Technical Consultation on implementation of planning changes

This response to the DCLG consultation is submitted in April 2016 by London Forum of Amenity and Civic Societies. We are a charity established by the Civic Trust in 1988 to network, inform, support and represent over 120 civic and community groups in London.

Our key points are as follows:-

- The consultation on implementation of planning changes should be repeated for any parts of the Housing and Planning Bill that are altered before it becomes an Act of Parliament
- Underperforming local authorities should not have increased planning application fees withheld
- Local authorities should decide which sites are suitable for 'permission in principle' and define what should be developed on them and on brownfield sites in a short Local Development Order
- Applicants should not determine that permission in principle applies to any of their proposals
- 'Technical details' for permission in principle must be more detailed than proposed
- There are inconsistencies in the process for permission in principle, more thought is needed and it requires further consultation when more information is available
- Communities must be engaged before an application for technical details consent is determined
- The Government must ascertain why approved developments are not being built and take action
- There must be clear plans for the release of surplus Government land and that of utility companies and Network Rail to enable brownfield site planning
- Three and a half years as target for delivering homes on brownfield sites is unrealistic
- Communities must be consulted about the sites identified in brownfield registers
- The Government should promote land assembly to make developments holistic and sustainable
- The Government's emphasis on the delivery of homes must not ignore the need to use land to create jobs and to support the economy, as indicated in 'Fixing the Foundations'
- The Government should reconsider if its proposals for small sites' registers are necessary
- Help should be given to local authorities with plans not up to date, instead of penalties
- The proposal for competition in the processing of planning applications is wrong in principle and should be dropped
- The assessment process for viability calculations needs to be an open one
- A civic society in the location of the application site should be able to initiate the process for S.106 dispute resolution
- Permitted development rights for state-funded schools are likely to cause problems of loss of workspace and unsustainable school extensions

These are our full comments on the consultation:-

Chapter 1 - planning applications 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?

Yes. The proposed increases in planning fees are welcomed but local authorities that are not performing well must be allowed to charge the higher fees so that they can recruit more or better qualified staff, revise their development control processes and give extra training to existing employees. Those improvements should be monitored and there should be a system of mentoring and support to assist such authorities to achieve improved results.

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?

London Forum does not believe that depriving underperforming authorities of the fee income they need to improve their service is a sensible way of getting performance to improve. It would surely have the opposite effect. Such authorities almost certainly need more and better staff, for whom they will have to pay. Some form of mentoring would be the best way of improving performance. We are inclined to favour locally-set fees. This would fit in with the Government's policy of devolution to

cities. Withholding increased fees for any local authority could delay the granting of planning permission and extend the timescales for completion of legal agreements required before commencement of development. That would be contrary to the Government's aims for applications to be decided in a reasonable period.

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?

There should be no 'deals' in the planning decisions process.

Paragraph 1.6 suggests that fees could be set locally. London Forum supports that for boroughs in London where there is considerable complexity of the proposed schemes for over 430 tall buildings, for regeneration of housing estates and for development of almost fifty opportunity and intensification areas described in the London Plan.

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?

The fast track service described in paragraph 1.8 a) should be applied only where there are Local Development Orders or a Neighbourhood Plans which state the type of development that would be acceptable in defined areas. Proposed developments that have been well assessed in pre-application consultancy and have the approval of over 75% of the residents and businesses who must have been consulted could also be fast tracked at a lower fee. Local performance agreements should be used.

Clauses in the Housing and Planning Bill for competition in assessing planning applications to be trialed in specific areas are not welcomed. We comment further on that in response to 'Testing competition in the processing of planning applications' (Chapter 8).

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

Paragraph 1.9 and Questions 1.3 and 1.5 imply that planning service standards are of concern especially to the local business community. They are of greater interest to the public generally - who have to live with the consequences of bad planning decisions - and have, at present, no right of appeal, which applicants do.

Chapter 2 - permission in principle

The 'Permission in Principle' clauses of the Housing and Planning Bill are currently subject to intense scrutiny in the House of Lords, and the Bill as passed may well differ from what was first presented to Parliament. This consultation is therefore premature. The Department must consult again when the Bill is an Act, taking account of responses to this consultation and what has been said in Parliament.

The term 'technical details', used often in the document, is inappropriate. It is intended to imply that these details are important only to professionals (such as experts in building control).That is utterly wrong. Actually, these 'details' are to include matters of design that are crucial to the acceptability of a development to the local community, and matters of amenity space that are crucial to the well-being of the people who will live in the development when completed. the word 'technical' should be dropped throughout.

It is not sufficiently clear for permission in principle what the 'locally supported qualifying document' would need to be. For certainty for both developer and local authority it should be a simplified form of a Local Development Order (LDO), which the Coalition Government recommended all local authorities should prepare for brownfield sites to give definition of the type of development that would be acceptable. Applications meeting the requirements would be fast tracked for approval.

No reason is given for the Government changing that approach in the content of the Bill and the 'qualifying document' proposed seems to be just a form of LDO. Paragraph 2.12 states that "An application for technical details consent must:
a) relate to a site where permission in principle is in place;
b) propose development in accordance with the permission in principle"
The latter is what an applicant would need to do to secure development of a site covered by a LDO, therefore existing processes in planning would cover the needs for 'permission in principle' and it is not necessary to introduce different terms and a new process.

The 'prescribed particulars' (paragraph 2.8) should be the type of development required, its content in terms of housing types and quantities, whether or not tall buildings would be appropriate in the location, any required mixed use, financial contributions expected, design expectations, parking provision (or none) and environmental considerations. Consideration must be given also to local infrastructure limitations and the availability of energy and water supplies.

The stated Government expectation that such documents will be used in "most cases" appears to be dictatorial and not suitable for effective local planning with reduced content, as the Local Plans Expert Group recommended.

It is proposed in paragraph 2.10 that a local authority may grant permission in principle for any site, including ones without a qualifying document, if an application is made. London Forum is concerned that in those cases a developer can have decided the profit required on land purchased and propose a scheme that does not meet the local authority's aims for the site or area.

The developer has the advantage that they can appeal to the Planning Inspectorate if refused permission in principle. That seems to take decision making away from the local authority and its communities, contrary to the aims of the Localism Act.

After the CLG Committee's consideration of that Bill, its chair, Clive Betts MP, commented "If communities and councils are to have confidence that this government is serious about localism, ministers must resist the temptation to intervene in purely local matters. It is by no means clear whether local government is at the heart of localism or is simply to be bypassed. Of course, localism should be about community consultation and involvement, but this will be more localist if organised according to the needs and requirements of each area, not prescribed by central diktat from Whitehall. "

The number of permission in principle appeals could delay decisions and provide more work for Inspectors.

Paragraph 2.12 states that "We expect that the parameters of the technical details that need to be agreed will have been described at the permission in principle stage." That 'stage' is not clear as to whether the technical details have to be described in the 'qualifying document' or in the local authority's response to the application for permission in principle.

London Forum's view on the eight areas for the operation of permission in principle (paragraph 2.15) are as follows.

a) the qualifying documents that can grant permission in principle on allocation
These should be an LDO or Area Action Plan with 'prescribed particulars', as described above.

b) permission in principle on application
All requirements of the local authority should be confirmed to the applicant for the technical details stage including infrastructure matters.

c) the 'in principle matters'
These should be the types and quantities of homes or work space to be supplied and the parameters for design standards, space standards, context, character and views considerations and the required amenity space and facilities for residents.

d) sensitive areas

These should include the setting of listed buildings, archaeological interest, any conservation area management plans that apply, flood risk and environmental aspects such as pollution.

e) involvement of the community and others

Consultancy involving local people should take place for both the stages of permission in principle and approval of technical considerations.

f) information requirements

1 - Design and Access statement and a transport plan.
2 - Agreement in outline of obligations, conditions and financial contributions.

g) durations of permission in principle and technical details consent

Permission in principle should be granted for one year.
Technical details consent should require commencement within 24 months.

h) maximum determination periods

Local authorities should be expected to agree each stage in 13 weeks and 26 weeks should be the maximum for competing all legal agreements.

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.

Paragraph 2.16 proposes that qualifying documents should be future Local Plans and future Neighbourhood Plans. That is unacceptable unless those plans have been submitted for inspection after consultation or have passed referendum approval. All potential sites for permission in principle should have been identified in approved plans or in brownfield registers where the likelihood of development is high and there are no major risks or obstacles.

The Minister, Brandon Lewis MP has said that all brownfield sites should be prioritised for Starter Homes. London Forum does not support such diktats which cut across local authorities' plan making and are contrary to the Localism Act. That prioritisation could be contrary to the best outcomes of using permission in principle on such sites because developers may not wish to build starter homes and the local authority may need a different type of development in that location.

It should be noted that many London boroughs exceed their targets for the delivery of market homes but deliver only half of the target for affordable homes.

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

Yes, the approach could be suitable for small developments and would assist a small builder to design and propose what the local authority needs.

Permission in principle is not suitable for major developments which require extensive evaluation of a full planning application which can have wide implications.

Question 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?

Paragraph 2.12 states "We expect that the parameters of the technical details that need to be agreed will have been described at the permission in principle stage." Paragraph 2.8 refers to the 'prescribed particulars' in a site allocation. To prescribe means to stipulate, to dictate, to specify, to impose, to determine, to fix and to require.

That means the 'in principle matters' should include the uses, amount and type of housing required and its density, limitations on height of buildings, views to be protected, private amenity space and children's play space expected, contributions to local infrastructure, safeguarding against flood and other hazards, parking space restrictions, design and access guidelines, expected energy standards and the need for a transport plan.

The implications for infrastructure of all major and some minor applications must be considered at the 'permission in principle' stage. People in new housing will need schools, health facilities and transport; whether these will be met is crucial to the judgement whether the application is acceptable. They are not 'details', let alone 'technical details'

Paragraph 2.22 states that "The 'in principle matters' are the core elements underpinning the basic suitability of a site for development." That does not seem to be correct. The 'in principle matters' must be a description of what development the local authority is likely to approve on a site which is suitable for development. As paragraph 2.8 states, the details are to be 'prescribed'.

Paragraph 2.22 warns against "avoiding overloading a permission in principle". However, it is necessary for the permission in principle to detail the development that meets the requirements of the Local Plan for the site. There should not be a deferment of the requirements to the 'technical details' stage, otherwise an applicant could believe they had a likelihood of obtaining full consent, arrange finance and other matters and then fail to get approval. An applicant must comprehend the matters required for technical details consent. They are to be given the right to appeal if it is not granted.

Paragraph 2.23 states that "The amount of non-residential development will not have to be specified." but London Forum proposes that in most relevant cases the non-residential elements should be described.

That paragraph requires that "the only 'in principle matters' that should be determined as part of a permission in principle should be the location, the uses and the amount of development." That would be inadequate. Local infrastructure needs have to be taken into account and any cross boundary implications and the items mentioned above in our comments regarding paragraph 2.12.

Paragraph 2.25 states that "The local planning authority may not use the technical details consent process to reopen the 'in principle' issues that have been approved in the permission in principle." Therefore the 'in principle matters' must be more comprehensive than the Government proposes.

<u>These inconsistencies in the detail of the consultation paper are unacceptable in the proposals for a new way of obtaining planning permission.</u>

Question 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 should be outlined for the matters that London Forum indicates above in its response to question 2.3. They should be fully described to give certainty to the applicant.

Another term other than 'technical details' should be found. The matters to be assessed before in principle consent is granted are not 'technical'. The 'details' stage is when an application is assessed against the requirements of the local authority for the site and its restrictions and against all planning policies that apply. For it "the local planning authority will be able to consider the detailed proposals for how the development will be delivered on the site" (paragraph 2.29). That means the detailed stage is a normal development control one towards a decision but the applicant has the confidence that their application is likely to be approved if they have met the requirements specified in the 'in principle' details and their development conforms to planning policies.

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

We welcome the approach to the Environmental Impact Assessment and Habitats Directives. We are very concerned at the absence of any recognition that Areas of Special Archaeological Significance are sensitive sites just as much as sites with, say, protected species on them; brownfield sites are actually more likely to be of archaeological than of nature conservation importance. Areas of Special Archaeological Significance and the like may therefore require mitigation through archaeological conditions. Since it is unfair on a developer to be faced with such a condition at the 'details' stage, this must be part of the 'Permission in Principle' process (the precise nature of an archaeological condition may be a genuinely technical detail, but whether there should be a condition at all is not).

Paragraph 2.27 is not clear and may not be properly worded. It says that sites should be assessed against local and national planning policy but the assessment should be of the application not the site.

London Forum welcomes (paragraph 2.28) that local authorities may decide not to use the permission in principle process for sensitive sites and ones where the surroundings have to be considered carefully.

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

The content of paragraph 2.35 are quite unacceptable in not requiring local authorities to consult with the community and others before an application for technical details consent is determined. It also contradicts the Government's statement in paragraph 2.32 that "We also want to ensure that an appropriate opportunity for further engagement is available when the technical details are considered". That is another inconsistency.

The local community, other consultees and stakeholders must be consulted before any decision that their local authority makes. Any engagement of the community at the time of granting permission in principle is less important because the applicant's final scheme will have to be assessed against all planning policies that apply and against the 'in principle matters' the applicant undertook to meet. London Forum cannot agree that any 'flexibility' should be allowed. If local authorities do not consult before the final 'details' decision it would not accord with the Localism Act's intentions for empowering communities for which the Rt Hon Greg Clark MP wrote in his introduction that he did not want to see people "feeling 'done to' and imposed upon - the very opposite of the sense of participation and involvement on which a healthy democracy thrives."

Question 2.7: Do you agree with our proposals for information requirements?

Paragraph 2.38 describes the information required for an application for permission in principle to the local planning authority for minor development. There are no details in the case of a more major developments.

For applications for detailed consent, plans and drawings are not sufficient. The applicant must include a statement on how the proposed development meets each of the requirements and limitations in the 'details' which should have the extent that London Forum has proposed above.

Question 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?

The local authority must receive enough funds to cover time spent dealing with applicants on two occasions, one for the permission in principle and again for approval or refusal at the details stage.

Question 2.9: Do you agree with our proposals for the expiry of (on - sic) 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?

We have no comment on the proposals for expiry of permissions.

The duration of the permission in principle should be a local matter, as site allocations can change resulting from recent developments and their impact and the release of land for development by Government and other organisations.

Question 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?

The determination period for technical details consent for minor sites should be seven weeks, not five, to allow for community engagement.

For major sites, the proposed period of ten weeks is likely to be satisfactory but local authorities which can explain satisfactorily why a particular applications took longer should not have that case included for any decision on applying special measures to them. Proper consideration of an application and consultation on it must not be prevented by rigid timescales and intervention.

A more significant problem than the duration of permissions is the length of time it takes to deliver developments. The Government should turn its attention to the hundreds of thousands of approved applications which are not being built at an acceptable rate or not yet started and the slow release of those that are built. The focus of the Government on the time it takes to obtain planning approval is wrong because many permissions are being granted that are not used.

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?

The proposals have been taken up already in London with the involvement of the Minister of State for Housing and Planning. There is a London Land Commission (LCC) established for the capital, co-chaired by Brandon Lewis MP and the GLA Mayor Boris Johnson. The London Land Commission's remit is to:

- Develop a robust brownfield register for publically owned land, bringing together existing data and sourcing new data from public bodies in London.
- Establish a strategy for prioritising public land release (around transport nodes and within Housing Zones and Opportunity Areas)
- Explore opportunities for collaboration and changes to improve procurement activities to accelerate new housing supply
- Develop a capital investment programme to incentivise land release and target investment to unlock housing around infrastructure

The LCC is considering improving the slow disposal by Government departments of land by procurement through the LDP as used by the GLA for its own land to enable more control over the final development. One hundred sites in public ownership suitable for release and development by March 2020 are being identified. Ten early opportunity sites are being considered for their timelines and barriers to disposal.

There is also a GLA Strategic Housing Market Partnership committee in place for assessing factors for housing delivery, including densification. The GLA supports the boroughs in their SHLAA work.

A Mayor's Outer London Commission has reported on 'Options for Growth' and 'Barriers to Housing Delivery' to inform the new Mayor's Replacement London Plan.

Brownfield register development in London is well underway.

Another source of information for the Government to consider must be clear plans for the release of surplus Government land and that of utility companies and Network Rail.

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

The proposed criteria of availability, capability of supporting five or more dwellings and capable of development are supported but many brownfield sites in London have been identified already and those designated as the thirty-eight Opportunity Areas can accommodate at least a total of 303,000 new homes, plus more in the seven Areas for Intensification.

The London Land Commission will identify other sites that can deliver high quantities of new homes.

Other factors for consideration for brownfield sites are that they are very likely to have on them, or beneath the surface, buildings or buried features remaining from the previous use of the site. These must be assessed at the earliest possible stage. The recording of standing buildings before their demolition will often be desirable, as will investigation (whether or not involving excavation) of buried features. Rarely the result may be a decision that the site is not suitable for redevelopment, but should be preserved. More often, what is needed will be a strategy for investigation and carry out recording.

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

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?

London Forum accepts and agrees with the approach described for all of these requirements and is confident it will be applied in London under the guidance of the Land Commission.

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

Yes. Transparency and consultation with communities and with potential development partners of brownfield sites are important.

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

Yes, to a large degree, but wherever possible local authorities should be encouraged to develop a planning status for brownfield sites that is of the form of a Local Development Order or some criteria for height, bulk, density, housing types and quantities and other requirements in any development.

More emphasis should be given by the Government to land assembly to link or extend brownfield sites. As soon as a site is identified for development it is likely that it will be purchased (or has been bought already) by a willing developer who may need to obtain a reasonable profit on any small site owned by implementing a density of housing above sustainable levels. That could cause overload of local infrastructure and tall buildings in the wrong place.

It is important that local authorities and, in the capital the London Land Commission, seek holistic development of an area at appropriate density and design for its surroundings and for the impact of quantities of new homes or commercial development on the wider location.

Local people will expect to see land used for jobs, as well as housing, to provide work and opportunities for small and emerging enterprises to develop the local economy.

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

London Forum has no suggestions on the standard or form of brownfield registers but an indication of the context and character of the surroundings would be useful.

The Government should make it clear that before a site is included in the register there should be consideration of the Duty to Cooperate across local authority boundaries to ascertain if there are sites

nearby which together could form a better total development area. In London that should be done with support from the London Land Commission.

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

Local authorities and the Mayor of London should be trusted to maintain up to date brownfield registers.

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?

The Government should ensure that local authorities have the resources they need (whether through adequate fees or in some other way) and then allow them to get on in the best way they can to serve their communities. The Government must resist the temptation to dictate methods and to apply penalties without ascertaining causes and addressing them with a local authority which seeks support or clearly needs it.

It is most unlikely that the Government's target will be met that 90% of all brownfield sites will have planning permission in the next three and a half years, particularly in London. The Government must consider this with the Planning Officers' Society and be realistic about the capacity of the house builders to take on a great deal of work. There are also contamination issues for brownfield sites to be dealt with. Some sites will be left for development or only partially built up if they are adjacent to land which may be released in future by Government, transport providers or other agencies that will allow better designed and more suitable development.

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?

The Government should support, not penalise, local authorities for bringing brownfield sites into development. It should recognise also the reluctance of elected local authority politicians to carry out compulsory purchase and redevelopment of areas which could be intensified for delivery of many more homes. Government support may be required.

Chapter 4: Small sites register

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

No. London Forum does not support these proposals and is concerned that the Small Sites Register may lead to the loss to development of accidental patches of open land in suburban London that add to the 'sense of place'. Also, that despite what the document says it will encourage garden-grabbing and backland development. The appearance of a site on the register may alarm neighbours and lead to conflict. The Government must satisfy itself that the benefits of the scheme outweigh these demerits.

Small sites should be those that are actually available for development and should be included in the brownfield register.

Self-build and custom housebuilding in London is not likely to deliver the intensification of land use that may be required in a particular area. People who can afford to buy plots of land in London may want to build homes of low density and of the large villa type. That is happening already in parts of Hampstead, Mayfair and Putney where several existing homes are being demolished to make room in each case for one such luxury home.

Instead of a small sites register, local authorities should be encouraged to promote schemes for existing home owners to combine their land for profit for higher density mansion blocks of flats which are compatible in height and design with their surroundings. Local authorities could also seek the development of high street frontages into taller designs with more flats above ground floor uses and

using the 'air space' over stations, low buildings and other low density areas such as car parks.

The Government makes clear that planning permission will be needed for development of small sites. There will be development of those sites by land owners, developers and individuals seeking self-build without the burden on local authorities of maintaining a small sites register.

The Government should reconsider its proposals for such registers.

Question 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?

No. As in our response to question 4.1, London Forum sees no need for a small sites register, separate from a brownfield register, particularly in London. However, there are other ways of achieving intensification of land use which we have suggested.

Question 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?

London Forum opposes the proposal to put land on registers with no assessment of their suitability. It would be necessary to determine that realistic prospect of development existed. It would be unreasonable to allow anyone to have placed on a register a site owned by someone who had no intention of making any part of it available for development. Publishing contact details of the owner, as the Government proposes in paragraph 4.8, would be an invasion of privacy and could seem threatening.

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

If there is to be a register of small sites, which London Forum opposes, sites should be excluded which the local authority considers to be unsuitable for development. Some may be required for future school expansion, have become useful as open spaces for local play, are near to areas of noise or pollution, etc.

Question 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?

If small sites were included in brownfield registers because the local authority considered that they met the brownfield criteria, contact details should not be published, even though they may be able to be obtained by anyone interested.

A small site should not appear on any register without the permission of the owner.

Chapter 5: Neighbourhood planning

Questions 5.1 to 5.9 inclusive

The London Forum welcomes and agrees to the steps the Government is taking to simplify the neighbourhood planning mechanisms. There are few neighbourhood plans in London - they are being taken up much more, as was always envisaged, by parish councils in rural areas. We have no evidence on which to base comments on the specific proposals.

However, the time taken to make progress with some neighbourhood plans in London has been considerable and some have not reached referendum status after several years.

London Forum considers that, as well as promoting Neighbourhood Plans, the Government should encourage communities and local authorities to work together to develop within Local Plans some Area Action Plans or Local Development Orders for neighbourhoods to meet the wishes of residents

and other stakeholders. That would be possible much more quickly than can be done by a Neighbourhood Forum, in the way recommended by the Expert Panel group in their proposals for Local Plans. It would give earlier certainty about the type of development intended for locations, avoid speculative applications by developers for inappropriate schemes and facilitate the Permission in Principle process.

Question 5.10: Do you agree that local planning authorities must notify and invite representations from designated neighbourhood forums where they consider they may have an interest in the preparation of a local plan?

The Government must make clear that **all** community groups, residents' associations, civic societies, voluntary organisations, businesses, key stakeholders and World Heritage Sites must be notified and consulted upon any changes to a Local Plan.

Chapter 6: Local plans

These proposals must be combined with the consultation responses on the follow-up to the Rhodes Report of the Expert Group for improving Local Plans. It would be best if the Department took comments it has received on that and on this chapter, came to some clear proposals, and then consulted on them.

Question 6.1: Do you agree with our proposed criteria for prioritising intervention in local plans?

It is stated in paragraph 6.2 that 84% of local authorities had published a local plan by January 2016 and more will have done so since then. Help should be provided by other local authorities or external consultants, with support by the Government, to local authorities that have not updated their Local Plan since the publication of the NPPF.

There is no point in penalising financially local authorities that have not done so, further weakening their ability to deploy sufficient resources to keep plans up to date.

The criteria for identifying where support is needed are supported but intervention must be proportionate and there must be encouragement to local authorities that are late in plan production to identify resource or skill shortages and other dependences and assistance to overcome them. Writing and imposing a plan on them to implement will not help them to keep it up to date, nor to apply it effectively, if there are problems not fully identified. Such a 'top down' plan might not have full community support.

Question 6.2: Do you agree that decisions on prioritising intervention to arrange for a local plan to be written should take into consideration a) collaborative and strategic plan-making and b) neighbourhood planning?

It is reasonable to prioritise external support to local authorities where cross-border cooperation and joint planning could be effective.

Neighbourhood Plans in local authorities without up to date local plans could form the basis for site allocations and area policies in a LPA revised Local Plan.

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

The Government should take into account that in London, under the GLA Act, the London Plan (Spatial Development Strategy) forms the basic core strategy for every borough to which it adds its own local policies. The London Plan states for most of its policies what local plans should contain to meet the Mayor's objectives for the capital and also the basis on which local authorities should make decisions. For the latter, the boroughs would take into account the NPPF and any Neighbourhood Plans. That means some Local Plans that have not been revised recently are still well covered in

decision making by London-wide policies.

The GLA conducts with boroughs a London-wide SHLAA and other housing opportunity assessments. There is therefore less likely to be an under-delivery of homes and commercial space in boroughs in London that do not have an up to date plan. Intervention to help them make progress should be left to the Mayor.

Question 6.4: Do you agree that the Secretary of State should take exceptional circumstances submitted by local planning authorities into account when considering intervention?

Yes.

Question 6.5: Is there any other information you think we should publish alongside what is stated above?

London Forum supports the proposals in paragraph 6.21 for the data that the Government intends to publish about local authorities' stages in plan making. It will encourage communities to seek progress and offer support and help to their local authority.

London Forum has no suggestions for more information.

Question 6.6: Do you agree that the proposed information should be published on a six monthly basis?

Yes.

Chapter 7: Expanding the approach to planning performance

Paragraph 7.10 states that "Prior to any initial designations the Housing and Planning Bill will need to be enacted, regulations made and the criteria for designation laid before Parliament. The earliest that the first designations would be made is therefore the final calendar quarter of 2016."
That timescale appears to be shorter than is likely

The Growth and Infrastructure Act 2013 introduced the existing performance approach which included "An authority that is designated by the government as underperforming is required to produce an action plan to address areas of weakness. Also, applicants for major development in that authority's area have the choice of submitting their application direct to the Secretary of State instead of to the authority" London Forum is concerned that the wishes of a 'failing' local authority and its communities may not be well enough taken into account in that route for a decision.

The Government is now proposing to extend the approach to include applications for non-major development and thresholds for assessing performance are outlined.

Question 7.1: Do you agree that the threshold for designations involving applications for non-major development should be set initially at between 60-70% of decisions made on time, and between 10-20% of decisions overturned at appeal? If so what specific thresholds would you suggest?

The London Forum is unhappy that the criteria for under-performance are based so much on the time taken for a decision. That is simplistic in the extreme. Some applications, even for major cases, are ill-considered, or even 'try-ons', without any pre-application discussions. The authority has a choice then of a simple refusal, or of entering into meaningful discussions with the applicant and the local community, which may well produce an acceptable revision or in practice a withdrawal and resubmission. The latter process would count against the threshold the Government has laid down, while the former would not. A much more nuanced criterion must be found.

Question 7.2: Do you agree that the threshold for designations based on the quality of

decisions on applications for major development should be reduced to 10% of decisions overturned at appeal?

No. To judge the quality of an authority's decision by what happens on appeal assumes that when an Inspector overturns a decision he/she is right and the authority wrong. Some decisions by Inspectors have been overuled later. There have also been inconsistencies in policy interpretation. The decisions have to be accepted, because that is the law, but that does not make them better than that of a democratically elected local planning authority. Local Councillors must have the confidence to take decisions in the best interests of their own people without being influenced by possible sanctions.

Question 7.3: Do you agree with our proposed approach to designation and de-designation, and in particular
(a) that the general approach should be the same for applications involving major and non-major development?
No
(b) performance in handling applications for major and non-major development should be assessed separately?
Yes
(c) in considering exceptional circumstances, we should take into account the extent to which any appeals involve decisions which authorities considered to be in line with an up-to-date plan, prior to confirming any designations based on the quality of decisions?
Yes, but not only 'decisions which authorities considered to be in line with an up-to-date plan' but also ones which they took in the best interests of their local communities.

Question 7.4: Do you agree that the option to apply directly to the Secretary of State should not apply to applications for householder developments?
Yes.
It is very rare for it to be right to take a decision away from a democratically-elected authority and give it direct to an inspector. There would be a slightly stronger case for giving it to an elected Minister.

Chapter 8: Testing competition in the processing of planning applications

The London Forum believes that the concept of competing for the processing of planning applications is wrong in principle. It would be another layer of complication adversely affecting prompt delivery of decisions on proposed developments. Conflict of interest would inevitable, and the contortions in the paragraphs 8.12 to 8.16 show that, in its heart, the Government realises this. The idea should be dropped. Joint working between local planning authorities might be a way forward.

According to paragraph 8.13, a local authority "would be required to take the decision within a short specified period (perhaps a week or two)" after receiving a report and recommendations on a planning application from an approved provider for assessment. That is far too short and it could cause diversion of resources in a local authority that would put at risk decisions on other applications being processed, contrary to the Government's aims for improved handling of all planning applications.

Also, a local authority receiving such a recommendation would be aware of the risk of being put into special measures if decisions are delayed. That might cause them to hasten a report to committee without full analysis of the scope and quality of the approved provider's recommendation. They might need to reassess the application on additional criteria.

In a one to two week period there would be little opportunity to adequately engage the local community in consideration of a report to committee, contrary to their expectations from the Localism Act for participation in local decision making.

There will be considerable concern about how the approved suppliers are chosen and monitored. The opening to competition of a local authority responsibility and process would undermine the

'democratic principle' mentioned.

Many of the planning consultants and service providers who could attain approved supplier status could be the same organisations that supported the applicant in preparing a development proposal. Their consideration of the merits of a development and its conformity to national, regional and local policies could be biased and they would not wish to damage their reputation with the developers from which they seek consultancy work.
Yet the decision on which organisation is used to evaluate an application is proposed to be the choice of the applicant. Allowing applicants to choose who assesses their proposals can lead to corruption and errors and is not a sensible process for the Government to introduce.

If there is competition for assessment of planning applications, there is a danger of organisations offering a fast tracked service at a lower fee and under-cutting the bid of the relevant local authority which would want to take a more comprehensive approach. The local authority understands well the site, the contribution it could make to local needs, the impact on the rest of its plan and its aims and it is more likely to involve its communities, businesses and other stakeholders in the application assessment.

This suggested 'freedom' in the process of development control could result in local authorities reducing their fees in order to be the one chosen by a person or company to process their application. That could result in them not being able to fund the necessary resources and skills to carry out a quality job. That would defeat the aims of the Government outlined in chapter 7 for improved planning performance.

Part of the consideration of a planning application often involves viability assessment and negotiations on build costs and margins. Those discussions must be held between the local authority and the applicant. It is inappropriate that a third party should handle the negotiations which often affect financial contributions to be made or the type of affordable housing the local authority seeks.

Approved suppliers dealing with planning applications may need to consider the implications of the proposed scheme on the economy of the area, on its suitability for the housing needs and on any effect the development would have on another local authority.

Those are matters that should be considered only by the local authority receiving the application. In the absence of such considerations, a third party service supplier could propose application approval based on planning policies but the local authority may then recommend refusal based on the effect of the development. The applicant is likely then to appeal, which would delay the determination and consume extra resource of the Planning Inspectorate and the officers and their legal advisers of the local authority. That could cause delays in the local handling of other applications.

The experience of each local authority in developing its Local Plan is taken into account in assessing planning applications and that may not be done by a third party dealing with new proposals.

An approved provider of assessment services on planning applications may not engage adequately with local residents and businesses, as they would not have an office in every local authority, but would want to bid wherever they could to maintain their resources.

A local authority presented with the assessment made by another organisation would have to carry out considerable work to validate the conclusions presented and to apply any other considerations or policies against which the application had not been reviewed. That would be a drain on the local authority's resources, without application income to cover the costs. The work to be done to prepare a report to committee or to the decision maker could cause delay in the processing of other applications and defeat the Government's intentions for speedier decisions.

The proposal for application assessments by approved suppliers should be dropped. It is not a sensible part of the essential local authority process. Support between neighbouring local authorities in processing applications may be useful, as there can be implications of development across boundaries. The Government is right to seek prompt handling of planning applications but it is the negotiations on reserved matters, legal agreements and conditions after approval which take time to

resolve and where support could be useful.

In its wishes for more homes to be built, the Government should examine what is happening to the hundreds of thousands of approved applications which are not being built and the slow release of those that are built.

Chapter 9: Information about financial benefits

Question 9.1: Do you agree with these proposals for the range of benefits to be listed in planning reports?

Yes. The more information that is in reports to planning committees and is available to the public the better, and the Forum supports the concept of requiring financial benefits to be included. The requirement should however go wider, and include financial disbenefits (for instance the need for more expenditure by the authority on infrastructure which cannot be recouped through CIL or through Section 106 payments. The Forum also argues that information about the viability of developments, which often lead to reductions in affordable housing, should be made public so that the electorate can have confidence in decisions. That has become a requirement in the London Borough of Greenwich. It is important because the less affordable housing is provided by developers, the more the burden on the public purse for supporting people.

The financial benefits should also be considered and weighed not only against disbenefits, but against other benefits and disbenefits, such as community, social, environmental and heritage.

Question 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?

London Forum agrees with these proposals.

Including potential Council tax and business rate revenue will be useful because it identifies the possible disbenefit to the local authority of an approved scheme not being commenced promptly or not being built out at a reasonable rate. There are over 270,000 homes with planning permission that seem to be stalled and that is another matter that the Government should consider for action.

Chapter 10: Section 106 dispute resolution

Question 10.1: Do you agree that the dispute resolution procedure should be able to apply to any planning application?

Yes. However, London Forum is concerned that offering the procedure to those making small developments might delay final S.106 agreement and result in the body acting on behalf of the Secretary of State dealing with arguments over small financial contributions which could be resolved by the local authority.

London Forum considers there is considerable benefit in a Section 106 dispute resolution for cases involving the delivery of affordable housing. If the maximum affordable housing is not going to be delivered, then the burden of housing people falls on the state for benefits.

There have been several cases where a developer's claims that a S.106 agreement for affordable housing would make their scheme non-viable has been found not to be correct. In the regeneration of the Elephant and Castle estate, it was reported that Lend Lease had offered no affordable housing at all.

This relates to our comments for chapter 9 on viability information and the need for it to have an open assessment process.

Question 10.2: Do you agree with the proposals about when a request for dispute resolution can be made?

Yes. However, London Forum proposes that any registered civic society in the location of the application site should be able to initiate the process as "another person" (paragraph 10.5). That will be important if it is thought that a deal between a developer and a local authority is not the best one that could be obtained.

Statutory consultees, such as the Port of London Authority or Historic England, should be able to initiate the dispute resolution process also.

Question 10.3: Do you agree with the proposals about what should be contained in a request?

Yes.

Question 10.4: Do you consider that another party to the section 106 agreement should be able to refer the matter for dispute resolution? If yes, should this be with the agreement of both the main parties?

London Forum has no comment to offer on these points.

Question 10.6: What qualifications and experience do you consider the appointed person should have to enable them to be credible?

The appointed person should be someone from another local authority, or who has worked in one, with proven experience in negotiating on S.106 agreements and payments. They should have been trained and have a good track record in viability assessment and a good understanding of build costs related to design and construction of developments and land reclamation work. In London an appointed person should understand the Three Dragons Toolkit and associated guidance and have used it themselves on several occasions. The appointed person should have demonstrated ability in dispute resolution.

Question 10.7: Do you agree with the proposals for sharing fees? If not, what alternative arrangement would you support?

Yes, but if the report demonstrates that the applicant withheld information, used wrong data for viability calculations or attempted to make an unreasonably high profit, then the fee to the local authority should be waived.

Question 10.8: Do you have any comments on how long the appointed person should have to produce their report?

No.

Question 10.9: What matters do you think should and should not be taken into account by the appointed person?

The appointed person should be allowed to take into consideration other aspects of the agreement on S.106 other than those over which the parties are in dispute.

Question 10.10: Do you agree that the appointed person's report should be published on the local authority's website? Do you agree that there should be a mechanism for errors in the appointed person's report to be corrected by request?

Yes to both questions but errors in the appointed person's report should be able to be pointed out for correction by any statutory consultee or by a registered civic society covering the site of the application.

Questions 10.11 to 10.14

London Forum believes these questions should be considered after the consultation proposed in paragraph 10.14 has been completed.

Chapter 11: Permitted development rights for state-funded schools

Question 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?

Permitted development rights should not be used to create or expand state-funded schools. It can lead to the eviction from existing workspace of businesses, voluntary groups, small and emerging enterprises and providers of social and civic facilities.

Local authorities should plan for the school places required and assign land or redevelopment of areas to achieve school development. Many local authorities have not done that and in London Metropolitan Open Land has been lost to school buildings, as a result. The changes proposed in this chapter seem to allow local authorities to continue not to plan properly for educational facilities.

Extensions to schools should need full planning permission, otherwise extra space may be obtained by building outwards, rather than increasing floors, so losing play space and/or having an adverse effects on the amenity of neighbours (as described in paragraph 11.8). Where schools could be expanded upwards, that should be done, under full development control to decide if the impact would be acceptable before permission is granted.

The proposed permitted development for 250 square metres of extension should not be introduced.

There should be no permitted development right to erect temporary school buildings on cleared brownfield sites before applying for planning permission. Such sites may have been cleared for a specific purpose, such as essential waste management, a new library or as part of land assembly for a planned development of housing or mixed use.

Question 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?

The existing prior approval mechanisms are causing harm to local businesses and social enterprises by the evictions that occur. That can break up established networking and interdependence. A new school in an existing building should be considered only if that building is empty or its occupants can be fully accommodated nearby at no higher rents.

Other local impacts which arise are the loss of open space and schools in areas that are unsuitable.

Section 12: Changes to statutory consultation on planning applications

This chapter is called a 'section'

Question 12.1: 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?
Question 12.2: Where an extension of time to respond is requested by a statutory consultee, what do you consider should be the maximum additional time allowed? Please provide details.

These are questions for the statutory consultees themselves.

Statutory consultees should provide reasons for needing an extension so that local authorities can have that taken into consideration in evaluation of their effectiveness in dealing with planning applications to avoid being put into special measures for slow decisions.

Statutory consultees should be given reasonable time to carry out their investigations and response. For example, it may be that there are archaeological remains to be considered or alternative uses that can be found for a listed building for which an applications for change is submitted.

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