

Consultation Response

Planning and planning obligations: delivering a fundamental change

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Shelter

Introduction

Shelter welcomes the Green Paper and its associated proposals for change to the system of planning obligations.

We share the view that fundamental change is required within the planning system, that it needs to become more responsive and enabling, and more accessible to the local communities that it serves.

The government's approach to sustainable development means putting economic, social and environmental concerns at the heart of decision making. This means addressing all of these equally, and in particular ensuring that a balance exists between environmental concerns and social issues such as the need for sufficient housing, including affordable housing.

We agree that the system of planning obligations can play a significant part in the delivery of affordable housing: we have emphasised this in our submission to the government's Spending Review 2002 although clearly the system can only deliver a minority of the need for affordable housing that we face. Greater clarity and fewer constraints within the government's policy framework, and investment in developing good practice and the skills of local authority officers, would significantly boost outputs from the system.

Shelter's particular perspective is that of homeless people and those in housing need, and our policy proposals are grounded in the experience that we have:

- In providing housing advice through 60 local Housing Advice Centres and a national telephone helpline;
- Through the research we have commissioned on subjects such as the need for investment in social housing;
- Through the development of specific policy proposals, for example on the delivery of affordable housing through the planning system; and
- Through our work with the 'Blueprint Group' (Shelter, ROOM, the National Housing Federation, the Local Government Association, the Chartered Institute of Housing), and our substantial input to the London Spatial Development Strategy and SERPLAN.

We have chosen to limit our comments to aspects of the government's proposals that we believe most directly affect homeless people and those in housing need.

Summary of response

- We welcome the proposals in the Planning Green Paper as they affect the planning system as a whole. The interests of the whole community - including homeless people and those in housing need - must be represented in the planning system. Their interests are distinct from those of developers and private house builders.
- We welcome the proposed suppression of the Structure Plan and its replacement with sub-regional plans where these meet a specific need to address strategic issues. We welcome the proposals for Local Development Framework documents and statements of community involvement.
- We agree that greater clarity in the government's guidance and additional training for planners and local authority members would allow the planning system to function more smoothly.
- We agree with the government's analysis of the faults of the current system of planning obligations. We consider that a 'tariff' system will offer much in the way of clarity of expectations on developers, faster procedures, and easier quantification of the benefits and how they are applied.
- We anticipate some practical issues with the introduction of a tariff system. In particular it may not be possible to avoid site-by-site negotiation, the level of tariffs must be set to take account of the risk of 'choking off' development, and substantial training of the planning officers who will operate the system will be required.
- Where 'low cost market housing' is to be included in the definition of affordable housing to be provided on a site, there should be an explicit mechanism that ensures that this is at a discount to the market price for the particular dwellings in question and that this discount should be retained in favour of successive occupiers rather than lost when the first occupier sells up.

Detailed comments

Green Paper on Planning: Delivering a Fundamental Change

Shelter welcomes the government's overall vision and the direction of change that it sets out for the planning system. We have limited our detailed comments to those areas where we have particular expertise to offer.

Planning for sustainability

The planning system has an economic and social impact on society and the built environment. It often overlooks these impacts: we therefore welcome the Green Paper's stated objective for the planning system: that it should deliver sustainable outcomes.

The government's definition of sustainable development includes:

*"Social progress which recognises the needs of everyone. Everyone should share in the benefits of increased prosperity and a clean and safe environment. We have to improve access to services, tackle social exclusion, and reduce the harm to health caused by poverty, poor housing, unemployment and pollution. Our needs must not be met by treating others, including future generations and people elsewhere in the world, unfairly."*¹

The Green Paper's approach to sustainability focuses largely on physical issues of landscape and resource conservation. The system of planning obligations delivers affordable housing for those in need and in our view this is equally a sustainable outcome. We recommend that the government gives this greater recognition on the face of its planning policy documents, and more seeks to integrate social and economic outcomes into its planning policy objectives.

Representing all sections of the community

The planning system is a process through which competing interests are balanced and a compromise reached between them. For this to work effectively, all interests must be properly represented.

This should include those who can speak for homeless people and those in housing need, who may not live in the area covered by the plan (and who tend not to engage directly in the planning system), but who would benefit from additional housing provision - especially where it includes an element of affordable housing.

In recent years the balance of the planning system has shifted considerably towards conservation and restraint of new development. Proposals for change should recognise and redress this balance.

Specifically, the amount of land to be made available for housing is subject to the attention of competing interests. Shelter is concerned, while we support the principle of 'Plan, monitor and manage', its actual operations can generate a situation where:

- Planning bodies, dominated by conservation-minded elected representatives, set targets for land release that are too low;
- There are insufficient monitoring systems in place to judge the effects of the chosen level of land release on the market and on land and house prices;
- The time frames and processes for review and evaluation do not allow any meaningful 'management' and response where monitoring systems do reveal insufficient land release.

The outcome is demographic changes at the national and regional level, and housing need that they entail, are overlooked by a process that places a premium on landscape conservation. There are of course checks and balances in the system, particularly with the government's reserve powers to call in local and structure plans.

We therefore welcome the Green Paper's comments about wider representation on regional planning bodies and urge that this should include representatives of homeless people or those in housing need. We urge the government to recognise that this should not be equated with development interests - such as house-builders. Similarly we welcome greater community involvement at the local level, and urge that the 'statement of community involvement' to be attached to Local Development Framework should include people who are not necessarily local residents but who stand to benefit from a proposed development.

Local development framework

We support the simplification of the local plan that will be achieved by the Local Development Framework with its mix of core policies and action plans. We note that the current section 54A of the 1990 Act (presumption in favour of development that accords with the plan) means that development interests see the local plan preparation process as the first stage in securing planning permission for any particular site. It is at this stage that the sites that will be released for development are identified and that 'in principle' agreement is reached on the level and type of planning obligations that will be sought on major sites.

This process is a significant contributor to the length of time it takes to prepare local plans. The Green Paper does not directly address whether section 54A will remain in its current form and whether the proposed Local Development Framework will provide the certainty that developers and planners need from the system, whilst avoiding the need to consider all potential sites within the local authority's area.

Statement of community involvement

We support this proposal, and the Green Paper's broader commitment to ensuring that the planning system engages with local people and communities.

It is important that the involvement of the local community should include people who may not live locally but who stand to benefit directly or indirectly from what the proposed development will provide. This should include people who are homeless or in housing need (or who have a non-pecuniary interest in representing the view of these groups - such as the local voluntary sector).

The breadth of this representation is particularly important in respect of developments that may elicit a 'NIMBY' reaction. We are concerned that the Green Paper does not address this issue: community consultation must be undertaken with particular care and the Local Development Framework has a role to play in demonstrating that the perceived burden of such developments is shared across the whole community, and that the community stands to gain from developments about which it may have some reservations.

County structure plans

We support the proposed abolition of the county structure plans. They are shown not to be necessary in unitary authority areas, they add to delay and bureaucracy in the system, and contribute to the problem of plan content being the "lowest common denominator" amongst the parties represented (para 4.45). It is important that the proposed sub-regional strategies should not inherit this same characteristic, for example with respect to determining the level and location of land release for housing.

Regional planning

We support proposals to ensure that regional planning bodies are more representative of different groups. We recommend that this should include the voluntary sector and the interest of homeless households and those in housing need.

Government guidance

We agree with the proposal that government advice on techniques and planning best practice should be clearly separated from its statements of planning policy. PPG3 (Housing) is an example of a document that does not clearly distinguish between the two. The result is that some local authorities do not realise the extent of the freedom they have to determine policy at a local level, and to set aside the government's advice where it is not appropriate to their particular circumstances.

Training for officers and local authority members

We welcome the government's proposals in respect of the training and development of planning staff and local authority members. In particular (and in connection with the operation of the system of planning gain), planners would benefit from greater understanding of the land development process and the financial framework that developers work within. Indeed this is vital to the successful operation of the proposed 'tariff' system for planning obligations.

Detailed comments

Planning obligations: Delivering a fundamental change

A 'tariff' system

We agree with the objectives of the government's proposal. The current system of negotiated obligations is demonstrably difficult to implement, it is not transparent, it imposes delays on the development process, and it can impose unexpected burdens on developers.

The tariff system addresses these issues: developers should be clear about the contribution that they will have to make, protracted negotiations should be avoided, and it would be easier to quantify the benefits derived and track their application.

The tariff system is also a new departure for the land-use planning framework, although (as the government's proposals explain) it is based on emerging practice. We have identified a number of issues that will need particularly close consideration:

- In our view, a generalised 'tariff' that will apply across a local authority may be difficult to achieve. This in turn is for a number of reasons:
 - Valuation is usually described as "an art not a science" and requires access to (or appraisal of) financial information. The level of tariff due would have to be negotiated in respect of each site failing which any local authority determinations in this respect will be routinely subject to appeal by landowners and developers;
 - The very different nature of different sites (their ownership and development history, the costs of remediation and infrastructure provision, the possible presence of 'ransom strips' in the access to the site) again means that there will be relatively few sites where a process of negotiation can be avoided. This is particularly relevant given the government's emphasis on the use of brownfield land for development.
- As the government's Green Paper makes clear, the system must avoid choking off developments by imposing tariffs so high that landowners simply withdraw from the market;
- We support the government's proposals that local authorities should publicly account for the planning gain agreements that it enters into in respect of each site, and provide an account of when and how the resources involved have been received and spent;
- Significant investment should be made in the training and development of staff responsible for the operation of planning obligations. Alongside this, the government should work with development, valuation and planning experts to provide good practice and standardised formats for obligations. Consideration should also be given

to introducing a formal disputes resolution procedure or independent valuation advice service to assist planners and developers;

- Within this framework of policy that defines the purposes of planning obligations, and good practice that supports their use, government should allow local authorities greater freedom to seek and negotiate contributions from developers.

Scope of planning obligations

Paragraph 4.5 envisages that a much wider range of objectives should be promoted through planning obligations, and paragraph 4.6 envisages a wider range of development types and sizes on which the tariff might be raised. We support this proposal. We note that the current system does, in principle, tie the proceeds of the obligations either to the local impact of the development, or to objectives closely allied to the nature of the development and the effect of the planning system on land supply and house prices. Too great a gap between the two may lead developers to challenge more routinely the nature and level of the tariff being imposed;

Affordable housing

We agree with the government's proposals in respect of the provision of affordable housing. Contributions should be sought from commercial developments and from smaller developments than the current PPG3 and Circular allow. (This is a specific area where it is not clear whether the content of the government's documents represent policy or good practice.)

Affordable housing definitions

Shelter, along with the 'Blueprint group'², has consistently argued for a definition of affordable housing that includes both affordable social housing provided by registered social landlords and local authorities, and housing provided by landlords or developers at a discount to prevailing market rents or prices and where there is a mechanism that ensures that this discount is available to successive occupiers and not just the first purchaser (failing which the value of the discount is immediately passed to the purchaser in question). We are disappointed that the Green Paper does not acknowledge this position.

We agree with the government's position that "A local authority's requirement for an element of affordable housing ... must be justified by a demonstrable housing need" (para 4.17).

Size of site to be subject to obligations

We agree with the proposals in para. 4.13 to exempt very small sites from the tariff or alternative system of obligations. However the thresholds suggested would mean that the sites that would be expected to make a contribution to affordable housing would be smaller than at present. We support this proposal.

Sites for affordable housing

The proposal in para. 4.24 appears to us to entail the introduction of an 'affordable housing use class'. We would support this if it represents an extension of the principles of the 'rural exception scheme' to non-rural areas (further work would be needed to determine the practical application of the scheme).

However we would not support the more general introduction of an affordable housing use class on sites that are released, because of the inflexibility that this will build into the system (for example, it would be difficult to integrate it with the operation of the Right to Acquire that is granted to tenants of newly developed registered social landlord properties).

Securing the use of empty homes

We support the government's proposal (para 4.25) that the proceeds of a tariff or obligations could be spent on bringing empty property back into use, or other steps that will boost the supply of affordable housing.

Co-operation between authorities

We agree with the proposals for co-operation between local authorities on the use of the proceeds of a tariff system or of obligations. One significant flaw of the current system is that the level of contributions that can be obtained is minimal in areas of severe planning constraint (e.g. Green Belt areas) where the need for affordable housing may nevertheless be high. Co-operative arrangements, working in tandem with a sub-regional planning framework, would help to overcome this problem.

Transparency and speed

We agree with the government's proposals in respect of greater openness and efficiency within the system of planning obligations, contained in paras. 4.30 to 4.40.

End Notes

1 Cm 4345 (1999) A better quality of life: a strategy for sustainable development for the UK The Stationery Office, London.

2 ROOM, the National Housing Federation, the Chartered Institute of Housing, the Local Government Association, and Shelter