Planning Reform Proposals

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Since the Coalition Agreement, major reforms to the planning system have taken place with the introduction of the *Localism Act 2011* and the *National Planning Policy Framework*. Changes have also been made in the *Growth and Infrastructure Act 2013,* aimed at speeding up the planning system.

More recently, the *Infrastructure Act 2015* gained Royal Assent on 12 February 2015 and contains a number of changes to the process of making and modifying development consent orders for nationally significant infrastructure projects. It also provides the basis of a new system for deemed discharge of planning conditions. Further information is set out in the Library standard note, *Infrastructure Bill: Planning Provisions*, SN06909.

Outside of these Acts a number of other announcements on planning reform have also been made, most recently in *Budget 2014*, the *Technical Consultation on Planning July 2014*, *Consultation: planning and travellers*, September 2014, *National Infrastructure Plan 2014* and *Autumn Statement 2014*, December 2014, which together include:

- allowing further changes of use to residential use without requiring planning permission;
- reforming the system of permitted development rights;
- amending the definition of "travellers" for planning purposes;
- proposals to get more brownfield land back into use;
- steps to speed up section 106 negotiations; and
- proposed reform of the compulsory purchase regime.

Most of the proposals would apply to England only.

This note sets out more information about the key planning reform announcements and an overview the proposals. For information about proposals to stimulate housing supply see Library standard note, *Stimulating housing supply*.

Contents

1 Key planning reform announcements 2

2 Proposed reforms 3

2.1 Permitted development rights 3

Change of use of existing buildings 5

Short term lettings in London 7

2.2 Environmental impact assessment thresholds 7

2.3 Right to Light 10

2.4 Nationally Significant Infrastructure Projects 11

2.5 Judicial Review 14

2.6 Planning conditions 14

2.7 Statutory consultation reduction 15

2.8 Householder benefits of infrastructure 15

2.9 Planning authority performance 16

2.10 Section 106 contributions 16

2.11 Traveller and green belt sites 17

2.12 Neighbourhood Planning 19

2.13 Garden Cities 19

2.14 Brownfield Land 20

2.15 Compulsory Purchase 22

2.16 A “right to build” (self-build plots) 22

2.17 Starter homes exception sites policy 23

2.18 Sustainable Drainage Systems 25

2.19 Statutory consultation: surface water drainage management 25

1 Key planning reform announcements

The Coalition Agreement in 2010 set out the Government’s ambitions for a “radical reform” of the planning system. Since this agreement, major reforms have taken place with the introduction of the *Localism Act 2011* and the *National Planning Policy Framework*, which was effective from April 2012. Changes have also been made in the *Growth and Infrastructure Act 2013,* aimed at speeding up the planning system.

The Government has stressed that the planning system should work proactively to support economic growth and it is still concerned that various aspects of the planning system are

burdened by "unnecessary bureaucracy that can hinder sustainable growth."[1] Key announcements on planning reforms not yet implemented have been made in:

- *Budget 2014*, 19 March 2014, which announced changes to the permitted development rights regime and support for a new garden city at Ebbsfleet.
- Government's *Technical Consultation on Planning*, July 2014. Proposed a number of changes to: introduce new permitted development rights and changes of use and to raise environmental impact screening thresholds so that fewer projects in certain areas need to be screened.
- Government's, *Consultation: planning and travellers*, September 2014 which proposed to amend the definition of a "traveller" for planning purposes and to change policy to address the problem of unauthorised occupation of land.
- *HM Treasury Autumn Statement 2014*, December 2014, and *National Infrastructure Plan 2014*, which proposed taking steps to speed up section 106 negotiations and said Government would publish proposals for consultation at Budget 2015 on reforming the Compulsory Purchase Regime.

The Queen's Speech 2014 Background Briefing Notes announced that an Infrastructure Bill would be introduced in the 2014-15 session. This is now the Infrastructure Act 2015. Its planning measures allow the panel of examining inspectors on an application for a Development Consent Order for a national infrastructure project to be appointed more quickly and amends the process for modifying Development Consent Orders. It also allows for certain types of planning conditions to be discharged upon application if a local planning authority has not notified the developer of their decision within a prescribed time period. Further information about all of these provisions is set out in the Library standard note, *Infrastructure Bill: Planning Provisions*, SN06909.

2 Proposed reforms

2.1 Permitted development rights

Permitted development rights are basically a right to make certain changes to a building without the need to apply for planning permission. These derive from a general planning permission granted from Parliament in The *Town and Country Planning (General Permitted Development) Order 1995* (SI 1995/418) (the 1995 Order), rather than from permission granted by the local planning authority. Schedule 2 of the Order sets out the scope of permitted development rights. For more information on the current permitted development rights for home extensions see the Government's planning portal webpage on extensions.

In some circumstances local planning authorities can suspend permitted development rights in their area with an "article 4 direction". For more information this and permitted development rights see Library standard note, *Permitted Development Rights*, SN/SC/485.

In *Budget 2014* it was announced that the Government would review the General Permitted Development Order:

> the government will review the General Permitted Development Order. The refreshed approach is based on a three-tier system to decide the appropriate level of permission, using permitted development rights for small-scale changes, prior approval rights for

[1] HC Deb 6 Sep 2012 c31WS

> development requiring consideration of specific issues, and planning permission for the largest scale development.[2]

In the Government's July 2014 Technical Consultation of Planning a number of new permitted development rights were proposed to make it easier for retailers to introduce "click and collect" services and to adapt to online shopping by:

- allowing the erection of small, ancillary buildings which could facilitate 'click and collect' services; and
- making it easier for retailers to increase their back of house loading bay capacity, allowing them to store more goods for home delivery and 'click and collect'.

A new permitted development right to make commercial filming easier has also been proposed:

> 2.83 We propose to introduce a new permitted development right to allow for commercial filming and the associated physical development on location. The product of commercial filming must be the sole purpose of the activity and not ancillary to other activities. The new permitted development right will grant permission for:
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> - location filming inside existing buildings and outside on single sites of up to one hectare, which can be split between buildings and land, and the construction and removal of associated sets. The right will be for a maximum period of nine months in any rolling 27 month period and will include a prior approval.

New permitted development rights are also proposed in a number of separate areas, including:

- a new permitted development right to support the installation of photovoltaic panels (solar PV) on non-domestic buildings with a capacity up to one megawatt (20 times the current capacity) without a planning application to the local authority;
- a new permitted development right "for those waste management facilities currently sui generis, to enable the carrying out of operations for the replacement of any plant or machinery and buildings on land within the curtilage of a waste management facility and which is ancillary to the main waste management operation"[3];
- a permitted development right equivalent to that for water undertakers for sewerage undertakers. This would allow sewerage undertakers to carry out the installation of a pumping station, valve house, control panel or switchgear house into a sewerage system.

In this consultation the Government also proposed putting some of its currents temporary permitted development rights on a permanent basis. This would include:

- putting on a permanent basis the temporary increase in size limits allowed for single storey rear extensions on dwelling houses; and
- putting on a permanent basis the temporary increase in size limits allowed for extensions to shops, financial and professional services, offices, warehouses and industrial premises.

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2 HM Treasury, *Budget 2014*, 19 March 2014, para 1.147

3 HM Government, *Technical Consultation on Planning*, July 2014, para 2.96

The Government has not yet responded to this part of the Technical Consultation on Planning.

A March 2015 Consultation, *Amendment to permitted development rights for drilling boreholes for groundwater monitoring for petroleum exploration: technical consultation*, proposes to grant permitted development rights for the drilling of boreholes for groundwater monitoring for petroleum exploration (including for shale gas exploration), enabling limited works to be carried out to establish baseline information on the groundwater environment. The *Infrastructure Act 2015* requires that, as one of a number of conditions that need to be met before certain high volume hydraulic fracturing can occur, methane in groundwater is monitored over a twelve months period. The change to permitted developments is being made so that this condition can be met more easily. The proposals include increasing the structure height of the rig that can be used for drilling. The consultation closes on 16 April 2015.

Change of use of existing buildings

The *Town and Country Planning (Use Classes) Order 1987* puts uses of land and buildings into various categories known as "Use Classes". The categories give an indication of the types of use which may fall within each use class. It is only a general guide and it is for local planning authorities to determine, in the first instance, depending on the individual circumstances of each case, which class a particular use falls into. Permitted development rights allow for change of use between certain classes without the need for full planning permission.

In the Budget 2014 the Government said that it would consult on new permitted development rights for change of use to residential use and to allow businesses to expand certain onsite facilities. The Budget also said Government would consider creating a "much wider 'retail' use class, excluding betting shops and payday loan shops".[4] A Written Ministerial Statement on 30 April 2014 said that the Government would consult in "summer 2014" on creating a new use class for betting shops so that planning permission would be required before a betting shops could be converted from a former bank, building society, restaurant or pub.[5]

In the Government's *Supporting High Streets and Town Centres Background Note*, 6 December 2013, it was set out that there would be a consultation on new permitted development rights to change retail use into leisure use:

> we will consult on relaxations for change use from retail use (A1) to restaurant use (A3) and from retail use (A1) assembly and leisure uses (D2) such as cinemas, gyms, skating rinks and swimming baths.
>
> We will also consult on creating a national planning permission to allow the installation of mezzanine floors in retail premises where it would support the town centre.
>
> These measures are targeted to support the diversification and vitality of town centres. They recognised the Portas Review recommendation to make it easier to change surplus retail space to leisure uses in the D2 use class.

The Government's July 2014 Technical Consultation of Planning contained proposals to introduce a number of these new permitted development rights to allow change of use. These proposals include:

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4 HM Treasury, *Budget 2014*, 19 March 2014, para 2.249

5 HC Deb 30 April 2014 c53WS

- allowing light industrial, storage and distribution buildings to change to residential use;
- allowing some sui generis uses (i.e. uses of buildings not falling into a particular use class), such as launderettes, amusement arcades, casinos and nightclubs to change to residential use;
- introducing a new permitted development right for the change of use from existing A1 and A2 use classes, and some sui generis uses, in use at the time of the Autumn Statement 2013 announcement, to restaurants and cafés (A3); and
- introducing a new permitted development right is introduced to enable the change of use from A1, A2 and some sui generis uses, which were in that use at the time of the Autumn Statement 2013, to assembly and leisure (D2) use.

In this consultation the Government also proposed allowing the current temporary change of use permitted development right, which allows change of use from office to residential (subject to certain restrictions), on a more permanent basis.

The Technical Consultation also proposed changes to the A1 (shops) and A2 (financial institutions) use classes, to create a larger, renamed A1 class which would incorporate a lot of what are currently A2 uses. This is in part aimed at solving the issue of betting shops and payday loan shops being able to open without requiring planning permission (and which would remain in use class A2):

> 2.57 We propose that the retail offer is strengthened by incorporating into a revised wider A1 use class the majority of financial and professional services currently found in A2. It is proposed that the Use Class Order will be revised in respect of use classes A1 and A2, and the names of both uses classes revised to better reflect their new scope.
>
> 2.58 This will expand the flexibility for businesses to move between premises such as a shop to what would have been an A2 use such as an estate agent or employment agency without the need for a planning application. This will support local communities and growth by enabling premises to change use more quickly in response to market changes, reducing the numbers of empty premises that can contribute to blight in an area. Betting shops and pay day loan shops will not form part of the wider A1 retail use class, but will remain within the A2 use class.

More information about use classes and other recent changes made is set out in Library Standard Note *Planning: Change of Use System*, SN/SC/01301. More information about use classes is also available on the Government's Planning Portal website.

The Technical Consultation on Planning closed on 29 September 2014 and the Government has not yet issued a response to this part of the Consultation.

On 26 January 2015 the Government put forward proposals to provide that the listing of a pub as an "asset of community value" would trigger a temporary removal of the national permitted development rights for the change of use or demolition of those pubs.[6] The change would be made by the introduction of new secondary legislation. The press notice stated:

> This will mean that in future where a pub is listed as an asset of community value, a planning application will be required for the change of use or demolition of a pub. This then provides an opportunity for local people to comment, and enables the local

[6] Government press release, *Coalition ministers change the law to protect the Great British pub*, 26 January 2015

> planning authority to determine the application in accordance with its local plan, any neighbourhood plan, and national policy. The local planning authority may take the listing into account as a material consideration when determining any planning application.[7]

In a debate on the then Infrastructure Bill on the same day, the Communities Minister, Stephen Williams gave assurances that the new regulations would be made soon:

> Stephen Williams: Yes. In this instance, terms such as "earliest opportunity", "shortly" and "soon" really do mean that. We all know that we are up against the buffers of a fixed-term Parliament, which is a very good constitutional initiative. When I say "at the earliest opportunity", I mean "at the earliest opportunity". In other words, we hope that the statutory instrument to which my hon. Friend has referred will be published and laid before Parliament in the next few weeks.[8]

Further information about assets of community value is provided in Library standard note, Assets of Community Value, SN06366.

Short term lettings in London

Under the section 25 of the *Greater London Council (General Powers) Act 1973*, as amended, London councils have powers to control short-term letting, defined as temporary sleeping accommodation occupied by the same person for less than 90 consecutive nights. This means that if a person were to rent a property in London for less than 90 consecutive nights it would amount to a material change of use that would require a planning application to be submitted. This provision applies in the Greater London area only and not to the rest of the country.

In a discussion document from February 2014, *Review of Property Conditions in the Private Rented Sector*, the Government asked whether this provision should be reviewed or updated. In a press release on 9 June 2014, Secretary of State for Communities and Local Government, Eric Pickles announced that he would add an amendment to the *Deregulation Bill 2013-14 to 2014-15* to give "Londoners the freedom to rent out their homes on a temporary basis, such when they are on holiday, without having to deal with unnecessary red tape and bureaucracy of paying of a council permit."[9] The press release made clear that the measure would not allow homes to be turned into hotels or hostels (this would still require "change of use" planning permission), and that measures would be put in place to prevent the permanent loss of residential accommodation. This amendment has now been added to the Bill and is clause 34 in *HL Bill 33 2014-15*. Progress of this Bill can be followed on the Parliament website.

2.2 Environmental impact assessment thresholds

The aim of *Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment* is to protect the environment and human health by ensuring that a competent authority (e.g. a local authority or the Secretary of State) giving consent for certain projects to proceed, makes the decision in the knowledge of any likely significant effects on the environment. The procedure is known as environmental impact assessment. The European

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7 Ibid

8 HC Deb 26 January 2015 c633

9 HM Government press release, *End to outdated laws will allow Londoners to let homes for extra cash*, 9 June 2014

Commission has proposed to amend this Directive to ensure consistent application of it between Member States.[10]

In a written statement on 6 December 2012, the Secretary of State, Eric Pickles, said that the Commission's proposals to amend the Directive could add further cost and delay to the planning system, by increasing the regulatory burden on developers:

> The European Commission has announced that it is seeking to amend the environmental impact assessment directive. The explanatory memorandum outlines that the proposals could result in a significant increase in regulation, add additional cost and delay to the planning system, and undermine existing permitted development rights. In addition, the proposal appears inconsistent with the conclusion of the October European Council that it is particularly important to reduce the overall regulatory burden at EU and national levels, with a specific focus on small and medium firms and micro-enterprises. This view was unanimous among all EU Heads of Government, who also agreed with the Commission's commitment to exempt micro-enterprises from EU legislation.[11]

The Directive is enacted into UK law through the *Town and Country Planning (Environmental Impact Assessment) Regulations 2011* (SI 2011/194), which set the thresholds for when a development project will require an environmental impact assessment. The Chancellor's Autumn Statement on 5 December 2012 said that the Government would consult on updated guidance on conducting environmental impact assessments by Budget 2013, and would consult on raising screening thresholds set out in the Regulations later in 2013.[12] In his 6 December 2012 written statement, Eric Pickles set out the Consultation on updated guidance would aim to give greater certainty about when an environmental impact assessment would and would not be required:

> It has become apparent that some local planning authorities require detailed assessment of all environmental issues irrespective of whether EU directives actually require it; similarly, some developers do more than is actually necessary to avoid the possibility of more costly legal challenges which add delays and cost to the application process. Consequently, my Department will be consulting in 2013 on the application of thresholds for development going through the planning system in England, below which the environmental impact assessment regime does not apply. This will aim to remove unnecessary provisions from our regulations, and to help provide greater clarity and certainty on what EU law does and does not require.[13]

In a story in the *Telegraph* on 13 January 2014 it was reported that the Government was "planning to remove the need for developers to assess the impact of some large housing estates, shopping centres and industrial estates on the countryside."[14]

In response to this story the Government said:

> Environmental impact assessments stem from European Union law and impose significant costs on the planning system, over and above long-standing, domestic environmental safeguards. It has become apparent that some local planning authorities require detailed assessment of all environmental issues irrespective of whether EU

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10 Department for Communities and Local Government, *Explanatory Memorandum on European Legislation*, DEP2012/1770, 6 December 2012

11 HC Deb 6 December 2012 c71-2WS

12 HM Treasury, *Autumn Statement 2012*, 5 December 2012, para 2.149

13 HC Deb 6 December 2012 c71-2WS

14 "Government takes 'nuclear option' with new planning laws" *The Telegraph*, 13 January 2014

> directives actually require it; similarly, some developers do more than is actually necessary to avoid the possibility of more costly legal challenges, which adds delays and cost to the application process.[15]

The Government's *Technical Consultation on Planning*, July 2014 proposed changes to "reduce the number of projects that are not likely to give rise to significant environmental effects that are screened unnecessarily."[16] Changes to screening thresholds would be made in relation to industrial estate and urban development projects. For industrial development the changes to the threshold were proposed as follows:

> 5.22 The current screening threshold is 0.5 hectare. As it is unlikely that industrial estates will be smaller than 0.5 hectare, all such development will currently be screened. We propose raising the screening threshold to five hectares. Having considered the Schedule 3 criteria, we do not consider that industrial estate development of this scale, which is outside sensitive areas, is likely to give rise to significant environmental effects within the meaning of the Directive. This would mean that the smallest projects would not need to be screened.[17]

For urban development projects:

> 5.24 The current screening threshold for all urban development projects set out in the 2011 Regulations is 0.5 hectare. The indicative thresholds for urban development projects differ for different types of development. The guidance states that environmental impact assessment is "unlikely to be required for the redevelopment of land unless the new development is on a significantly greater scale than the previous use, or the types of impact are of a markedly different nature, or there is a high level of contamination. The indicative thresholds for sites which have not previously been intensively developed are:
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> - the site area of the scheme is more than five hectares; or
> - it would provide a total of more than 10,000 square metres of new commercial floorspace; or
> - the development would have significant urbanising effects in a previously non urbanised area (e.g. a new development of more than 1,000 dwellings)".
>
> 5.25 We propose to raise the screening threshold for the development of dwelling houses of up to five hectares, including where there is up to one hectare of non-residential urban development.
>
> 5.26 Based on an average housing density of 30 dwellings per hectare, the new higher threshold will equate to housing schemes of around 150 units. Having considered the Schedule 3 criteria, we do not consider that housing schemes of this scale, which are outside of sensitive areas, are likely to give rise to significant environmental effects within the meaning of the Directive. It is anticipated that raising the threshold for housing will reduce the number of screenings of proposals for residential development in England from around 1600 a year to about 300.
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> 5.27 Our objective is to move closer to the existing indicative threshold for 'likely significant effects' for housing of 1000 dwelling units (around 30 hectares at average density). However, we would want to be reassured from the available evidence that to

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15 Department for Communities and Local Government, *Response to story on planning conditions and environmental impact assessments*, 14 January 2014

16 HM Government, *Technical Consultation on Planning*, July 2014, para 5.17

17 HM Government, *Technical Consultation on Planning*, July 2014, para 5.22

> do so would be consistent with the requirements of the Directive. We welcome contributions to this consultation which will help make the case for further reform. Conversely, we welcome evidence which shows that moving substantially closer to the indicative threshold than proposed would risk housing projects which give rise to likely significant environmental effects not being subject to assessment.

The Government responded to this part of the Consultation on 6 January 2015. The Government proposed that it would go ahead with the new thresholds as proposed, but said that in response to concerns about the potential for significant environmental effects of residential tower blocks in urban areas, it would introduce a measure for a threshold based on the number of units. The threshold has therefore been amended to refer to developments which do not exceed 5 hectares or do not include more than 150 units. This is intended to provide suitable thresholds for both low and high density housing developments respectively. The Government's response sets out the next steps:

> We therefore intend to raise the environmental impact assessment screening thresholds in line with our consultation proposals (as set out in paragraph 4 above) but to also include a threshold relating to residential developments of more than 150 units. We will lay regulations in early 2015 which amend the *Town and Country Planning (Environmental Impact Assessment) Regulations 2011* to bring these changes into effect.
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> 29. Raising the thresholds will reduce the number of projects that are not likely to give rise to significant environmental effects that are screened unnecessarily. As now, interested parties will continue to be able to make representations on the environmental effects of a project and all planning applications will be subject to the strong environmental protection provisions of the National Planning Policy Framework and, as appropriate, other relevant environmental legislation.
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> 30. The existing directive on environmental impact assessment was amended by a new *Directive 2014/52/EU* in early 2014. The Government will implement the new requirements by 17 May 2017.[18]

On 5 March 2015 the Government said that it would "shortly be laying regulations which will significantly reduce the number of housing schemes and proposals for other urban development which are not likely to have significant effects on the environment but which currently have to be screened by local planning authorities."[19]

2.3 Right to Light

The law relating to a right to light is a complex area. A right to light is a property right called an easement that gives landowners the right to receive light through defined apertures (i.e. a window) in buildings on their land. The right may be created by express grant, by implication and by prescription. The right may enable landowners to prevent construction that would interfere with their rights or, in some circumstances, to have a building demolished.

On 18 February 2013 the Law Commission issued a consultation paper, *Rights to Light*, which sought to examine whether the law by which rights to light are acquired and enforced provided an appropriate balance between the interests of landowners and the need to facilitate the appropriate development of land.[20] The background to the Consultation is

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18 Department for Communities and Local Government, *Government response to the technical consultation on environmental impact assessment thresholds*, January 2015

19 Gov.uk press release, Planning update: written statement to Parliament, 5 March 2015

20 Law Commission, *Rights to Light consultation homepage*, 18 February 2013

previous work done by the Law Commission on easements which found that "rights to light appear to have a disproportionately negative impact upon the potential for the development of land."[21]

The Law Commission published its final report, *Rights to Light* in December 2014. The key recommendations from the final report were for:

- a statutory notice procedure which would allow a landowners to require their neighbours to tell them within a specified time if they intend to seek an injunction to protect their right to light, or to lose the potential for that remedy to be granted;
- a statutory test to clarify when courts may order damages to be paid rather than halting development or ordering demolition;
- an updated version of the procedure that allows landowners to prevent their neighbours from acquiring rights to light by prescription;
- amendment of the law governing where an unused right to light is treated as abandoned; and
- a power for the Lands Chamber of the Upper Tribunal to discharge or modify obsolete or unused rights to light.[22]

Appendix B to the Law Commission's report also contained a draft Rights to Light (Injunctions) Bill. Appendix A contained some draft clauses which could be added to an Easements Bill, which has been recommended previously by the Law Commission. The Government has not yet responded to the proposals for either Bill and there are no indications if, how or when it would take any of this work forward.

2.4 Nationally Significant Infrastructure Projects

Nationally Significant Infrastructure Projects (NSIPs) are usually large scale developments (relating to energy, transport, water, waste water or waste) which require a type of consent known as a "development consent order (DOC)" under procedures governed by the *Planning Act 2008* (the 2008 Act) and amended by the *Localism Act 2011*.

Any developer wishing to construct a NSIP must first apply for consent to do so. For such projects, the Planning Inspectorate examines the application and will make a recommendation to the relevant Secretary of State, who will make the decision on whether to grant or to refuse development consent. The process is timetabled to take approximately 15 months from start to finish. The 2008 Act sets out thresholds above which certain types of infrastructure development are considered to be nationally significant and require development consent.[23] For more information about this process see Library standard note *Planning for Nationally Significant Infrastructure*.

In the *National Infrastructure Plan 2013* the Government announced that it would continue to refine the NSIP regime by:

- launching an overarching review of the NSIP regime, while freezing planning application fees for the NSIP regime for the remainder of this parliament;

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21 Law Commission, *Rights to Light consultation executive summary*, 18 February 2013, p1
22 Law Commission website, Rights to Light [on 15 December 2015]
23 National Infrastructure Planning website, *Planning Inspectorate role* [on 10 April 2013]

- having regard to the designation of a 'Top 40' priority investment when considering applications for the NSIP regime; and
- providing policy certainty and confidence for the transport sector through the publication of a National Networks National Policy Statement (NPS).[24]

The overarching review discussion document was published alongside the Infrastructure Plan and sought views on:

- streamlining consultation and environmental information requirements to speed up the pre-application phase;
- flexibility to make changes to Development Consent Orders after a decision is made;
- expanding the scope of the 'one stop shop' for consents;
- efficiency and flexibility during the examination phases; and
- strengthening guidance on engagement between the developer, Statutory Consultees, Local Authorities and communities.[25]

The "top 40 priority investment" designation would mean that infrastructure projects, that would not otherwise meet the 2008 Act threshold to be classed as a NSIP would be able to use the development consent process. This would particularly be the case for developments related to science and innovation. Further information about the top 40 investments are set out in the National Infrastructure Plan 2013.

The Government responded to the discussion document on 25 April 2014.[26] Annex A to the Government's response stated the actions that the Government intends to take to change the system, how and when. Some of the changes will require amendment to primary legislation. Provision for this is now in the *Infrastructure Act 2015* which:

- makes changes to the procedures in the *Planning Act 2008* for handling minor changes to existing development consent orders (DCOs) for nationally significant infrastructure projects (NSIPs). It also amended the processes for making significant changes;
- allows the examining authority, (a panel of planning inspectors who consider DCO applications), to be appointed earlier on in the process, immediately after an application has been accepted; and
- allows the examining authority panel to comprise only two inspectors.

For further information about these provisions see Library Library standard note, Infrastructure Bill: Planning Provisions.

The Government's *Technical Consultation on Planning*, July 2014 in respect of NSIPs proposed:

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24 HM Government, *National Infrastructure Plan 2013*, 4 December 2013, p11
25 HM Government, *National Infrastructure Plan 2013*, 4 December 2013, pA
26 HM Government, *Government response to the consultation on the review of the Nationally Significant Infrastructure Planning Regime*, 25 April 2014

- introducing a new regulation that allows the Secretary of State not to hold an examination into an application for (a material) change if he considers that one was not necessary; and

- amending regulations so that the examination of a project (for a material change) had a maximum period of four months. There would then be a maximum period of two months for the Examining Authority to prepare their report and recommendation and a further two months for the Secretary of State to reach a decision;

The Government responded to this part of the Consultation in November 2014 and confirmed that it would amend the *Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011* to make these changes.[27]

The Technical Consultation also proposed giving developers the option of gaining ten other related consents as part of the DCO (e.g. consents concerning European protected species, water discharge, trade effluent, flood defence, water abstraction and impoundment licences). In the Government's National Infrastructure Plan 2014 it set out how it would proceed with this proposal:

> 15.21 The government is also continuing to make practical improvements to the Nationally Significant Infrastructure Planning regime and will take forward work to:
>
> • bring more non-planning consents into the Development Consent Order regime, starting with three consents covering water discharge and trade effluent during this Parliament; the European Protected Species licence will be brought into the regime early in the new Parliament, once a legislative vehicle is identified, in a way that ensures robust decision making; the government is currently working towards bringing flood defence consents into the environmental permitting framework next year, followed by water abstraction and impoundment licenses as soon as possible after that.

The formal response to this part of the Technical Consultation on Planning was published in March 2015. In it the Government confirmed how it would proceed with bringing related consents into the DCO regime:

> 37. After careful analysis of the consultation responses, the Government considers that the proposal to streamline is appropriate and three consents concerning discharge for works purposes and trade effluent will be removed from the section 150 list during this Parliament, with European Protected Species Licence to follow early in the next Parliament when a suitable legislative vehicle is identified. The remaining six consents will be streamlined between 2015 and 2017 when taking forward work to consolidate consents within the Environmental Permitting Regulations. This is summarised in Table 2.
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> 38. The Government is not persuaded by the suggestion that section 150 should be repealed in its entirety. Consents are retained on the section 150 list for safety, security or technical reasons.[28]

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[27] HM Government, *Government response to the consultation on making changes to Development Consent Orders*, November 2014

[28] HM Government, *Streamlining the consenting process for nationally significant infrastructure planning: The Government's response to the Summer 2014 Technical Consultation*, March 2015

2.5 Judicial Review

On 6 September the Government published a *consultation* which included proposals to create a new specialist "planning chamber" for challenges relating to major developments to be taken only by expert judges using streamlined processes.[29] The Government believes that judicial reviews have created "unacceptable delays to the development of crucial infrastructure and housing projects."[30] The Consultation explained that the aim was to allow planning cases to be better prioritised and allow specialist judges to maximise their specialist skills to ensure that cases proceed quickly to a determination.

The Government's response to the consultation was published in February 2014 and said that Government would create a specialist Planning Court within the High Court to deal with judicial reviews and statutory appeals relating to Nationally Significant Infrastructure Projects and other planning matters. The *Criminal Justice and Courts Bill 2013-14 to 2014-15* now contains this provision and is going through its Parliamentary stages.

2.6 Planning conditions

The power to impose conditions when granting planning permission is very wide. They can be used to enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission.[31] They can cover a wide range of issues such as design and landscape to restricting hours of operation of a business. Under the National Planning Policy Framework planning conditions should "only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects."

In the *National Infrastructure Plan 2013* the Government expressed concern about delays with local planning authorities discharging planning condition and committed to making changes to the system:

> 7.43 Delays associated with the discharge of planning conditions can hinder the effective delivery of development. The government will legislate so that where a planning authority has failed to discharge a condition on time, it will be treated as approved, and will consult on using legislative measures to strengthen the requirement for planning authorities to justify conditions that must be discharged before any work can start.

It was confirmed, in the Queen's Speech on 4 June 2014 that this changes would be taken forward as part of the "Infrastructure Bill" for the 2014-15 session.[32] The Infrastructure Act 2015 has now received Royal Assent and permits certain types of planning conditions to be regarded as discharged if a local planning authority has not notified the applicant of their decision within a set time period. For further information about this provisions see Library standard note, Infrastructure Bill: Planning Provisions.

The Government's July 2014 Technical Consultation on Planning also proposed some changes to the regime relating to planning conditions, including:

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29 Ministry of Justice, *Judicial Review: proposals for further reform*, 6 September 2013
30 HM Government, *National Infrastructure Plan 2013*, 4 December 2013, para 7.36
31 Government, *Circular 11/95: Use of conditions in planning permission*
32 Queen's Speech 2014: background briefing notes, p25

- a reduction from 12 weeks to 8 weeks in the time period after which an applicant for confirmation of compliance with conditions attached to a planning permission becomes entitled to a fee refund if the local authority has not notified them of their decision; and

- additional requirement for local authorities to justify the use of pre-commencement conditions (i.e. conditions requiring the submission and approval of something by the local planning authority before a prescribed part of the development goes ahead).

The Government's response to this part of the consultation was published on 5 March 2015. It confirmed that these changes would be made by amendments to secondary legislation.

2.7 Statutory consultation reduction

The *National Infrastructure Plan 2013* said that there would be a consultation on reducing when statutory consultation would be required as part of the planning process:

> 7.44 To prevent delays for applicants, the government will consult on proposals to reduce the number of applications where unnecessary statutory consultations occur, and key statutory consultees will commit to a common service agreement. The government will also pilot a new scheme to provide a single point of contact for cases where a point of conflict in advice cannot be resolved locally.

The Government's *Technical Consultation on Planning*, July 2014, chapter 4 gave more detail about this proposal and included, for example, to change to the requirement to consult Natural England, English Heritage and the Highways Agency before the grant of planning permission in certain circumstances.

The consultation also proposed to introduce an extended requirement to ensure that railway infrastructure managers are notified of all planning applications where development is proposed near a railway (para 4.62).

The Government responded to this part of the Consultation on 23 January 2014.[33] The response sets out how the consultation proposals will be taken forward. Specifically, the proposal to remove English Heritage's power to direct local planning authorities in Greater London as to the granting of planning permission will require primary legislation, which the Government said "will be taken forward when a suitable legislative opportunity arises."[34]

2.8 Householder benefits of infrastructure

With the aim of reducing the extent to which development is blocked or delayed as a result of active opposition by local residents, in the *National Infrastructure Plan 2013* the Government said that it would develop a pilot of a system by where individual householders were given a "share of the benefits" of infrastructure:

> 7.45 The government wants to ensure that households benefit from developments in their local area. Building on the measures it has already put in place at the local authority and community level (including the neighbourhood funding element of the Community Infrastructure Levy, 'Community Benefits' in the energy sector and the New Homes Bonus), the government will work with industry, local authorities and other interested parties to develop a pilot passing a share of the benefits of development directly to individual households.

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[33] Department for Communities and Local Government, *Planning application process improvements Government response to consultation*, 23 January 2015

[34] Ibid, para 33

In September 2014 the Government published Development benefits pilots: Invitation for expressions of interest. The document sets out that the Government has a budget of £3.5m for piloting the development benefits model and invites expressions of interest from local planning authorities and parish councils or neighbourhood forums. It explained that where a development attracts development benefits, eligible households would receive a direct financial payment when the site for housing is allocated or when that development goes ahead. Payments could be varied to reflect distance from the development or be a single figure. The legal basis on which planning decisions are taken would not change.[35] The document gives further information about what it proposed and how it would operate. The invitation for expressions of interest closed on 24 October 2014 and the Government has not yet announced which areas will be involved in this pilot.

2.9 Planning authority performance

The *Growth and Infrastructure Act 2013* allows applicants for major development to apply direct to the Secretary of State (in practice a Planning Inspector), rather than the local planning authority (LPA), where the LPA has been "designated" for having a record of very poor performance in the speed or quality of its decisions.

In the *Autumn Statement 2013* the Government said that it would consult on increasing the threshold for designation from 30% to 40% of decisions made on time. On 23 March 2014 the Government published a consultation, *Planning performance and planning contributions: consultation* which consulted on raising threshold for designation as follows:

> We are proposing that the threshold for designating authorities as under-performing, based on the speed of deciding applications for major development, should increase to 40% or fewer of decisions made on time. The threshold may be raised further at a future stage. Authorities that have dealt with an average of no more than two applications for major development, over the two year assessment period, would be exempt from designation based on their speed of decisions. The document setting out the criteria for designation would set out the types of exceptional circumstances that may be taken into account, prior to designations being confirmed.

The Government responded to this part of the consultation on 13 June 2014 and confirmed that the threshold for designation would be raised to 40%.[36] In respect of this it laid a revised criteria for designation document, on 13 June 2014, before Parliament for its statutory 40 day period, which has now come into effect.

In the National Infrastructure Plan 2014 the Government said that the government will keep the speed of major decisions under review, with "minimum performance thresholds increasing to 50% of major decisions made on time as performance improves."[37]

2.10 Section 106 contributions

Section 106 contributions, sometimes known as "planning obligations" or "planning gain" stem from agreements made under section 106 of the *Town and Country Planning Act 1990*. They are agreements made between the developer and the LPA to meet concerns about the costs of providing new infrastructure or affordable housing levels.

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35 HM Government, *Development benefits pilots: Invitation for expressions of interest*, September 2014, para 9
36 HM Government, *Planning performance: government response to consultation*, 13 June 2014
37 HM Government *National Infrastructure Plan 2014*, December 2014, box 15.A

In the Autumn Statement 2014 and the National Infrastructure Plan 2014 the Government said that it would take further measures to speed up section 106 negotiations to speed up the end-to-end planning process. Specifically this would include issuing revised guidance, consulting on a faster process for reaching agreement, and considering how timescales for agreement could be introduced, and improving transparency on the use of section 106 funds.[38]

A consultation, *Section 106 planning obligations - speeding up negotiations*, was published on 20 February 2015. The consultation sought views on proposals on two issues:

- Speeding up the negotiation and completion of Section 106 planning obligations; and
- Whether the requirement to provide affordable housing contributions acts as a barrier to development providing dedicated student accommodation.

The proposals to speed up negotiation of section 106 obligations included:

- setting clear time limits so section 106 negotiations are completed in line with the existing 8 to 13 week target for planning applications to be processed rather than letting them slow the whole planning process down;
- requiring parties to start discussions at the beginning of the planning application process, rather than the current system where negotiations can often start towards the end;
- a dispute resolution process where negotiations stall preventing development;
- using standardised documents to avoid agreements being drafted from scratch for each and every application;
- potential legislation in the next Parliament to give new measures teeth.[39]

The consultation closes on 19 March 2015.

2.11 Traveller and green belt sites

In a written ministerial statement to Parliament on 17 January 2014, the Government said that it would consider improvements to planning policy and practice guidance to strengthen green belt protection in regard to traveller sites:

> Moreover, ministers are considering the case for further improvements to both planning policy and practice guidance to strengthen green belt protection in this regard. We also want to consider the case for changes to the planning definition of 'travellers' to reflect whether it should only refer to those who actually travel and have a mobile or transitory lifestyle. We are open to representations on these matters and will be launching a consultation in due course.[40]

A consultation was published on this matter, *Consultation: planning and travellers*, on 14 September 2014 and which closed on 23 November 2014.

The consultation invites views on a number of different questions. One of the main questions is about whether the definition of "traveller" should be changed for planning related purposes

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38 HM Government, National Infrastructure Plan 2014, December 2014, para 15.23
39 Gov.uk press release, *New measures will speed up housebuilding*, 23 February 2015
40 HC Deb 17 Jan 2014 c35WS

so that it would exclude those who have permanently ceased from travelling. The current definition of traveller can be found in the Government's Planning Policy for Traveller Sites. The consultation explains the Government's reasons for proposing this change:

> 2.2 Current policy requires that those who have ceased travelling permanently for reasons of health, education or old age (be it their needs or their family's or dependents') are for the purposes of planning treated in the same way as those who continue to travel.
>
> 2.3 The Government feels that where a member of the travelling community has given up travelling permanently, for whatever reason, and applies for a permanent site then that should be treated no differently to an application from the settled population (for example, seeking permission for a Park Home). This would not prevent applications for permanent sites, but would mean that such applications would be considered as any other application for a permanent caravan site would be: i.e. not in the context of Planning Policy for Traveller Sites.
>
> 2.4 This is not about ethnicity or racial identity. It is simply that for planning purposes the Government believes a traveller should be someone who travels.

The proposed new definition of gypsies and travellers would read:

> Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.[41]

The Consultation also asked for views on whether the Government should integrate sections from the National Planning Policy Framework on green belt protection with its Planning Policy for Traveller Sites. The intention of this is to reiterate and make clearer existing planning policy relating to green belt and travellers, rather than to change policy. The Government also proposed to inset the word "very" into the following existing policy to give stronger emphasis: "Local planning authorities should [very] strictly limit new traveller site development in open countryside."

One proposed change is to amend the weight which is currently given to any absence of a five year supply of permanent sites when deciding planning applications for temporary sites in land designated as Green Belt, sites protected under the Birds and Habitats Directives, sites designated as Sites of Special Scientific Interest, Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park or the Broads. The consultation explained, "the absence of an up-to-date five year supply of deliverable sites would therefore no longer be a significant material consideration in favour of the grant of temporary permission for sites in these areas. It would remain a material consideration, but its weight would be a matter for the decision taker."[42]

The Consultation also proposed to change planning policy to deal with the intentional unauthorised occupation of sites, so that if a site were to be intentionally occupied without planning permission, this would be a material consideration in any retrospective planning application for that site:

> For the avoidance of doubt, this does not mean that retrospective applications should be automatically refused, but rather failure to seek permission in advance of

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41 HM Government, *Consultation: planning and travellers,* 14 September 2014, section 2.6

42 HM Government, *Consultation: planning and travellers,* 14 September 2014, section 3.8

> occupation will count against the application. It will, the Government hopes, encourage all applicants to apply through the proper planning processes before occupying land and carrying out development.[43]

Another measure aimed at addressing unauthorised occupation of land was to remove the need for local authorities which are "burdened by a large-scale unauthorised site which has significantly increased their need", to be required to plan to meet their traveller site needs in full.

The Government has not yet issued a response to this consultation.

2.12 Neighbourhood Planning

In response to an oral question in the House of Commons on 3 March 2014 about whether neighbourhood planning could be introduced for small communities the then Planning Minister, Nick Boles, said that work was underway to look at that this:

> We have, I think, now reached the point where there has been enough experience of neighbourhood planning with enough different kinds of communities for us to learn lessons and to ask whether there is not a version of neighbourhood planning that might be more easily accessible and quicker for some communities. We are doing that work, and we are very keen to hear from any hon. Members and communities with their thoughts on how we can achieve that.[44]

2.13 Garden Cities

In *Budget 2014* the Government announced that it would support a new Garden City at Ebbsfleet in Kent:

> 1.145 The government will support a new Garden City at Ebbsfleet. Ebbsfleet has capacity for up to 15,000 new homes, based on existing brownfield land. To date, under 150 homes have been built on the largest site. The government will form a dedicated Urban Development Corporation for the area, in consultation with local MPs, councils and residents, to drive forward the creation of Ebbsfleet Garden City, and will make up to £200 million of infrastructure funding available to kick start development. This will represent the first new garden city since Welwyn Garden City in 1920.

An article on the Planning Portal website highlighted that the new urban development corporation would have compulsory purchase powers:

> The development is earmarked for brownfield land – a former quarry and industrial sites - around the high speed rail station at Ebbsfleet which is 19 minutes by train from central London. The initiative will be supported by an urban development corporation which will have compulsory purchase powers.
>
> "We're going to create an urban development corporation so we're going to create the instrument that allows this kind of thing to go ahead and cuts through a lot of the obstacles that often happen when you want to build these homes," the Chancellor told the BBC.[45]

On 14 April 2014 the Government published a prospectus called *Locally-led Garden Cities*. The prospectus sets out a support package which the Government can offer to local areas which are interested in forming a new garden city.

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43 HM Government, *Consultation: planning and travellers,* 14 September 2014, section 4.10

44 HC Deb 3 March 2014 c621

45 Planning Portal, *Chancellor confirms Ebbsfleet as new garden city*, 20 March 2014

In the Queen's Speech 2014 Background Briefing Note it was announced that Government would introduce the secondary legislation to allow for a locally supported garden city to be built in Ebbsfleet, backed by an Urban Development Corporation.[46]

In the Autumn Statement 2014 the Government provided an update on progress with the development in Ebbsfleet:

> 1.132 The government is taking forward the commitment to build the first new garden city for almost 100 years at Ebbsfleet, which will deliver up to 15,000 new homes. The A2 Bean and Ebbsfleet Junction improvements will be delivered as part of the Highways Agency programme. The Chairman Delegate of the Urban Development Corporation is now in place and the government has reached agreement with the key landowners on the site on a collaborative approach to the delivery of development. The government will make the first £100 million available to fund infrastructure and land remediation to kick start development, subject to due diligence.

On 3 March 2015 the Government confirmed how changes would be made to legislation to allow for the establishment of Urban Development Areas and Urban Development Corporations:

> the government tabled an amendment to the Deregulation Bill to change the Parliamentary approval procedure, from affirmative to negative, for the establishment of Urban Development Areas and Urban Development Corporations.
>
> This amendment was accepted and is now part of the Deregulation Bill. I should like to place on record my thanks to the Hon Member for the City of Durham (Roberta Blackman-Woods) for her participation in discussions on how to proceed on this matter. I know she shares my view that we want to see progress in taking this proposal forward.
>
> The government therefore intends, subject to Parliamentary approval, to lay a negative Statutory Instrument immediately following Royal Assent to establish the Urban Development Corporation.
>
> A separate Order to grant the Urban Development Corporation planning functions, making it the local planning authority responsible for the development of the area, will be laid at the same time.[47]

For more information about garden cities see the Library Standard Note, *Garden Cities*.

2.14 Brownfield Land

In the Mansion House Speech 2014 on 12 June, the Chancellor George Osborne announced that Councils would be required to put local development orders on over 90% of brownfield sites that are considered suitable for housing. He suggested that this would mean planning permission for up to 200,000 new homes.

This speech was later followed by a written statement in the House of Commons by the Secretary of State for Communities and Local Government, Eric Pickles, which set out further the Government's plans to increase housebuilding on brownfield land:

> Councils will play a critical role in bringing forward suitable unused and previously developed land. They will consult on and put in place local development orders, which

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46 Queen's Speech 2014: background briefing notes, p43

47 HM Government, *Ebbsfleet Garden City: Oral Statement to Parliament*, 3 March 2015

> are a flexible, proactive way to provide outline planning permission for the scale and type of housing that can be built on sites. This will provide greater certainty for both builders and local residents, helping developers to work up suitable schemes and ultimately speeding up the building of new homes. Our aim is to see permissions in place on more than 90% of suitable brownfield sites by 2020—which could provide up to 200,000 new homes.
>
> We are providing a £5 million fund, to be launched before the summer, to support the first wave of new local development orders; we will also be providing a set of local development order "templates" for smaller brownfield sites, and will consult on other measures to underpin this programme later in the year. The Mayor of London will be given new powers to drive forward local development orders in the capital. But this drive for planning permissions will retain key safeguards—as with any planning application, councils will need to take account of the views of local people when preparing an order, as well as environmental issues like minimising flood risk.[48]

Information is also given in the accompanying Government press release, *Government initiatives to help build more new homes on brownfield land*, 13 June 2014.

A Local Development Order (LDO) grants permission for a certain type of development and thereby removes the need for a planning application to be made by the developer. The legal basis is sections 61A-61D of the *Town and Country Planning Act 1990*. The idea is that they can allow developers to progress development proposals with greater speed and certainty. Associated costs may be lower with an LDO as there will not be a planning application fee or need to commit the resources associated with the preparation of an application. The procedure for making an LDO is set out in section 34 of the *Town and Country Planning (Development Management Procedure) (England) Order 2010*, SI 2010/2184. Further information about LDOs is set out in the National Planning Practice Guidance.

In August 2014 the Government issued an invitation to bid which provided more information on how Councils could bid for funding to support their local development orders. Bids were encouraged from local planning authorities which could identify brownfield sites that were suitable for housing, could accommodate in the region of 100 dwellings or more and where work on a local development order could commence in the autumn this year with a view to being in place in 2015. The invitation to bid ran until 30 September 2014 and is now closed. The Government has not yet responded to this invitation.

A summary of reaction to the proposals on brownfield land policy from planning and house building professionals is available on the Planning Blog, 13 June 2014.

In January 2015 the Government issued a consultation, Building more homes on brownfield land, which "seeks views on the Government's proposals for identifying suitable brownfield land and sharing data openly and transparently, measuring progress towards the Government's goal for housing permissions on brownfield land, and options to support authorities where additional action is needed to get permissions in place." In particular the consultation proposes a definition and a set of criteria to be met for land to be considered as brownfield land suitable for housing. This includes the land being free of constraint and being capable of supporting five or more dwellings.

As a measure to encourage progress on LPAs meeting the target of putting in place LDOs on 90% of brownfield sites that are considered suitable for housing by 2020, the consultation

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[48] HC Deb 16 June 2014 c72WS

proposes that LPAs could be designated as under-performing where they do not meet this objective, or where they have failed to provide sufficient evidence that this objective is being met. Where an authority is designated, this would mean that developers would then have a choice of applying directly to the Secretary of State for planning permission. This would be implemented through a change to primary legislation, and by revising the criteria for designation and de-designation.[49] The consultation also proposes an intermediate objective of objective of putting LDOs in place on 50% of brownfield land suitable for housing by 2017 and that LPAs could be designated for not meeting this objective.

A second option to incentivise progress on the 2020 target was also put forward for consultation. In this option the National Planning Policy Framework would be amended to say that local planning authorities that had failed to make sufficient progress against the brownfield objective would be unable to claim the existence of an up-to-date five year housing land supply when considering applications for brownfield development, and therefore the presumption in favour of sustainable development would apply. This means that where any local plan is absent, silent or relevant policies are out-of-date, planning permission for development will normally be granted, unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted.[50]

The Consultation closed on 11 March 2015 and a response to it has not yet been issued.

Alongside this consultation the Government published an Invitation to bid for funding to support local planning authorities who consult on and make local development orders on brownfield land. It sets out how LPAs can access up to £50,000 of a local development order incentive fund to assist with the costs incurred in 2015-16 delivering the local development order. The Government aims to support around 100 bids and they would be paid via section 31 of the *Local Government Act 2003*, subject to HM Treasury approval. Further information about eligibility and award criteria is provided in the invitation. All bids should be submitted by 11 March 2015.

2.15 Compulsory Purchase

In the Autumn Statement 2014 the Government announced, that in respect of compulsory purchase reform, it would "publish proposals for consultation at Budget 2015 to make processes clearer, faster and fairer, with the aim of bringing forward more brownfield land for development."[51]

2.16 A "right to build" (self-build plots)

The Budget 2014 announced that the Government would consult on creating a new "right to build" which would give people who want to build their own homes a right to a plot from a council and access to a repayable fund.[52]

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49 HM Government, Building more homes on brownfield land, January 2015, para 23
50 HM Government, National Planning Policy Framework, March 2012, para 14
51 HM Government, Autumn Statement 2014, para 2.49
52 HM Treasury, Budget 2014, 19 March 2014, para1.142

In July 2014 the Department for Communities and Local Government published an expression of interest for "right to build vanguards", inviting expressions of interest from local planning authorities. It explained that a right to build would be a requirement on local authorities to:

> (a)Open and promote a register for prospective custom builders. A key purpose of the register is to measure effectively the demand for custom build housing in the local area. We are considering options on how this register might operate, including, for example, that eligibility for registration would be open to those who are resident in the local authority area and potentially also those with a direct family connection to the area.
>
> > The proposed requirement to open and promote a register builds upon existing national planning policy and guidance. The National Planning Policy Framework requires local authorities to have a clear understanding of housing need in their area and plan to address the need for all types of housing, including the demand from those people wishing to build their own homes. The Government's Planning Practice Guidance states that plan makers should, therefore, consider surveying local residents, possibly as part of any wider surveys, to assess local housing need for this type of housing, and compile a local list or register of people who want to build their own homes; and
>
> (b)Make available, for sale at market value, a sufficient number of suitable serviced plots for those on the register within a reasonable period of time. Land for plots could come from local authorities' own landholdings or land from other landowners.[53]

In October 2014 the Government published, *Right to Build: supporting custom and self build: consultation*. The consultation set out that 11 local authorities had been selected to become Right to Build Vanguards. It also confirmed that the Government would support Richard Bacon MP's Private Members' *Self-Build and Custom Housebuilding Bill* 2014-15 which aims to enact the first element of the Right – the establishment by local planning authorities of a register of prospective custom builders who are seeking a suitable serviced plot of land. The consultation sought views on the technical aspects about how the right to build should work in practice. The consultation closed on 18 December 2014 and a Government response has not yet been issued. For further information see Library standard note, *Self-build and custom build housing sector*.

2.17 Starter homes exception sites policy

In December 2014 the Government published a consultation, *Stepping onto the property ladder: Enabling high quality Starter Homes for first time buyers – a consultation*. This consultation proposed to create a new policy in the National Planning Policy Framework (NPPF) to allow applications for starter homes to be built on "exception sites on under-used or unviable industrial and commercial land that has not been identified for housing." These houses would be for offered for sale at a minimum of 20% below normal market price, to people who have not previously been a home buyer, and who were below the age of 40 at the time of purchase. Purchasers would then be prevented from re-selling the property at open-market value for a five to fifteen year period, in order to prevent a windfall profit being made. Developers of these homes would be able to claim an exemption from any applicable section 106 planning obligation charges or community infrastructure levy payments.

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[53] Department for Communities and Local Government, *Right to Build Vanguards: Invitation for expressions of interest*, July 2014, para 9

The consultation proposes to implement this scheme by inserting a new section into the NPPF (following a written ministerial statement being made in Parliament) and by making amendments made to community infrastructure levy regulations. It also proposed that local authorities could use planning obligations and/ or planning conditions at the time of planning permission being granted for a starter home under this scheme to ensure that the sale is restricted to first time buyers under a certain age and to prevent resale of the property at full open market price within a specified time period.

The Government responded to this consultation on 2 March 2015 and issues a written ministerial statement, which confirmed that the scheme would go ahead and that planning policy would be changed as follows:

> After careful consideration of these responses, the Government is today making the following change to national planning policy:
>
> Local planning authorities should work in a positive and proactive way with landowners and developers to secure a supply of sites suitable for housing for first time buyers. In particular, they should look for opportunities to create high quality, well designed Starter Homes through exception sites on commercial and industrial land that is either under-used or unviable in its current or former use, and which has not currently been identified for housing.
>
> Where applications for starter homes come forward on such exception sites, they should be approved unless the local planning authority can demonstrate that there are overriding conflicts with the National Planning Policy Framework that cannot be mitigated.
>
> Planning obligations should be attached to permissions for starter homes on Starter Homes exception sites, requiring that the homes are offered for sale at a minimum of 20% below open market price, to young first time buyers who want to own and occupy a home. They should also prevent the re-sale and letting of the properties at open market value for a five year period.
>
> In view of their contribution to meeting housing needs, Starter Homes exception sites should not be required to make section 106 affordable housing or tariff style contributions.
>
> Exception sites may include a small proportion of market homes, at the planning authority's discretion, where this is essential to secure the required level of discount for the starter homes on the site.
>
> Starter Homes developments are expected to be well designed and of a high quality, contributing to the creation of sustainable places where people want to live, work and put down roots to become part of the local community. A new Design Advisory Panel set up by the Government, involving leading industry experts, is developing an initial set of exemplar designs for Starter Homes which we expect to publish shortly for wider comment. While recognising the need for local flexibility, we would expect these designs over time to become the default approach to design to be considered for Starter Homes developments.
>
> This new national planning policy should be taken into account in plan-making and decision-taking, and should be read alongside other policies in the National Planning Policy Framework.[54]

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[54] HCWS324, 2 March 2015

The statement also made clear that the Government would seek to amend the Community Infrastructure Levy regulations in the next Parliament to exempt discounted Starter Home developments from the levy.[55]

2.18 Sustainable Drainage Systems

In September 2014 the Government published a consultation on Delivering Sustainable Drainage Systems, which proposed changes to the planning regime for sustainable drainage systems to introduce the expectation that sustainable drainage systems would be provided in new developments subject to certain thresholds.

The summary of responses and Government response was published on 18 December 2014. In a written statement to Parliament on the same date, the Government set out changes that would be made to the planning system to ensure that sustainable drainage systems for the management of run-off are put in place, to come into force from 6 April 2015:

> we expect local planning policies and decisions on planning applications relating to major development - developments of 10 dwellings or more; or equivalent non-residential or mixed development (as set out in Article 2(1) of the *Town and Country Planning (Development Management Procedure) (England) Order 2010*) - to ensure that sustainable drainage systems for the management of run-off are put in place, unless demonstrated to be inappropriate.
>
> Under these arrangements, in considering planning applications, local planning authorities should consult the relevant lead local flood authority on the management of surface water; satisfy themselves that the proposed minimum standards of operation are appropriate and ensure through the use of planning conditions or planning obligations that there are clear arrangements in place for ongoing maintenance over the lifetime of the development. The sustainable drainage system should be designed to ensure that the maintenance and operation requirements are economically proportionate.
>
> To protect the public whilst avoiding excessive burdens on business, this policy will apply to all developments of 10 homes or more and to major commercial development. The government will keep this under review, and consider the need to make adjustments where necessary. The current requirement in national policy that all new developments in areas at risk of flooding should give priority to the use of sustainable drainage systems will continue to apply.
>
> These changes will take effect from 6 April 2015. For avoidance of doubt this statement should be read in conjunction with the policies in the National Planning Policy Framework. This statement should be taken into account in the preparation of local and neighbourhood plans, and may be a material consideration in planning decisions.[56]

2.19 Statutory consultation: surface water drainage management

In December 2014 the Government published a consultation, *Further changes to statutory consultee arrangements for the planning application process*. The consultation proposes three main changes to existing arrangements:

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55 Ibid

56 HC Deb 18 Dec 2014 c119WS

Part A: proposal to introduce the Lead Local Flood Authority as a statutory consultee on major planning applications with surface water drainage implications to ensure technical advice is available to local planning authorities.

Part B: proposal to change the thresholds for the Environment Agency's statutory consultee involvement in a planning application to achieve a more proportionate approach in light of changing responsibilities.

Part C: whether to make water companies statutory consultees in respect to planning applications for shale oil and gas development.

The consultation sets out more information and background information on each of these proposals.

The Government published its response to this consultation in March 2015. It confirmed that the majority of the proposals would go ahead as per the consultation and that changes would be made to the *Town and Country Planning (Development Management Procedure) (England) Order 2010*, in order to enact them.