

This was London Forum's response made on 25th March 2024 to the DLUHC consultation on developing brownfield land

The reasons for the changes the Government proposes can be seen [here](#).

Q.1: Do you agree we should change national planning policy to make clear that local planning authorities should give significant weight to the benefits of delivering as many homes as possible [yes/no]? If not, why not?

No: "As many homes as possible" may be interpreted as "maximising" the number of new homes. Since 2011 the London Plan has sought to optimise the housing potential, taking account of local context and character, design principles and public transport capacity.

To seek "as many homes as possible" would not be compatible with paragraphs 129 and 130 of the NPPF, and it could result in inappropriate densities if the resulting built form would be totally out of character with the existing area.

London Forum considers that "as many homes as possible" is totally inappropriate as a policy term, as it does not provide a clear basis for assessing the appropriateness of applications, let alone for balancing. This will provide a field day for barristers and developers wanting to promote schemes which contravene paragraphs 130 and 133 of the NPPF, by arguing that the term did not limit the number of homes. The proposed approach would result in a complete loss of confidence in the planning system.

None of the problems for developing sites in consultation paragraph 13 would be addressed by having a presumption in favour of building on brownfield land and the presumption is unlikely to lead to more applications unless the Government produces guidance and funding to address the issues deterring developers.

In London, the "presumption in favour of building on brownfield land" is a non-issue as development on greenfield sites is almost non-existent.

Q.2: Do you agree we should change national planning policy to make clear that local planning authorities should take a flexible approach in applying planning policies or guidance relating to the internal layout of development [yes/no]? If not, why not?

No, because the quality and size of homes is too important to be relaxed as it could lead to overcrowded and unsuitably small homes. In London there are minimum space standards and policies on this subject which must be applied. In addition, London Plan Policy H10: Housing size mix sets out the issues that may be relevant when seeking the most appropriate mix reflecting the needs of each borough. This is likely to be relevant in other cities.

With regard to impact on character, paragraph 16 reassuringly says that the presumption will not “undermine wider considerations of character as part of the plan-making process”. Paragraph 130 of the latest NPPF also seeks to reassure communities that:

“In applying paragraphs 129a and b above to existing urban areas, significant uplifts in the average density of residential development may be inappropriate if the resulting built form would be wholly out of character with the existing area. Such circumstances should be evidenced through an authority-wide design code which is adopted or will be adopted as part of the development plan.”

Also, consultation paragraph 16 states that the flexibility must not undermine wider considerations of character as part of the plan-making process. Local context and character considerations should be applied, as the Rt Hon Michael Gove MP has emphasised as important in his statements and speeches.

It is, however, unclear what “internal layout of developments” means in this context. Paragraph 15 refers to “National policy would continue to expect that new development would provide acceptable living standards.” We recommend the application of prior approval to assess these impacts.

There should be no ‘flexibility’ in the application of approved policies as the term is meaningless.

Q.3: If we were to make the change set out in question 2, do you agree this change should only apply to local policies or guidance concerned with the internal layout of developments [yes/no]? If not, what else should we consider?

No, consideration must be given to context and character, as well as local needs.

Other local policies have to be taken into account in assessing an application, as in NPPF paragraph 12 - “The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted.” Also, NPPF paragraph 93 applies for providing “the social, recreational and cultural facilities and services the community needs.”

Q.4: In addition to the challenges outlined in paragraph 13, are there any other planning barriers in relation to developing on brownfield land?

Yes, other barriers include the increasing costs of building materials, of meeting energy efficiency requirements, the availability of social infrastructure, facilities, services and, especially, accessibility by public transport. If those are inadequate for developing a brownfield site, the cost of supplying them may be more than the developer or the local authority could afford. In that case, the development would not be sustainable according to NPPF paragraphs 7, 8 b), 11 b) ii, 93, 124 c), 130 and 154.

For very large sites, such as Opportunity Areas in London, the reason that they remain unused is the need for major investment in infrastructure, such as improvements to public transport accessibility. The latest proposals for major developments, such as in Barking, are only happening because of Government commitment to major transport infrastructure investment. The

development around Euston is another case where the scale of the problem requires support, some of which is being supplied by the Government.

Q.5: How else could national planning policy better support development on brownfield land, and ensure that it is well served by public transport, is resilient to climate impacts, and creates healthy, liveable and sustainable communities?

National planning policy needs to explicitly recognise the support needed to secure the development on previously-developed land, including social infrastructure.

The requirements of NPPF paragraph 104 must be met.

Q.6: How could national planning policy better support brownfield development on small sites?

The Policy H2 and associated guidance in the 2021 London Plan may be generally applicable in other parts of England and DLUHC should consider their wider use.

Q.7: Do you agree we should make a change to the Housing Delivery Test threshold for the application of the Presumption in Favour of Sustainable Development on previously developed land [yes/no]?

No. This approach is inappropriate in London where more than 98% of sites that are developed were previously developed - greenfield sites are not an option - and the density of development is considerably increased. The key issue is frequently whether the density of the proposed development is appropriate in terms of its built form and impact on the character of the surrounding area.

Q.8: Do you agree the threshold should be set at 95% [yes/no]? Please explain your answer.

No, even with the current housing targets in the 2021 London Plan, which are based not only on housing need but also on the capacity of sites, which makes the targets more achievable, some boroughs cannot meet their current targets due to a lack of sites and failure by housing developers to build out their consents. An arbitrary 35% London-wide uplift would not overcome but rather would exacerbate these problems.

Q.9: Do you agree the change to the Housing Delivery Test threshold should apply to authorities subject to the urban uplift only [yes/no]? If not, where do you think the change should apply?

No, see answer to Q.8. Please note that we can answer only with regard to London. If the private sector is failing to meet the current targets, what evidence is there that higher targets and greater penalties for London boroughs will manage to incentivise private housebuilders?

Q.10: Do you agree this should only apply to previously- developed land within those authorities subject to the urban uplift [yes/no]?

No, if the intention is to incentivise the reuse of previously-developed land in the right places (i.e. well-served by public transport and with good accessibility to social infrastructure), national policy should incentivise development in these locations.

Q.11: Do you agree with the proposal to keep the existing consequences of the Housing Delivery Test the same [yes/no]? If not, why not?

No, the effectiveness of the Housing Delivery Test needs a fundamental review as to whether it actually delivers what it is supposed to do. It needs to be transformed from a penalty to an incentive.

There is a saying - when you are in a hole, stop digging! What evidence is there that the current approach is effective in getting more new housing completed? Private developers seek planning consents and, if and when they choose, produce new housing. In London, the level of applications and particularly completions has not produced enough housing. Additional (or even the same) penalties for local planning authorities is likely to lead to developments that are wholly out of character with the surrounding area and do not serve the LPA's needs.

Q.12: For the purposes of Housing Delivery Test, the cities and urban centres uplift within the standard method will only apply from the 2022/23 monitoring year (from the 2023 Housing Delivery Test measurement). We therefore propose to make a change to the policy to align with the publication of the Housing Delivery Test 2023 results. Do you agree [yes/no]? If not, why not?

No, aligning the dates will not change the effectiveness of the tool.

Q.13: Do you think the current threshold of 150 residential units for referral of a planning application of potential strategic importance to the Mayor of London is the right level? [yes/no].

Yes, as the Mayor has a third option to the two in consultation paragraph 29 which is to tell the local authority that he is content for them to determine the application themselves. That would avoid any time-wasting engagement of developers with the Mayor's officers. The referral level of 150 units allows the Mayor to consider if the best use would be made of land and whether or not the amount of affordable housing in the proposed development is sufficient for the locality.

The referral then enables the Mayor to apply the £4bn grant he has from the Government to work with the developer to see how more affordable housing could be achieved.

The 150 residential unit threshold is only one of a number of thresholds that may result in an application being referred to the Mayor. Whatever threshold triggers referral, once referred the application is subject to review against a range of strategic development plan policies.

It should be noted that the threshold for the Secretary of State to recover jurisdiction for an appeal is 150 units.

Q.14: If no, what would you set as the new threshold? [300/500/750/1000/other] Please explain your answer.

Not applicable.

Q.15: We continue to keep the impacts of these proposals under review and would be grateful for your comments on any potential impacts that might arise under the Public Sector Equality Duty as a result of the proposals in this document.

The inequalities for people on low incomes in being able to access homes they can afford need to be reduced in London and new developments on brownfield land must supply the type of homes needed. A simple presumption favour of development may not lead to delivering those.