Campaign to Protect Rural England
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TECHNICAL CONSULTATION ON THE IMPLEMENTATION OF PLANNING CHANGES

A response by CPRE
April 2016

Note: this response was submitted into an online 'SurveyMonkey' form, and hence was not submitted in this format. This paper does not therefore conform to CPRE's usual response format and does not include our standard contextual introduction. CPRE's response referred to a Wildlife & Countryside LINK response to which we had signed up; LINK's response is attached as an appendix to this paper.

Chapter 1: Changes to planning application fees

Question 1.1: Do you agree with our proposal to adjust planning fees in line with inflation, but only in areas where the local planning authority is performing well? If not what alternative would you suggest?

No.

Answer to all questions in this chapter:

CPRE is concerned that the proposed changes to fees exacerbate the system's tendency towards quick planning for the sake of speed, rather than good planning that leads to sustainable development outcomes aligned with community aspirations. The changes also continue to apply punitive financial measures to less well-performing councils, when it is already the case that the principal cause of underperformance in council planning departments is a lack of resources to do their jobs properly. It is worth noting that planning department resources are already being undermined by the increasing move away from planning application types on which fees are payable in the first place. More attention needs to be given to ensuring that all council planning departments are adequately resourced, before rewarding the best performing departments.

CPRE also supports the submission made by Wildlife and Countryside LINK, to which we are a signatory.

Question 1.2: Do you agree that national fee changes should not apply where a local planning authority is designated as under-performing, or would you propose an

alternative means of linking fees to performance? And should there be a delay before any change of this type is applied?

No.

See answer to question 1.1.

Question 1.3: Do you agree that additional flexibility over planning application fees should be allowed through deals, in return for higher standards of service or radical proposals for reform?

No.

See answer to question 1.1.

Question 1.4: Do you have a view on how any fast-track services could best operate, or on other options for radical service improvement?

No.

See answer to question 1.1.

Question 1.5: Do you have any other comments on these proposals, including the impact on business and other users of the system?

Yes.

See answer to question 1.1.

Chapter 2: Permission in principle

Question 2.1: Do you agree that the following should be qualifying documents capable of granting permission in principle?

a) future local plans;
b) future neighbourhood plans;
c) brownfield registers.

Yes – future local plans

Yes – future neighbourhood plans

No – brownfield registers

Since the consultation does not have a question concerning the principle of PiP, some comments need to be made here.

The problem PiP is intended to address:

Analysis of the problems that PiP is intended to address is fundamentally flawed.

The "costly technical details" required for full planning permission remain a small proportion of overall development costs (although it is recognised that this can be a larger proportion for smaller sites), including the costs of investing in securing an option on a development site. Developers are often happy to invest in the most unlikely development sites without a second thought because the rewards are so great.

It is very rare for a local planning authority to change its mind about the principle of development on a site allocated in a development plan, unless circumstances have changed, such as the discovery of previously unknown wildlife or heritage value (which PiP would not overcome). Conversely it is very common for that the applicant to come forward with a proposal that either (a) while according with the plan allocation in terms of location, scale and mix of uses, is of a poor quality design or fails to meet 'technical details' in terms of provision of affordable housing or infrastructure, or (b) significantly exceeds the scale of development envisaged in the local plan; again PiP would not overcome this issue.

PiP, as proposed, is the wrong solution to the wrong problem. There are issues along the lines discussed that do need to be addressed, but this needs a wider and more rational debate, particularly about the move away from a discretionary planning system towards one based more on the American/European style of zoning and coding. It is worth noting that zoning and coding systems allow for far less flexibility for applicants than the existing English discretionary system.

Introduction of PiP on top of other routes to planning permission:

Contrary to its commitment to simplifying the planning system and making it easier for ordinary people to access, many of the Government's interventions through the Housing and Planning Bill, and previously, have served further to complicate the system and make it far harder to access without detailed and extensive planning knowledge – all of which has been very good news for planning consultants and lawyers, the people who largely comprise the Government's advisors on planning.

Where we once had regional and local plans (both of which, for their many weaknesses, were in effect the same kinds of thing with the same kinds of processes, but operating on a different geographical scale), we now have combined authority spatial plans of varying sorts, strategic economic plans (SEPs), local plans, and neighbourhood plans, all prepared under very different processes, some of which have no opportunities for public engagement. Where we once had full planning permission or outline consent/reserved matters consent, local development orders, plus a limited amount of permitted development rights for proposals that had no significant external impacts, we will now have all of those plus automatic

PiP/technical details consent, applied-for PiP/technical details consent, neighbourhood development orders, community right to build orders and an ever increasing range of centrally-imposed permitted development rights, many of which have their own unique 'prior approval' regime, for proposals which often have significant impacts.

It might be more practicable to consider, as an alternative to the hasty introduction of PiP, to alter the regulations surrounding outline and reserved matters consent and/or to amend national planning policy to give more weight to the provisions of local and neighbourhood plan allocations.

In doing so it must be emphasised that it is equally unacceptable for the applicant to seek to alter their proposals to something not envisaged in plan allocations, outline consent or PiP as it is for the planning decision maker to renege on their previous commitments.

CPRE also supports the submission made by Wildlife and Countryside LINK, to which we are a signatory.

Answer to actual question 2.1

If PiP is to be implemented in any form, CPRE considers that only future local plans and future neighbourhood plans should be capable of conferring automatic PiP. It is only through the rigorous checks and balances of plan-making processes – including consultation, examination and SA/SEA – that there is any hope of achieving the level of understanding of a site that would maximise the robustness of PiP.

Layering the requirements of consultation etc. sufficient for PiP on top of the Brownfield Register process would significantly slow down the production of the Register, to the detriment of that mechanism.

We support the conclusion that PiP should not be applied retrospectively to existing plans, as these plans may not have considered all sites at the level of detail required for PiP to apply.

CPRE also supports the submission made by Wildlife and Countryside LINK, to which we are a signatory.

Questions 2.2-2.10

[Referred to Wildlife and Countryside LINK response without adding further comment.]

Chapter 3: Brownfield register

Question 3.1: Do you agree with our proposals for identifying potential sites? Are there other sources of information that we should highlight?

Yes

CPRE strongly supports the introduction of the Statutory Brownfield Register. In addition to the submission on this point made by Wildlife and Countryside LINK, to which we are a signatory, we would like to make the following general points.

1. The primary legislation (forthcoming Housing & Planning Act 2016) should specify that the Registers are intended to record brownfield sites, and define the term on the face of the Act.
2. Automatic Permission in Principle should not be applied to sites on the Registers for the reasons given above and in the submission made by Wildlife and Countryside LINK.
3. Re-using, redeveloping or restoring brownfield sites should be seen as ends in themselves with general benefits for quality of life for all citizens, and not just another way of securing more land for housing (important though that objective is). More emphasis should be placed on the Registers as having a function in identifying brownfield sites that might be developed for all uses (not just housing), especially sites that cause social, environmental or economic problems for communities, in order to create a pipeline of sites facilitating the community in managing the process of moving from derelict eyesore to productive and attractive use (including open space or wildlife haven). The Registers also have a key information role in recording matters such as the environmental or heritage value of identified sites, and other factors such as contamination and ownership, thereby enabling better information for investors and local people about the status of the sites.

CPRE would be very happy to participate in further discussion of the policy, guidance and regulations surrounding the Statutory Brownfield Registers. Please do not hesitate to contact us if we can be of help.

Question 3.1:

The means of identifying sites outlined in the paper are reasonable and proportionate.

CPRE also supports the submission on this point made by Wildlife and Countryside LINK, to which we are a signatory.

Question 3.2: Do you agree with our proposed criteria for assessing suitable sites? Are there other factors which you think should be considered?

No

It has previously been suggested that the Registers might comprise 2 parts: (a) sites that are immediately available, suitable for development and deliverable, and (b) sites that might move into category (a) with further work on land assembly, de-contamination, etc.

CPRE considers that the Registers should include all sites that have been identified through the processes set out in relation to question 3.1, with the Register recording whether the site is, in fact, brownfield, whether it is suitable for development, what constraints it is affected

by, etc. This would enable users of the Registers to avoid wasting time re-researching sites that have previously been suggested, assessed and (possibly) rejected, for whatever reason.

The Register should also record what use or uses the site might be considered appropriate for if it was not considered suitable for housing.

CPRE agrees that it will probably be impracticable to require that councils proactively identify small sites (i.e. less than 0.25 hectares). However, such sites can make a significant contribution to meeting local development needs, particularly in smaller towns and villages, and especially for community, custom- and self-build projects. Councils should therefore be encouraged to record and not to reject sites suggested to them that fall below this threshold.

CPRE does not consider that "free from constraints that cannot be mitigated" provides strong enough guidance on the correct approach to take to sites of high environmental, heritage or community value. There are few constraints that cannot be mitigated in some way, but the question of whether mitigation is the best solution needs to be resolved more carefully.

Other than these points CPRE agrees with the scope of the proposed criteria.

CPRE also supports the submission on this point made by Wildlife and Countryside LINK, to which we are a signatory.

Question 3.3: Do you have any views on our suggested approach for addressing the requirements of Environmental Impact Assessment and Habitats Directives?

Yes

CPRE supports the submission on this point made by Wildlife and Countryside LINK, to which we are a signatory.

If inclusion on the Register does not lead to automatic Permission in Principle, however, then the need for EIA and other assessments would be reduced.

Question 3.4: Do you agree with our views on the application of the Strategic Environment Assessment Directive? Could the Department provide assistance in order to make any applicable requirements easier to meet?

CPRE supports the submission on this point made by Wildlife and Countryside LINK, to which we are a signatory.

If inclusion on the Register does not lead to automatic Permission in Principle, however, then the need for SEA and other assessments would be reduced.

Question 3.5: Do you agree with our proposals on publicity and consultation requirements?

Yes

CPRE largely agrees with the consultation requirements outlined here.

However, as we do not consider that inclusion on the Register should lead to automatic Permission in Principle, then the need for robust consultation would be reduced.

Question 3.6: Do you agree with the specific information we are proposing to require for each site?

No

We consider that the data prescribed above could be enhanced as follows:

- site reference - Unique Property Reference Number (UPRN)
- site name and address
- grid reference
- size (in hectares)
- brownfield status (site is or isn't brownfield)
- constraints affecting site (possibly as tick boxes: habitat, protected species, heritage asset, Green Belt, etc.)
- indicator of site description (intact buildings, derelict buildings, cleared site, etc.)
- potential uses for the site
- if suitable for housing an estimate of the number of homes that the site would likely to be support, preferably a range of provision
- planning status (including link to details held elsewhere of planning permissions, permission in principle/associated technical details consents, and local development orders)
- ownership (if known, if in public ownership, or if private owner has given consent)
- developability of the site

See our response to Q 3.2 with regard to the need for the Register to record sites submitted to the register, but either not considered suitable for housing development or not considered to be 'brownfield'.

CPRE also supports the submission on this point made by Wildlife and Countryside LINK, to which we are a signatory.

Question 3.7: Do you have any suggestions about how the data could be standardised and published in a transparent manner?

Yes

CPRE strongly agrees that the Registers should meet 'Open Data' standards and be as accessible to citizens and potential developers as possible.

We consider that all councils' Registers should be recorded on a single national platform enabling easy aggregation at higher geographical scales, including nationally. This will be especially important for feeding data into Housing Market Area analysis and the work of Combined Authorities.

We also consider that the Registers should be viewable on a map base as well as in tabular form.

Question 3.8: Do you agree with our proposed approach for keeping data up-todate?

Yes

CPRE largely agrees with this proposal. Updating the Registers more frequently than once a year (and even possibly only that frequently) will make meeting the requirements for EIA, SEA and public consultation more problematic.

If Permission in Principle is not automatically applied to Register sites, then the Registers could easily be updated in real-time, and then fed into regular reviews of local plan site allocations.

Question 3.9: Do our proposals to drive progress provide a strong enough incentive to ensure the most effective use of local brownfield registers and permission in principle?

No

CPRE considers that applying this test could have perverse consequences in terms of how thoroughly councils pursue their Registers: the more sites they identify, the harder it will be to ensure planning permission is secured on 90% of them.

If automatic Permission in Principle is applied to the Registers, and PiP is taken as planning permission for the purposes of the 90% target, then all councils should have permissions on 100% of their Register sites by definition. CPRE does not support automatic PiP on the Registers, however.

Question 3.10: Are there further specific measures we should consider where local authorities fail to make sufficient progress, both in advance of 2020 and thereafter?

No

[CPRE did not submit responses to the consultation questions in chapters 4-12, relying on the response submitted by Wildlife and Countryside LINK.]

CPRE
March 2016

Annex: text from Wildlife & Countryside LINK response

Full response available here.

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'Wildlife and Countryside Link is a unique coalition of voluntary organisations concerned with the conservation and protection of wildlife and the countryside.'

Chair: Dr Hazel Norman Director: Dr Elaine King
A company limited by guarantee in England & Wales
Company No. 3889519 Registered Charity No. 1107460

Wildlife and Countryside Link Response to the Technical Consultation on Implementation of Planning Changes

April 2016

Wildlife and Countryside Link (Link) brings together 46 voluntary organisations concerned with the conservation and protection of wildlife, countryside and the marine environment. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over eight million people in the UK and manage over 750,000 hectares of land.

This response is supported by the following nine organisations:

- Bat Conservation Trust
- Campaign to Protect Rural England
- National Trust
- Open Spaces Society
- Royal Society for the Protection of Birds
- Wildfowl and Wetlands Trust
- Wildlife Gardening Forum
- The Wildlife Trusts
- Woodland Trust

Chapter 1 – Changes to planning application fees

1.5 Do you have any other comments on these proposals, including the impact on business and other users of the system?

Link is concerned that the proposed changes to the fee regime will place further emphasis on LPAs complying with time restraints rather than producing robust decisions that truly facilitate sustainable development. Currently only one third of local authorities have access to their own 'in-house' ecologists, with decreasing resources and increasing time pressures we remain very concerned that ecologically sound decisions can be made.

Chapter 2 – Permission in Principle

2.1 Do you agree that the following should be qualifying documents capable of granting permission in principle? a) future local plans; b) future neighbourhood plans; c) brownfield registers

The proposed 'permission in principle' clause is profoundly radical. It will result in creation of a development order, for any land allocated for development in a qualifying document (e.g. register, Neighbourhood Plan, Local Plan, etc.), that gives permission to development in principle. Whilst the Government's Productivity Plan indicated that the proposals for permission in principle would relate specifically to brownfield land, there are currently no limitations on the types of development that may be affected by the proposals.

Permission in principle will severely restrict the potential for local authorities and the public to comment on – or object to - development on these sites. This would ultimately result in local communities being excluded from really being able to shape the places that they live

The proposals for permission in principle also risk creating a variety of mini planning systems alongside each other (e.g. permission in principle via brownfield registers and permission in principle via a Local Plan). This would be a difficult system to understand and navigate. This complexity could add cost and time, which would have significant implications for resource-strapped local planning authorities (see comments on resourcing, below).

We articulate our concerns further in the sections below and provide some suggestions on how PiP could work better in practice (assuming the Government is minded to bring forward this system).

Link is very concerned that if land of high environmental value is granted permission in principle (PiP) there will be added pressure to develop these sites, resulting in a significant loss of biodiversity.

Consequently, we wish to ensure that land of high environmental value is excluded from permission in principle, this would provide clarity to developers, decision-makers, the public

and others, by ensuring such sites do not come forward for development. This will avoid time-consuming and costly planning processes and possible challenges to sites further down the line.

Land of high environmental value should be defined as land which meets any of these criteria:

(a) Contains habitat(s) and species listed under section 41 of the Natural Environment and Rural Communities Act 2006 (biodiversity lists and action (England))
(b) Holds a nature conservation designation such as 'Site of Special Scientific Interest'
(c) Has been selected as a Local Wildlife Site or
(d) Contains protected species.

This definition could equally apply to brownfield or greenfield sites. We recommend that this definition is adopted in updated National Policy and statutory guidance.

Taking account of our comments above it may be appropriate to use future local plans to grant PiP due to the careful consideration that the plan-making process should give to the suitability of sites.

We are pleased that PiP will not apply retrospectively to existing plans (paragraph 2.8 b) as these documents have not been prepared with this in mind and are unlikely to contain the necessary details to be compatible with the proposed PiP regime.

One potential problem is the inability of local authorities to impose planning conditions when granting PiP (paragraph 2.9). This is likely to work against larger sites where conditions are more likely to be needed. Consequently, it will be very important that the appropriate technical details (for consideration when Technical Details consent is determined) are defined for each site at the PiP stage.

If there is insufficient site information available then allocation without PiP would be more appropriate. The Government will need to ensure that plan production is not unnecessarily delayed by trying to grant PiP to potentially contentious sites – these should be allocated without permission.

In respect of Neighbourhood Plans, sites should only be granted PiP on allocation if local planning authorities are confident that they have sufficient information to make an informed decision. We assume that PiP on allocation in Neighbourhood Plans is intended only for non-major developments, particularly as such plans are less robust in terms of evidence requirements and do not have to meet the test of soundness.

It must be recognised that conferring PiP to development through a plan makes the plan-making part of the process more onerous, and so more resources are required as the local planning authority are effectively doing more planning not less.

<u>Brownfield Registers</u>

Link recognises the Government's desire to make best use of brownfield land for housing, noting this will reduce pressure on the Green Belt and other undeveloped land and offer chances to promote economic regeneration. However, some brownfield sites are havens for wildlife and support some of the UK's most scarce and threatened species. In many cases they provide the last 'wild space' in urban areas for local communities, allowing them access to nature and consequently improving the communities health and wellbeing. Consequently, we wish to ensure that land of high environmental value is not included in brownfield registers of land and is excluded from permission in principle.

We support the recommendation put forward in the recent CLG Select Committee report on the consultation into national planning policy which proposes that the Department draws up an authoritative definition of brownfield sites to which the presumption in favour of development will apply. This could be achieved by expanding the existing definition of PDL in Annex 2 of the NPPF to exclude land of high environmental value.

Rather than creating new layers of bureaucracy and complexity through new legislation on PiP, the current Local Development Order (LDO) process could be used to streamline planning consents on suitable brownfield sites. The LDO process would have the added advantage of providing a statutory mechanism for public consultation and for EIA and HRA. Using the LDO process would also be more in-line with the proposals that were set out in the Queen's Speech.

Qualifying Documents

We strongly recommend that the proposed 'Qualifying Documents' that can grant PiP on allocation be restricted to future local plans and future neighbourhood plans, as referenced in paragraph 2.16 of the consultation document, but should not include brownfield registers. This should be set out in secondary legislation or statutory guidance.

Qualifying documents must be consulted on and adopted by planning authorities with the Plan's purpose clearly acknowledged so the public fully understand the implications of PiP.

- All sites being considered for PiP should be:
- informed by an ecological network map (NPPF, para. 117) and supported by an up to date ecological survey and assessment undertaken by a recognised expert
- Subject to EIA Screening (note the local planning authority will need to be adequately resourced to do this).

Further Points/Questions in relation to PiP

We have the following further questions/points to raise to Government in respect of PiP.

- How will councillors/members be responsible in democratic accountability terms for PiP? For example, will they be able to sign off 'in principle' allocations in planning

committee meetings (as part of the Plan adoption process) so that democratic discretion is maintained?

- We assume that PiP allocation of sites has to form part of plan examination hearings and the right to be heard by the public/NGOs has to apply.
- We assume the Government will provide further clarity in Guidance to planning authorities on the level of site information which is deemed 'sufficient' in order for judgements on PiP to be made.

2.2 Do you agree that permission in principle on application should be available to minor development?

While it is the case that many small sites, particularly 'windfall' development, do not necessarily achieve allocation through the local plan process, the strategic housing availability (SHLAA) process does seek to identify all potential sites capable of delivering five or more dwellings, to enable them to be considered as part of the plan-led system. This is the preferred route for such sites to be identified within the planning system – not least because it allows for Local Planning Authorities to consider the strategic consequences of an accumulation of minor developments.

Where a windfall opportunity site comes forward without notice, our preference would be for a pre-application process to take place and for an outline application to be made. A full planning application supporting a local plan allocation can effectively deal with all policy matters and it is not clear that 'permission in principle' will help to speed up or give more certainty to developers, as these matters will always have to be addressed. For developers, greater certainty may be achieved by them having as much information and a full planning assessment as early as possible to enable them to decide on a sites viability and 'developability'. 'Permission in principle' simply seems to be trying to defer that assessment further down the line, which is unlikely to help a developer, who may discover significant constraint costs later in the development process.

Link notes that the Government envisages that retail, community and commercial uses compatible with residential use can be granted PiP (paragraph 2.23) but would welcome clarification on whether these are appropriate for minor development applications.

Paragraph 2.20 of the consultation document states that "Permission in principle applications could also be of benefit to applicants for major development.... We therefore propose to consider the case for this following a closer examination of the operation of outline permission.." Link does not believe that permission in principle 'on application' is appropriate for major applications due to the amount of information required to understand whether or not a site would be suitable.

We were pleased to note in the recent House of Lords Committee debate on PiP, that the Minister confirmed that fracking would not be suitable for PiP.

2.3 Do you agree that location, uses and amount of residential development should constitute 'in principle matters' that must be included in a permission in principle? Do you think any other matter should be included?

Link considers that these requirements are probably appropriate for PiP, subject to our proposed additions below. See also our response to Question 2.1 above.

Location

The consultation document proposes that 'location' include a red line plan drawn to a scale that clearly identifies the location and parameters of the site. A proposed development layout should be provided, illustrating where development is expected to be located within the site. This proposed layout should be binding – this is important, particularly where permission in principle has been granted on the basis of development avoiding certain constraints.

Furthermore, we believe that 'access' is a fundamental component of the location of the site (and hence whether or not a site would be deemed acceptable in principle) and consequently should also form one of the 'in principle matters'.

Uses

Link strongly agrees that PiP should only relate to housing-led uses, where housing remains the predominant use. The other types of uses should be specified as part of the 'in principle' matters.

Amount of residential development

It is very important that the maximum amount of housing to be permitted is specified as part of the 'in principle' matters. This is important so the scale of development is understood (and hence its likely impact can be properly considered). We recommend that the amount of non-residential development is also specified so this can be understood and to ensure that housing remains the dominant use.

Parameters of Technical Details Consent

We also strongly recommend that the parameters of Technical Details consent form an 'in principle matter'. This would provide the public with an opportunity to comment on the detailed issues to be considered at Technical Consent stage (and to ensure these can be tested and commented on before permission in principle is granted). We believe it is crucial that the technical details of a development are sufficiently understood at the 'in principle' stage. We have provided additional comments on this under question 2.4 below.

2.4 Do you have views on how best to ensure that the parameters of the technical details that need to be agreed are described at the permission in principle stage?

The parameters of a future technical details consent should be included as an 'in principle matter' (see our response to question 2.3 above) so that the public and others have an adequate opportunity to comment on the scope of these before PiP is granted.

The key challenge for the local authorities operating the system, particularly when dealing with permission in principle for local and neighbourhood plans will be to ensure that the parameters are described in a manner that is sufficiently concise to avoid bloating the size of the plan, whilst ensuring that all necessary details are provided.

The Government could provide a national set of parameters that technical details consents are expected to address (and the relevant technical issues should be defined as part of each site PiP, recognising that technical details will vary from site to site). This would enable the PiP to be briefer, and would have the added merit that the technical details approach could be kept up-to-date and nationally consistent: this approach would enable the requirements that technical details consent is required to meet to evolve in the light of experience of the operation of the system.

We strongly recommend that 'Biodiversity', 'Landscape', 'Climate Change Adaptation', 'Flood Risk' and 'Heritage' are included as national parameters. The need for detailed consideration of these issues will depend on local circumstances.

We are pleased with the statement in paragraph 2.25 which notes that if the technical details are not acceptable for justifiable reasons, the local planning authority could justify a refusal at the technical details stage – we strongly recommend that this is specified in secondary legislation or in statutory guidance. This is important as there may well be issues that emerge on a site that could not have been foreseen that provide a reason for refusing technical details consent.

2.5 Do you have views on our suggested approach to (a) Environmental Impact Assessment b) Habitats Directive or c) other sensitive sites?

(a) EIA

Paragraph 2.30, bullet 2 suggests that if an authority decides that EIA is required, then EIA should be undertaken, and PiP only granted if any measures needed to address the significant effects of the proposal are in place. We support this statement, however, we are unclear what benefits the PiP route will confer to those bringing forward EIA development (over the existing planning application route). We are also unclear whether the responsibility for undertaking EIA would fall to the planning authority granting PiP or to the site promoter. We are very concerned that there is a lack of skilled resource available within planning authorities to undertake EIA effectively.

We do not believe that PiP is appropriate for EIA development.

SEA

SEA is required for plans and programmes prepared for a number of sectors and which set a framework for future development consent of projects listed in the EIA Directive and where assessment is required pursuant to the Habitats Directive.

Consequently SEA will be required for Local Plans and potentially Neighbourhood Plans. SEA may also be required for Registers of Land (due to the potential significant cumulative effects of proposed development). It is also possible that EIA developments will be included on the Registers of Land.

Assuming SEA is undertaken appropriately, it should be possible to understand the impacts arising from sites conferred PiP in plans and registers. It will be important that practitioners understand the need to consider the cumulative impact of development within qualifying documents. The NPPG should provide updated guidance on SEA. Undertaking SEA should not obviate the need for EIA of specific projects.

(b) Habitats Directives

We are pleased with the statement in paragraph 2.31 that the requirements of the Habitats Directive will also need to be met where they apply.

If sites are deemed to require assessment under the Habitats Regulations, we would question whether PiP is the most appropriate route through planning, given the complex issues which may need to be addressed before a planning authority can be confident in granting PiP.

(c) Other sensitive sites

Land of high environmental value should be excluded from PiP. By making use of our proposed definition of such land, developers and local planning authorities can be absolutely clear on the circumstances when PiP is not appropriate. We recommend that the Government states in updated statutory guidance that land of high environmental value will not be suitable for PiP.

Regarding other 'site sensitivities', such as heritage, the key issue is for the local authority to be able to decide whether the information requirements associated with the site sensitivities are such that PiP is not a suitable way to bring the site forward. The consultation paper acknowledges that sites must be assessed against local and national planning policy (paragraph 2.27) - Government guidance on how to undertake such assessment will be essential. Guidance must firstly focus on how potential impacts can be identified prior to PiP being granted and then how such issues can be resolved through the technical details process. Without clear guidance, local authorities may choose not to award PiP to sites in order to retain effective control through the standard planning application process.

2.6 Do you agree with our proposals for community and other involvement?

Permission in Principle on allocation in local and neighbourhood plans

In relation to PiP on allocation in local and neighbourhood plans we do not think that existing consultation arrangements provide an adequate framework for involving communities. Local Plan consultation (including consultation on supporting assessments such as SEA/SA and HRA) are necessarily technical and complex and difficult for the public to engage with.

The recent report from the Local Plans Expert Group proposes some changes to the current local plan preparation process. These seek to reduce the overall number of consultations undertaken and would enable local planning authorities to modify a plan in response to public consultation at the first (and only) stage when a local plan is formally published in draft. The proposed changes to the plan-making stages are set out below:

(i) The local planning authority carries out community engagement on the high level vision and options for the local plan at the commencement of plan preparation;
(ii) The authority prepares and publishes its plan for representations;
(iii) Representations are made and the authority decides if it wishes to modify the published plan
    a. The authority will submit the plan, with any modifications it has made, and any representations will be allowed on the modifications;
(iv) The inspector will consider the representations on the submitted plan and the representations on the modifications in the examination.

We support these proposed changes. Point (ii) in particular would enable the public and others to fully engage with a draft plan (this is not possible in formal terms at present, but tends to happen informally resulting in multiple public consultations leading to 'consultation fatigue' and failure to grapple with the big issues). Having a formal consultation on the draft plan would make it absolutely clear to the public and others when they are required to engage. Changes to the plan making process should be combined with clear communication to the public on what they are being consulted on – i.e. being absolutely clear what it means if a site is given PiP in a plan or neighbourhood plan.

We strongly recommend that statutory guidance is issued to set out the consultation requirements in respect of PiP. It would also be helpful if the Government could provide a steer on how to distinguish between sites to be granted PiP and sites being allocated in qualifying documents so the public can effectively engage with those sites being granted PiP.

We would also expect the public to have an opportunity to comment on the technical parameters to be considered during technical details consent (prior to granting PiP), so additional technical issues can be scoped in if required.

Finally we propose that PiP site allocations form part of plan hearings and the right to be heard has to apply – this would enable a further round of scrutiny by the public/NGOS during examination into Plans.

Permission in principle on application

Setting consultation arrangements in line with requirements for planning applications seems sensible.

Application for Technical Details Consent

Link believes that secondary legislation must mandate the requirement for local planning authorities to consult with the community and others before determining an application for technical details. This may be the first opportunity the public has had to engage with the technical details of sites to be granted permission in principle.

2.7 Do you agree with our proposals for information requirements?

Permission in principle on allocation in local plans/neighbourhood plans

We reiterate the recommendations provided in our response to questions 2.3 and 2.4 in respect of what additional 'in principle' matters should be included.

A possible approach (to inclusion of information in local and neighbourhood plans) would be to include draft policies for sites to be conferred permission in principle (similar to site policies often included in allocation plans at present). Such 'policies' would include information on all issues to be considered during the application for technical details with reference to potential mitigation measures. As discussed in our response to question 2.6, planning authorities should consult the public on the scope of technical issues before PiP is granted. This will enable additional technical issues (for consideration during technical details consent) to be 'scoped in' where necessary.

Recognising that there may be occasions where irresolvable technical issues emerge later we are pleased that it will be possible to refuse technical details consent.

Minor Development

We have some suggestions on the information requirements proposed in paragraph 2.38:

Location

We note that the Technical Details stage would include a Design Statement containing information relating to design matters including layout, access and architectural detail. We find it difficult to understand how permission in principle can be granted without properly understanding the proposed site layout (by understanding this early on it would be possible to demonstrate whether or not on-site constraints can be avoided and hence, whether the development is acceptable in principle). Furthermore, we believe that access to a site is a fundamental component of site location and should form one of the 'in principle' matters.

Use

Provide details on the proposed uses, ensuring that the proposed use is housing-led; provide information on other proposed uses (ensuring these are subsidiary to housing).

Amount

Provide details on the number of homes ensuring that the maximum permitted number of homes is 10 units (as this relates to minor developments).

Parameters of Technical Details

Include reference to the issues to be considered during technical details consent.

Technical Details consent

We broadly support the proposals set out in paragraph 2.40, provided that the 'impact statement' includes consideration of impacts on the natural environment, landscape and heritage and that this information is clearly separate from any statutory assessments under the European Directives (e.g. EIA, HRA). Any required mitigation must be sufficiently detailed and provided in line with the mitigation hierarchy. Compensation should be considered as a last resort and not considered to be a form of mitigation.

We strongly recommend that provision be made for additional issues to be considered at the technical details stage should these emerge once permission in principle has been granted.

2.8 Do you have any views about the fee that should be set for (a) a permission in principle application and (b) a technical details consent application?

Link considers that the fees for both stages should reflect the general principle of cost recovery that underpins planning fees.

In addition, it is important to ensure that the fees set for these applications together should broadly reflect the cost of attaining a standard full planning consent. This is to ensure that this process does not inappropriately divert schemes onto the permission in principle path in order to save costs. If this happens local authority planning departments may find themselves under-resourced to deal with the applications coming in.

2.9 Do you agree with our proposals for the expiry of on permission in principle on allocation and application? Do you have any views about whether we should allow for local variation to the duration of permission in principle?

Expiry of permission in principle on allocation

Five years seems a sensible duration for permission in principle to apply. However, if development does not proceed until the end of the five year period we would expect survey

work (e.g. protected species and habitat surveys) to be updated and reviewed. This could form a condition of any future technical details consent (i.e. pre-construction surveys must be undertaken to ensure site conditions have not materially changed).

We do not support local variation to the duration of permission in principle to facilitate plan led development as we believe this would add unnecessary confusion and inconsistency to the process.

Expiry of permission in principle on application

Paragraph 2.44 of the consultation document proposes two possible options for expiry of permission granted on application – Option A (three years) or Option B (one year).

As the purpose of permission in principle on application is to speed up the process for bringing forward 'minor' developments we would support Option B which would encourage applicants to bring forward an application for technical details quickly after receiving permission in principle. This would have the added advantage of ensuring the information on site conditions (provided at permission in principle stage) remains relatively up to date.

As per our comments above, we do not support local variation to the duration of PiP to facilitate plan led development.

Expiry of permission of technical details consent

We support the proposed duration of technical details consent of three years. We do not believe local planning authorities should be able to vary this time period.

2.10 Do you agree with our proposals for the maximum determination periods for (a) permission in principle minor applications and (b) technical details consent for minor and major sites?

We do not agree with the maximum determination periods proposed (5 weeks to determine permission in principle for minor applications; 5 weeks to determine technical details consent for minor sites and 10 weeks to determine technical details consent for major sites).

We strongly recommend that the maximum determination periods be in line with existing applications as a minimum (e.g. 8 weeks to determine an outline application for minor development; a further 8 weeks for subsequent reserved matters applications; and 13 weeks for major applications). We are concerned that the determination periods proposed will not provide the public and others with adequate time to comment on applications for permission in principle and technical details consent.

We assume that the determination period for major applications is not defined as permission in principle would only be granted on allocation in plans.

We assume that EIA developments emerging through the permission in principle route would be subject to the existing 16 week determination period. However, as stated earlier we do not think that permission in principle is an appropriate route for EIA development.

Chapter 3 – Brownfield Register

The following comments represent Links views on the whole of Section 3.

Link welcomes the introduction of the brownfield register, as we believe it will lead to local authorities doing more to identify opportunities to build on suitable previously developed land, thereby reducing pressure to build on undeveloped land. However, not all brownfield sites are suitable for development.

We are particularly concerned to protect sites of high environmental value (see definition set out in our answer to question 2.1), as the NPPF and PPG already allows for. We welcome the undertaking in paragraph 3.14 to set out suitability criteria in regulations, and to have regard to the NPPF and PPG in this connection. Link recommends that the criteria should include specific provision that designated wildlife sites or priority habitats are not to be considered suitable for housing. We have put forward a definition for land of high environmental value (see our response to question 2.1). This would provide absolute clarity on which sites should be excluded from Registers of Land and from Permission in Principle.

We also note that at paragraph 3.22 the Government indicates that the Strategic Environmental Assessment regulations may apply to some brownfield registers. This reinforces Link's view that permission in principle should normally only be used for sites that have first been identified and agreed in a Local Plan, where the requirements of the SEA Directive will have been met as a matter of course. Similarly, we do not believe that the publicity and consultation requirements proposed in paragraphs 3.23-3.25 will be sufficient. Permission in principle should only flow from an allocation in an adopted Local Plan and neighbourhood plan.

Finally, we believe that Registers should relate solely to brownfield land for housing and not other types of land.

Chapter 4 – Small sites register

4.1 Do you agree that for the small sites register, small sites should be between one and four plots in size?

Link feels that plots which could accommodate up to four dwellings would be an appropriate size for the purposes of defining 'small sites' in relation to the register. However, we suggest that it may be appropriate to consider a maximum plot size overall to ensure that the best and most efficient use of land is made, and that particularly in urban areas land is not put forward for fewer larger units where there would be sufficient benefit to the overall

sustainability of an area for having a higher density of development. It is recognised that such an upper limit of the plot size may be difficult to achieve across the whole country, given the wide variations in density, but that using an average density value the size of 4 plots could be defined. Alternatively it could be left to the discretion of local authority planning officers to determine whether a plot size is appropriate for four dwellings, in the context of a site suitability assessment.

4.2 Do you agree that sites should just be entered on the small sites register when a local authority is aware of them without any need for a suitability assessment?

It would be a disproportionate burden and resource intensive for Local Planning Authorities to carry out a suitability assessment when sites are entered on the proposed register. On that basis, LINK agrees with the proposal. As the consultation documents states in paragraph 4.8, the lack of any suitability assessment prior to the land being entered on the register 'will mean that there is no guarantee that sites on the register can be used for development', and this must be made clear through the regulations and guidance. These should also make it clear that the requirement to carry out a suitability assessment will rest with any future applicant. Without this clarity the holding of such a register by a Local Planning Authority would imply to the lay person that the authority had endorsed the sites on the register, and that there was an effective presumption in favour of their development. This would be unfair, both on the owner of the land and those interested in self-build and custom housebuilding, and could place a financial burden on them where there is little hope of success. The consultation does not state whether sites could only go onto the register with the agreement of the owner, what evidence of ownership would be required and who would be responsible for checking it. These safeguards would appear essential to avoid abuse of the small sites register and to meet data protection requirements. An ability to remove sites where the ownership changes or the owner changes their mind about being on a public register would also seem necessary. The contact details would also need to be periodically verified.

4.3 Are there any categories of land which we should automatically exclude from the register? If so what are they?

Specific exclusions should be in place for land of high environmental value (see definition in answer to question 2.1), as well as Green Belts, National Parks, AONBs, World Heritage Sites, Heritage Coasts, SSSIs, and land registered as Common Land or as a Town or Village Green. It should also be made clear in guidance that sites in defined settlements and on other previously developed land will normally be more appropriate than undeveloped sites.

4.4 Do you agree that location, size and contact details will be sufficient to make the small sites register useful? If not what additional information should be required?

In addition to the listed criteria, the small sites register should be subject to the same requirements as the Brownfield Register set out in paragraph 3.28. Information on sites constraints and site history should be supplied.

Chapter 5 – Neighbourhood planning

5.1 Do you support our proposals for the circumstances in which a local planning authority must designate all of the neighbourhood area applied for?

Link is very supportive of the concept of neighbourhood planning as a tool for local communities to shape environmentally sound, sustainable development. As such we are supportive of mechanisms that can speed up and improve community's experience of the process to promote wider uptake and engagement within the planning system. However we caution that this must be set within properly resourced LPAs. Without proper resourcing the opportunity for early intervention and dialogue between the LPA and the community at the designation stage could be missed.

Chapter 6 – Local Plans

6.3 Are there any other factors that you think the government should take into consideration?

Link believes that the planning system must remain plan led. A plan led system is the only way to ensure that planning can deliver both environmental and social justice alongside economic growth within a democratic process. This needs to be as strategic as possible to ensure that, whilst we are planning for infrastructure and growth, this is in the context of protecting and improving our natural environment and public access to it. A landscape scale approach focusing on the delivery of ecosystem services is fundamental to the delivery of successful strategic planning for the good of all. Fundamental to this is the belief that local plans should be produced locally and democratically, making best use of local knowledge and reflecting the local situation. As such we strongly oppose any considerations for a sector led approach to plan making (as set out in paragraph 6.7).

Chapter 7 - Expanding the approach to planning performance

Not answering

Chapter 8 – Testing competition in the processing of planning applications

8.6 Do you have any comments on these proposals, including the impact on businesses and other users of the system?

Link is strongly opposed to the competition proposals. We are very concerned about third parties making recommendations to planning committees and the implications this has for the

democratic process. This concern also extends to the practicalities of the proposals with regard to applications being taken forward to appeal and who keeps the planning register.

Link is uncomfortable with the comparisons being drawn between Building Control and Planning. The Building Control process is quantifiable and therefore an appropriately trained and qualified person can make sound decisions. Planning decisions are based on planning balance and therefore much more qualitative, they are dependent on sound community engagement and good local knowledge. We are also deeply concerned that sharing the fee between service providers will further strip both resources and expertise from LPAs further undermining their abilities to make sound and timely decisions. This can only have a detrimental impact on local communities and businesses.

It is critical that if this approach is taken forward high standards are maintained, Link recommends that all work should be led by Chartered Planners (MRTPI) to ensure that there is a degree of professional accountability.

Chapter 9 – Information about financial benefits

9.2 Do you agree with these proposals for the information to be recorded, and are there any other matters that we should consider when preparing regulations to implement this measure?

Link does not support the proposed new requirement for local planning authorities to list financial benefits when issuing planning committee reports. It is a well-established principle of the British planning system that planning permission should not be bought and sold. In our view the current Planning Practice Guidance generally reflects this principle well by making clear that a financial consideration is only material, or relevant, to a planning decision if it helps make a development acceptable in planning terms (so clearly relating it to publicly agreed planning policy as opposed to simply providing the benefit of raising revenue) . Unless further work is done in the final regulations, the proposed reforms are likely to undermine the principle, introduce irrelevant information into planning committee reports and reduce public faith in the planning system.

If the regulations are produced as proposed, then Link recommends that they should also state (i) the position currently set out in the Planning Practice Guidance about when financial benefits are and are not material; and (ii) the need to balance any financial benefits of development against environmental, social or economic costs, which may often be much greater in a local area than benefits. Ministers have shown recognition of the importance of the latter point, as shown by a recent statement made by Housing and Planning Minister Brandon Lewis. This was made at the House of Commons Report stage in response to concerns about the proposal as it is set out in the Housing and Planning Bill. The statement is set out below and Link has emboldened the sections which we believe should be included in any new regulations.

House of Commons Debates 5 Jan 2016: Column 238

Brandon Lewis: …It is right that new development should be supported by an appropriate level of infrastructure and that developers should provide support to put that in place. That is what the negotiations on section 106 and the community infrastructure levy are for. We would expect any significant infrastructure that would be needed to support a proposed new development to be a material consideration for the planning decision, and therefore covered in detail in planning reports for a local authority. We would therefore expect the costs associated with putting the necessary infrastructure in place to be covered.

Chapter 10 – Section 106 dispute resolution

The Government is proposing a dispute resolution process where by an 'independent body' is to provide a binding report setting out appropriate terms where these had not previously been agreed by the local planning authority and the developer. It is intended to apply to all cases. The person appointed can award costs and charge fees. There are general issues with these proposals – whether the appointed person will be independent while at the same time publicly accountable; whether there is any appeals process on the 'binding report' to be submitted where it can be clearly identified that mistakes have been made in the process of dispute resolution; how public consultation on the planning application which influences the content of the section 106 will be incorporated into the resolution process; what the role of the councillors will be if the report on the S106 resolution is 'binding'; whether there is sufficient time allowed for really contentious discussion which suggests that these will not be immaterial matters, and more rather than less time is required given the incentives that exist to approve development.

Chapter 11 – Permitted development rights for state funded schools

11.1 Do you have any views on our proposals to extend permitted development rights for state-funded schools, or whether other changes should be made? For example, should changes be made to the thresholds within which school buildings can be extended?

We seek clarity over whether these proposals also apply to Academies as well as Local Authority State Schools. We acknowledge the demand for school places; however, we urge caution at widening the remit of development without requiring planning permission. It is important that the quality of the schools offer a supportive and encouraging learning environment. The natural environment also plays an important role in this. Research indicates that views to green landscapes cause significantly better performance on tests of attention and increase student's recovery from stressful experiences. The opportunity for outdoor learning experiences should also not be underestimated. It is important that these proposals do not cause the loss of valuable green spaces. We propose that there should be a requirement that temporary buildings are removed after the three years and that after

development (or the removal of temporary structures) green spaces should be restored/created within the footprint and surrounding affected areas.

11.2 Do you consider that the existing prior approval provisions are adequate? Do you consider that other local impacts arise which should be considered in designing the right?

We support the inclusion that in seeking permanent change of use approval must consider highways, noise, and contamination impacts. Contamination needs to include impacts to water quality. There is no mention within proposals to consider the environmental impact of where these buildings or temporary structures are put up. There needs to be adequate assessment for protected species and habitats which may be present on the school land (notably bats and newts). Given that planning permission is not required it is important to ensure that such species are identified where present and appropriate avoidance/mitigation measures put in place should they be present.

As these proposals seek to increase the number of new schools as well as expand capacity in existing schools, development needs to consider any impact on drainage capacity and flood risk to the school and the surrounding area.

Chapter 12 – Changes to statutory consultation on planning applications

12.3 What are the benefits and/or risks of setting a maximum period that a statutory consultee can request when seeking an extension of time to respond with comments to a planning application?

We note that most statutory consultees have experienced significant staff reductions over the past 5 years, without any attendant reduction in the statutory consultee duties. If the Government wishes to specify maximum response times it should ensure that the consultees are appropriately resourced to meet such deadlines.

Link considers that a key risk of setting maximum extensions of time is that insufficient time will be allowed for the statutory consultee to properly consider the documentation. This is particularly important in large, complex schemes where the matters to be considered require significant scrutiny by statutory consultees. This may lead to schemes being rejected by risk-averse staff, or erroneously consented where the implications have not been properly understood.

Chapter 13 – Public Sector Equality Duty

Not answering