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Anne Wood
Department for Communities and Local Government
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6 March 2015

Dear Ms Wood,

BUILDING MORE HOMES ON BROWNFIELD LAND CONSULTATION RESPONSE

1. Introduction

1.1 We are writing in response to your Department's consultation paper dated January 2015 on behalf of the Smart Growth UK coalition. This response is specifically supported by the following organisations:-

*British Land Reclamation Society
Campaign for Better Transport
Campaign to Protect Rural England
Chartered Institute of Environmental Health
Environmental Protection UK*

1.2 We would like to say at the outset we welcome and fully support the decision to recommence and widen the collection and collation of data on the availability and location of brownfield land. We also accept the use of local development orders to secure development – but only in the right circumstances, at the instigation of the local planning authority and subject to strict guidance.

1.3 That said, however, we have serious concerns about your specific proposals for identifying brownfield land suitable for housing. We also believe that requiring, rather than encouraging, local authorities to use the LDO route, and backing this with coercive punishments like special measures, is likely to breed hostility and resentment, rather than securing increased brownfield development. This would be wholly inimical to the letter and spirit of localism.

1.4 The proposals as formulated would, in effect, set a limit on the number of brownfield sites of five or more units in England that could be identified as suitable

for housing development. This would be directly contrary to the paper's purported purpose of increasing brownfield development.

1.5 This response includes answers to the specific questions raised in your consultation, below, but we believe there are important additional messages to be sent about the current proposals.

2. Definition of brownfield land

Question 1: Do you agree with our proposed definition of brownfield land suitable for new housing and the criteria that are applied to define land suitable for new housing? No.

2.1 The *NPPF* definition of brownfield land has, with minor modifications, been in use since 1999 and, though there will always be room for occasional uncertainties, it has generally worked well (apart from the issue of old landfills, see paragraph 8.4 below). It formed the basis for the previous National Land Use Database statistics on brownfield land and its continued use would enable useful comparisons to be made.

2.2 We have very serious concerns about the proposed criteria to qualify the *NPPF* definition which appear to us to have been designed to exclude the majority of brownfield land suitable for housing or other development. Designating which land is suitable for development should be an issue for local planning authorities through their plan making and development control work.

2.3 In this context, it is disturbing to see your Department and the Treasury continuing to quote a figure of 200,000 for brownfield housing capacity in England. We fear the criteria have been formulated to justify that figure and this wholly misleading limit on brownfield land capacity. Many studies have shown the actual capacity is far in excess of that – probably well over one million¹ - and use of the proposed criteria would be more likely to lead to restriction, rather than promotion, of brownfield regeneration. The University of the West of England work also showed the “churn” of brownfield sites is neglected – its data analysis found that, in many local authorities, brownfield sites were added to the NLUD data at around the same rate that they were developed; supply is not finite. The various capacity figures that are quoted, however, all assume that the supply *is* finite – we are not building anywhere near 200,000 homes per year at the moment so are unlikely to use all of the available supply in any one year (even if this number weren't an underestimate).

2.4 Indeed, on 20 February, the Chancellor of the Exchequer implicitly conceded the 200,000 figure is a serious under-estimate. Announcing a new London Land Commission², he announced it would “identify public sector land for development, helping London to ensure development on all of its London's [*sic*] brownfield land by 2025 – so that London can meet its target of at least 400,000 new homes, primarily through brownfield land”. So, if Greater London alone has space for 400,000 brownfield homes (the capital has very little greenfield land and most of that is green belt), how can there only be room for 200,000 in the whole of England?

2.5 **Deliverable.** While it makes obvious sense to exclude sites in productive or valuable use, housing with a significant future for instance, this criterion as stated

would exclude sites where land assembly problems or an existing user determined to stay on a very small part of the site would prevent development.

2.6 Free of constraint. We are extremely concerned at the wording of the first of these two paragraphs. What is the definition of “severe physical constraint”? The criterion would appear to enshrine and even enhance the damage caused by the viability test requirements of the *NPPF* in a more specific form, explicitly rendering most land subject to contamination or instability as undevelopable.

2.7 Particularly concerning is the statement that “contaminated land should also be excluded if there is clear evidence that the cost of remediation would be out of proportion to its potential value, making redevelopment unviable”. Implicit in this is the suggestion that land reclamation in general, with all its huge economic, social and environmental benefits, is not worthwhile. Derelict land is a serious drag on any local economy, deterring investment, encouraging anti-social behaviour and, as recent research has shown, harming health in ways that go far beyond any direct health effects of the contamination³. Encouraging exclusion of the more difficult sites is likely to force land with more complex issues on to the public purse to resolve, i.e. via Part 2a of the Environmental Protection Act 1990.

2.8 The second paragraph here is also problematic in that it appears to contradict the *NPPF*, paragraph 89. The consultation paper says “development on brownfield land in the green belt should not be approved except in very special circumstances”. But *NPPF* paragraph 89 lists, as an exception to the proscription of building in green belts “limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the green belt and the purpose of including land within it than the existing development”.

2.9 Capable of development. This criterion would apply a market barrier to brownfield land, effectively blighting brownfield land in those large parts of England where the economy is depressed. While there will be cases where the demands of sustainable planning, such as location in open countryside far from settlements or sustainable transport, could preclude inclusion in the statistics (at the discretion of the local authority), the way this criterion is worded would simply make inclusion a question of developer interest or capacity.

2.10 It is also difficult to see how such a viability test could be applied. Sites which already have planning consent are specifically excluded, so the test would apply only to brownfield sites which lack planning consent or LDOs already. How then, in the absence of site investigation to identify and cost remediating contamination, instability and other physical constraints and of such detailed design of a development that estimation of the likely financial return to the developer would be possible, could a local authority assess whether “there would be interest from developers in purchasing the site and building housing there in the near future”? Commercial developers are, in any case, likely to regard such estimates as commercially confidential.

2.11 The constraint to be applied here should be that of local planning policy, not economic interest. As it stands, this criterion would further blight economically

depressed areas and actually introduce a degree of deliberate market failure into planning policy.

2.12 Capable of supporting five or more dwellings. The five dwelling threshold would rule out many smaller sites and artificially depress the number of brownfield sites rated “suitable for development”. It also risks the entirely perverse result of leaving sites with fewer than five dwellings subject to the full rigour of the planning system, while subjecting larger sites to less rigorous controls.

3. Sharing information on progress

Question 2: Do you agree that local planning authorities should be transparent and publish the small subset of data at source, and update it at least once a year, to a common standard and specification? *No, a return to the land use change statistics style data is required.*

Question 3: Do you have views on how this common standard and specification should be developed? *No.*

3.1 We believe that overarching data on brownfield land needs to be available, including key national statistics on the amount of land available and annual percentages of annual land use for housing and other purposes and of the areas of brownfield/greenfield land changing to housing use. If additional data is now to be assembled it will be important to ensure it is compatible with NLUD data allowing direct comparisons.

4. Assessing progress towards meeting our objective

Question 4: Do you agree that local planning authorities should review their baseline and progress regularly, at least annually, to ensure that information about permissions on suitable brownfield land is current, reflecting changes in the availability of suitable housing sites? *See below.*

4.1 Paragraph 21 states that “the Government’s objective is to see local development orders in place on more than 90% of suitable brownfield land that does not already benefit from planning permission by 2020”. Taken with the estimate, explicitly stated in paragraph 8, that “there is enough brownfield land to accommodate up to 200,000 homes”, the paper gives a clear indication that the Government expects LDOs to be brought forward for only 180,000 brownfield homes in the next five years.

4.2 Although, thanks to lack of recent data, it is impossible to say how many brownfield homes are currently being built in England, it is certainly in excess of 36,000 annually. So, if current trends continue, significantly more than 180,000 brownfield homes on sites with five or more units would be built in the next five to six years if this LDO initiative did not proceed. Is the Government really saying it expects its proposals to *limit* the number of brownfield homes to be built in that time?

5. Measures to encourage progress

5.1 We agree that the Government should encourage those local planning authorities that want to use the LDO approach to securing development on 5+ home brownfield sites, and any funding or loans for these purposes are welcome.

5.2 However, we cannot accept that local authorities should be *forced* to adopt this approach where they choose not to. There are many areas where a degree of management on a finer scale may be necessary to prevent inappropriate development and protect existing structures. Conservation areas, world heritage sites, SSSIs, AONBs, national parks, ancient monuments, listed buildings, special protection areas, special areas of conservation – all of which can cover parts of urban areas – may be examples of where a more detailed approach, considering individual sites, may be more appropriate. Indeed, preparation of an LDO to a site which, say, only has potential for housing development in single figures, might actually be more onerous in some cases than simple development control.

5.3 What is needed to encourage use of brownfield sites large and small is reform of the *NPPF*. Some changes we believe are necessary to secure redevelopment of brownfield sites are outlined in Section 8 below.

Question 5: Do you think that the designation of under-performing planning authorities in the way suggested would provide an effective incentive to bringing forward planning permissions on brownfield land?
No.

Question 6: Do you agree that:

a) Authorities should be designated from 2020 if they have not met the 90% objective? *No.*

b) Performance against the 90% objective should be calculated on the extent to which the brownfield land suitable for housing identified a year earlier is covered by local development orders? *No.*

Question 7: Do you agree that:

a) Authorities should be assessed against an intermediate objective in 2017? *No.*

b) Having local development orders in place on 50% of brownfield land identified as suitable for housing (and which does not already benefit from planning permission) in the preceding year is an appropriate intermediate objective? *No.*

Question 8: Do you agree that authorities should be designated from 2017 if they have failed to make sufficient progress against the intermediate objective? *No.*

Question 9: Do you agree:

a) With our proposed approach to identifying and confirming designations, including the consideration of whether exceptional circumstances apply? *No.*

b) With our suggested approach to de-designating authorities from 2020? *No.*

c) That the provisions for handling applications made to the Secretary of State should be the same as where an authority is designated under the existing performance measures? No.

5.4 **Designation.** Applying special measures to an underfunded local planning authority already struggling with its planning workload for failing to secure the complexities of LDOs would be an over-reaction to the problem. Certainly the submission of full brownfield land statistics (rather than the very partial data proposed) should be made a policy requirement. But applying special measures for those authorities who do not do so, for whatever reason, risks stirring up the same resentment that the application of house building targets in regional strategies did, and which imposition of unacceptable housing numbers via local plan examinations since 2012 has also done.

6. Policy-based incentive

Question 10: Do you:

a) Think the policy-based approach would provide an effective incentive for authorities to put local development orders in place on suitable brownfield land? *We agree a policy-based approach is required, but not the one proposed. See below.*

b) Agree with the proposed thresholds and dates at which this measure would take effect? *It is far too early to pass judgement on thresholds. Significant further work would be required.*

6.1 The *National Planning Policy Framework* certainly needs significant reform. One reason for doing this would certainly be to prioritize greater redevelopment of brownfield land, but simply tinkering with those of its current provisions designed to coerce greater releases of greenfield land would be a grave mistake.

6.2 There is widespread scepticism about the way “five-year housing land supply” data are assembled and the so-called “presumption in favour of sustainable development” is widely regarded as the exact opposite, a source of resentment at least on a par with regional strategies. Its application to brownfield development would simply generate hostility.

6.3 We do not accept the presumption should be used to “make it easier to obtain planning permission on brownfield land where authorities had failed to make sufficient progress towards the Government’s objective for permissions” (paragraph 36). This would simply undermine good planning, as it has already widely done on greenfield sites. Any planning consent anywhere, however obtained, should meet national and, especially, local planning requirements.

6.4 As stated in paragraph 5.3 above, we believe reform of the *NPPF* is needed. The very first change needed is restoration of brownfield-first. This would, at a stroke, secure far more brownfield development than any complex system of LDOs. Our suggestions for reform of planning guidance are set out in Section 8 below.

7. Dealing with data gaps

Question 11: Do you agree that the measures proposed for failing to publish information on progress are proportionate and effective? If not, what alternative would you propose and why? No. See below.

7.1 We believe a statutory approach to data provision is more appropriate than punitive sanctions through special measures or manipulation of so-called “five-year supplies”.

8. Other approaches

Question 12: Do you have any other suggestions for measures that could help to deliver local development orders on brownfield land suitable for new housing? See below.

8.1 The *NPPF* plainly needs significant reform, particularly in relation to its content on housing provision, though many of the changes it needs are beyond the scope of this consultation. However, there are a number of reforms to the *NPPF* we would like to see in this context.

8.2 The first requirement is a return to a robust and functional brownfield-first policy. Developing a greenfield site will almost always be more commercially attractive than a brownfield one, however unsustainable the results. The absence of a brownfield-first policy, therefore, is to all intents and purposes a greenfield-first policy.

8.3 There also needs to be a replacement for *PPS23* Annex 2 on developing on land subject to contamination to give developers the certainty they need to develop such sites. Its absence has led to a plethora of different local requirements which make it difficult for developers. In this context, we would also question the wording of paragraph 121 of the *NPPF* which says “Planning policies and decisions should also ensure that:... adequate site investigation information, prepared by a competent person, is presented”. “Should” is a very loose term and the obligation of the developer to provide adequate information, or face rejection of his application, needs to be more clearly stated.

8.4 The definition of brownfield land in the Glossary (see paragraph 2.1 above) excludes disused landfill sites where provision for restoration has been made through development control. This excludes sites capable of being developed for housing and we suggest it be amended to allow development on those sites that meet the locational and other criteria in paragraph 8.7 below and which can be shown to be suitable in terms of contamination, stability and landfill gas.

8.5 There must be more to planning than simply promoting raw numbers of houses. Where local authorities choose to apply the LDO approach to brownfield housing sites, they should be free to do so. But it would still be important to ensure basic planning standards are met.

8.6 For those situations where local authorities do choose to use the LDO route, we have formulated a set of basic principles which would need to be enshrined in national guidance to ensure at least basic standards are met. These would need to be included in, and extended, in local plans.

8.7 These are the principles we recommend:-

ZONE LOCATION

1. **Brownfield.** Where brownfield LDOs are used, the area should consist overwhelmingly of previously developed land and small areas of greenfield land should only be included in exceptional circumstances.
2. **Location.** LDOs should only be designated within the built-up footprint of existing major urban areas. On other brownfield sites the usual development control requirements should always apply.
3. **Transit-oriented development.** LDOs should only be used in places well served with public transport, rail-based where possible, or where firm plans exist for their inclusion in such networks.
4. **Protected areas.** LDOs should not be designated within green belts or environmentally important areas.
5. **Flooding.** LDOs should not be designated within areas at high risk of flooding.

ZONE DESIGN PRINCIPLES

1. **Housing mix.** Housing development should aim to secure a mix of dwellings appropriate to the area. High proportions of small flats which tend to cause high population turnover should be avoided and the homes should aim to ensure a mixed community including families, couples, single people and older people. High-density alternatives like terraced housing or mansion blocks can provide excellent and desirable alternatives.
2. **Housing densities.** Densities should be appropriate for the cities where the zones are located, avoiding both the very low densities of typical greenfield development and acute town cramming.
3. **Place making.** LDOs should ensure an appropriate mix of other uses is maintained; rigid zoning should be avoided. Residents need access to shops, education, healthcare, services and open space. Places should be designed to allow communities to grow and flourish, not just to accommodate people.
4. **Design.** The zones should reflect the *NPPF* demand for high standards of design, using architecture which respects the traditional designs of the particular locality. This should build on the work done by various organisations on design codes etc. and such standards should be made a requirement.
5. **Layouts.** Where new street layouts are involved, they should be designed to allow free and convenient movement on foot or by bike. LDOs developments should have easy access to shops, schools, healthcare, other services and public transport. Provision should be made for present and future fixed-link public transport corridors where appropriate.
6. **Sustainable building.** Construction should be to high standards for energy, water usage, etc..
7. **Natural environment.** Larger residential developments should “make room for nature” and feature appropriate green infrastructure, including planting and open space. They should reflect the need to investigate and manage existing wildlife.
8. **Conservation.** All residential development should protect and enhance existing built heritage, paying particular attention to the setting of nearby heritage assets. It should respect an area’s existing character and historic environment and create distinctive places. Investigation and protection of archaeology should be required where appropriate.

9. Consideration for the elderly. Local planning authorities will need to consider inclusion of modern flexible housing for older people, given current projections predicting 79% of new households will be over-55s.

10. Ground conditions. Provision must always be made, and resources made available, for treatment of adverse ground conditions including instability, contamination, invasive species and flood risk. Where this cannot be achieved via the commercial return on the development, there must be public support.

9. Conclusions

9.1 The Smart Growth UK coalition strongly supports the Government's stated aim of "maximizing housing delivery on brownfield land". We also support moves to gather data on land availability and location and to encourage and support local authorities who wish to use local development orders for this purpose.

9.2 However, we are very seriously concerned at proposals in the consultation paper which we believe would frustrate, rather than secure, an increase in brownfield house building. The criteria defining "brownfield land suitable for new housing" would result in much land that is actually suitable for house building being not only excluded from statistical returns, but actually sterilized from development.

9.3 The proposed requirement that all brownfield housing developments of more than five units be secured via local development orders, combined with the very restrictive criteria for designating "brownfield land suitable for new housing", would be very likely to result in a significant drop in the number of brownfield homes built – and thereby, of course, the total number of homes built. It would also reduce the proportion of houses built on brownfield sites, reducing their contribution to five-year housing supplies and tilting the balance further in favour of greenfield. The proposals might appear justify the unsustainable claim that England only has suitable brownfield land to accommodate 200,000 homes, but they would actually damage both house building and urban regeneration.

9.4 The main problems with getting brownfield sites developed seldom relate to obtaining planning permission. What LDOs offer is a way of proactively helping to create certainty for developers as an alternative to local plan allocations, site development briefs and outline planning consents, all of which do the same job. But in most cases it is not planning consent that is stalling the regeneration of these sites, but issues of land assembly and unrealistic expectations of value by land owners. Regeneration of brownfield sites delivers so much more than just housing numbers, and government both national and local, needs to do much more to deliver on brownfield sites than simply grant planning consent."

9.5 We are strongly opposed to the imposition of the LDO route for brownfield housing sites as a requirement, rather than an optional opportunity. With appropriate support and strong guiding principles, there could well be an increase in the number of local authorities who chose this route. But to threaten the proposed use of special measures or the so-called "presumption in favour of sustainable development" against councils who are, for any reason, unable to comply, would be a wholly inappropriate approach to the problem.

9.6 Such coercive approaches are only likely to further alienate local planning authorities already struggling with desperately limited resources. There are better ways, including reform of the *NPPF* and making resources available once again for land reclamation.

Smart Growth UK

6 March 2015

¹ Danielle Sinnott, Laurence Carmichael, Katie Williams, Paul Miner: *From Wasted Spaces to Living Spaces* [London, Campaign to Protect Rural England, 2014]

² *Plans to Help Deliver Over 400,000 Homes for London set out by Chancellor* [HM Treasury press release, 20 February 2015]

³ Bamba C, Robertson S, Kasim A, Smith J, Cairns-Nagi J M, Copeland A, Finlay N, Johnson K: *Healthy Land? An Examination of the Area-Level Association between Brownfield Land and Morbidity and Mortality in England* (*Environment and Planning A* **46**(2) 433 – 454)