indicator (NI) for brownfield sites, which was abolished by the government as part of the review to reduce the unnecessary data collection burden on local authorities (resulting in the Single Data List). Moreover, the addition of a new performance measure is contrary to the commitment from the Secretary of State for Communities and Local Government to 'mark the end of the old, top-down local performance framework'<sup>2</sup>.

Sector-led improvement is the most effective means of achieving continuous improvement, not centrally led intervention. Resources should be focused on promoting the benefits of sector-led improvement and enhancing the support that is available to local authorities, for example through the work of Planning Advisory Service (PAS).

---

<sup>2</sup> See 'Written Statement to Parliament: Local Accountability', delivered on 13 October 2010 by The Rt Hon Eric Pickles MP at <https://www.gov.uk/government/speeches/local-government-accountability--2>