

## **Response to Consultation on Building More Homes on Brownfield Land**

### **Summary**

This report seeks endorsement of Officer comments submitted to the Department for Communities and Local Government in response to the Government's 'Building More Homes on Brownfield Land Consultation Proposals'. The consultation began on 28<sup>th</sup> January 2015 and ends on 11<sup>th</sup> March 2015. Owing to the date of receipt of this consultation and the limited 6-week consultation period, Officers have been unable to bring the consultation response to Executive prior to the deadline for the submission of comments.

The consultation seeks views on a range of proposals to encourage authorities to identify and record brownfield land suitable for housing and make progress in putting permissions in place for housing through the use of local development orders. The Consultation document is available to view in the Members Room or online at: <https://www.gov.uk/government/consultations/building-more-homes-on-brownfield-land>.

The document proposes that Councils should be required to formulate and publish annually a list of 'brownfield sites suitable for housing' and place Local Development Orders on 50% of brownfield sites identified as suitable for housing by 2017 and on 90% of such sites by 2020. The document also sets out measures to encourage Authorities to meet the requisite percentages.

In response to the consultation, concerns are raised in respect of the clarity of the proposals and the extent to which they can be applied to Surrey Heath, in addition to the cost and resources required to put Local Development Orders in place. Objections are also raised to the measures proposed to encourage Authorities to meet the requisite percentages.

### **Portfolio - Regulatory**

**Date Portfolio Holder signed off report: 3<sup>rd</sup> March 2015**

### **Wards Affected**

All

### **Recommendation**

The Executive is advised to resolve to ENDORSE the response submitted by Officers to the Department for Communities and Local Government on the consultation on building more homes on brownfield land, as set out in Annex A to this report.

### **1. Resource Implications**

- 1.1. There are no resource implications associated with responding to the Government's consultation. However, some of the proposals may have implications for Council resources by decreasing the amount of income currently generated through the planning application process.

## 2. Key Issues

- 2.1 The Department for Communities and Local Government are consulting on a range of proposals to encourage authorities to identify and record brownfield land suitable for housing and make progress in putting permissions in place for housing through the use of Local Development Orders.
- 2.2 Local Development Orders are made by local planning authorities and are a significant de-regulatory tool. They streamline the planning process by removing the need for developers to make a planning application to a local planning authority. Relating to a specific site or geographical area, they grant planning permission for a certain type or types of development (as cited in the order), either outright or subject to conditions. National Planning Policy Guidance notes that they create certainty and save time and money for those involved in the planning process.
- 2.3 The consultation seeks views on a range of proposals, including:

- Requiring the Council to formulate, maintain and publish annually a list of 'brownfield sites suitable for housing'. In order for a brownfield site to be considered 'suitable for housing', the paper advises that it should meet the criteria as set out within the National Planning Policy Framework and four additional criteria set out within the consultation proposals. The four additional criteria are:

**Deliverable:**

- Sites should be available now or in the near future;
- Sites should be not in current use, in use (though not for housing) or underutilised. The Council should have evidence that the landowner would be willing to make the land or building available for new housing

**Free of Constraint:**

- Land that is subject to severe physical, environmental or policy constraints should not be identified unless the constraints can be mitigated whilst retaining the viability of the development

**Capable of development:**

- The condition and location of the site should make it an option that would be of interest to developers.

**Capable of supporting five or more dwellings.**

- Placing a requirement on Councils to prepare Local Development Orders on 50% of brownfield sites identified as suitable for housing by 2017 and on 90% of such sites by 2020;
- Designating Councils where they have failed to achieve the requisite % by respective years. Designation would mean that applicants would have the option of applying directly to the Secretary of State for planning permission where their scheme relates to a brownfield site providing five or more units. In such cases the planning application fees would be diverted to the

Secretary of State with the Local Authority only undertaking a small handful of administrative exercises. Designation and de-designation is suggested to take place once a year.

- In the event that the designation approach is not pursued, an alternate approach is suggested whereby Councils that have not achieved the requisite targets are by default unable to claim the existence of a 5 year housing land supply. In such cases the presumption in favour of sustainable development would apply; the consultation document suggests that this would make it easier for applicants to grant planning permission.

2.4 In response to the consultation, Officers have sought to raise a number of concerns in respect to the proposals. These are set out below and in further detail within the consultation response at Annex A.

2.5 It is advised that the additional criteria set out within the consultation document are considered to be ambiguous and will require further clarification if Authorities are to use them effectively and transparently to identify brownfield land 'suitable for housing'. If the government is minded to introduce the proposals, these will need significant clarification.

2.6 The Council also seeks clarification in respect of whether local development orders could be implemented within Surrey Heath. The Thames Basin Heaths SPA and the area surrounding it is a significant policy and environmental constraint and legislation would suggest that there is limited legal provision for local development orders to be used in such areas.

2.7 Objection is raised to the identified target percentages and proposals to designate authorities where these have not been met. The objection is raised on the following grounds:

- It is not considered that this would be necessary or appropriate where an up to date plan or a 5 year housing land supply is present;
- The transfer of decision making powers for some applications to the Secretary of State would devalue both the local plan making process and ethos of Localism;
- The interim target of 50% of sites being designated by 2017 is likely to be unachievable;
- The implementation of local development orders is likely to prove onerous for a planning authority the size of Surrey Heath and is likely to have a notable detrimental effect upon other valuable plan making work.

2.8 Objections are also raised to the alternate approach whereby Councils that have not achieved the requisite targets are by default unable to claim the existence of a 5 year housing land supply. It is suggested that this would represent an unfair approach where any Council still had a five year housing land supply and would undermine the work of local

planning authorities, particularly in respect to the preparation of the Strategic Housing Land Availability Assessment.

- 2.9 Concerns are expressed in respect of the cost and resources required to put Local Development Orders in place.

### **3. Options**

- 3.1 The options for the Executive to consider are:-

- (i) To ENDORSE the response submitted by Officers to the Department for Communities and Local Government on the consultation on building more homes on brownfield land, as set out in Annex A to this report.
- (ii) To ENDORSE the response submitted by Officers to the Department for Communities and Local Government on the consultation on building more homes on brownfield land, as set out in Annex A to this report and any additional comments which the Executive may wish to make.
- (iii) To NOT ENDORSE the response submitted by Officers to the Department for Communities and Local Government on the consultation on building more homes on brownfield land, as set out in Annex A to this report and elect to withdraw the response to the consultation.

### **4. Proposals**

- 4.1 It is proposed to submit the consultation response attached as Annex A to this report by the 11<sup>th</sup> March deadline.

### **5. Corporate Objectives and Key Priorities**

- 5.1 The proposals may affect the Council's ability to achieve Objective 2 by reducing the Council's capacity to maintain adequate employment floor space.

### **6. Policy Framework**

- 6.1 The main policy framework is contained within the National Planning Policy Framework 2012 (NPPF) and its associated Planning Practice Guidance 2014 (PPG). The National Planning Policy Framework advises that planning should encourage the effective use of land by re-using brownfield sites, provided they are not of high environmental value, and that local councils can set locally appropriate targets for using brownfield land. Planning Policy Guidance stresses the importance of bringing brownfield land back into use.

### **7. Consultation**

- 7.1 The Government consultation runs from 28<sup>th</sup> January – 11<sup>th</sup> March 2015.

<b>Annexes</b>	Annex A – Consultation Response
<b>Background Papers</b>	'Building more homes on brownfield land – consultation proposals' (2015) Department for Communities and Local Government
<b>Author/Contact Details</b>	Kate Baughan – Senior Planning Officer <a href="mailto:kate.baughan@surreyheath.gov.uk">kate.baughan@surreyheath.gov.uk</a>
<b>Head of Service</b>	Jenny Rickard – Executive Head of Regulatory

### Consultations, Implications and Issues Addressed

<b>Resources</b>	<b>Required</b>	<b>Consulted</b>
Revenue	✓	<u>02/03/15</u>
Capital		
Human Resources		
Asset Management	✓	<u>02/03/15</u>
IT		
<b>Other Issues</b>	<b>Required</b>	<b>Consulted</b>
Corporate Objectives & Key Priorities	✓	<u>02/03/15</u>
Policy Framework		
Legal	✓	<u>02/03/15</u>
Governance		
Sustainability		
Risk Management		
Equalities Impact Assessment		
Community Safety		
Human Rights		
Consultation		
P R & Marketing	✓	<u>02/03/15</u>
Development Management	✓	<u>02/03/15</u>

**Review Date:**

**Version:** 1<sup>st</sup> Draft



**Surrey Heath Borough Council**  
 Surrey Heath House  
 Knoll Road  
 Camberley  
 Surrey GU15 3HD  
 Switchboard: (01276)  
 707100  
 DX: 32722 Camberley  
[www.surreyheath.gov.uk](http://www.surreyheath.gov.uk)

<b>Service</b>	<b>Regulatory Services</b>
<b>Our Ref:</b>	<b>N/A</b>
<b>Your Ref:</b>	<b>N/A</b>
<b>Direct Tel:</b>	01276 707222
<b>Email:</b>	<a href="mailto:planning.policy@surreyheath.gov.uk">planning.policy@surreyheath.gov.u</a>

Anne Wood  
 Department for Communities and Local Government  
 Third Floor  
 Fry Building  
 2 Marsham Street  
 SW1P 4DF

By Email

11<sup>th</sup> March 2015

Dear Ms Wood,

### **Building more homes on brownfield land – Consultation response**

Thank you for the opportunity to respond to the above consultation. Surrey Heath Borough Council has now had the opportunity to consider the proposals and has the following comments to make.

***Question 1: Do you agree with our proposed definition of brownfield land suitable for new housing and the criteria that are applied to define land suitable for new housing?***

The Council does not have any objection to using the definition of brownfield land in the National Planning Policy Framework. However, the additional criteria set out within the consultation document are considered to be ambiguous and will require further clarification if Authorities are to use them effectively and transparently to identify brownfield land 'suitable for housing'. In particular, the Council would seek clarification in respect of the following points:

**Deliverable** – This criterion states that a deliverable brownfield site would constitute any site 'not in current use, or a site in use (though not for housing) or under-utilised'. This appears to be an unnecessarily convoluted means of stating that a 'deliverable brownfield site' is any brownfield site not already used for housing. The Council also considers the term 'under-utilised' to be

exceptionally vague. If such ambiguities are not addressed in any proposal brought forward, disagreement between Authorities, the Government and developers in respect of the suitability of sites is likely to arise and the ability of local authorities to introduce Local Development Orders in a timely fashion is likely to be compromised. Clarification is also sought in respect of how mixed use sites should be treated and what is meant by 'the near future'.

**Free of constraint** – The Council would seek clarification as to whether a Local Development Order can be placed on a site within 5km of the Thames Basin Heaths Special Protection Area (SPA). The full extent of Surrey Heath lies within 5km of the Thames Basin Heaths SPA and the Council perceives that this to be both an environmental and policy constraint.

It is noted that the impact upon the SPA of new residential units (located within the 400m to 5km zone of the SPA) can frequently be mitigated through financial contributions (collected through the Community Infrastructure Levy) towards Suitable Alternative Natural Greenspace (SANG). Notwithstanding this, it is noted that regulation 78 of the Conservation of Habitats and Species Regulations 2010 (which relates to Local Development Orders and states that development should not be granted where it is likely to have a significant effect on a European site or a European offshore marine site) does not contain the caveat set out in regulation 73 for General Development Orders, which grants planning permission subject to a condition that the development cannot commence until the Local Planning Authority has given written notification of the approval under regulation 75. Therefore whilst it is noted that a Local Development Order can grant planning permission subject to conditions, it seems questionable as to whether it would be lawful to grant a Local Development Order subject to a condition that no development within 5km of the SPA shall be implemented unless the Local Planning Authority has confirmed that it can proceed. This matter should be clarified in the event that the Government is minded to bring these proposals forward.

The consultation proposals also suggest that Local Development Orders could be placed on brownfield sites within the Green Belt, although inappropriate development on brownfield land in the Green Belt should not be approved except in very special circumstances (as per NPPF policy). Over 44% of land within Surrey Heath lies within the Green Belt, with the area accommodating a number of brownfield sites. The assessment of whether the development of such sites is inappropriate is often complex, with a thorough assessment of Green Belt and broader planning policy required. In particular, it is noted that some such sites may be unsustainably located. As such the Council considers that brownfield sites within the Green Belt should be automatically excluded from the Local Development Order scheme given the complexities involved.

**Capable of development** – This includes the requirement that there ‘would be interest from developers in purchasing the site and building housing there in the near future’. It is unclear as to what level of evidence might be required to establish developer interest. The Council would like clarification in respect of this matter in the event that these proposals are brought forward.

**Question 2:** *Do you agree that local planning authorities should be transparent and publish the small subset of data at source and update it at least once a year, to a common standard and specification?*

The Council does not have any detailed comments on the data proposed to be collected, however we would wish to highlight that the resources required to compile, maintain and publish such data on an annual basis could prove onerous to a planning authority the size of Surrey Heath.

**Question 3:** *Do you have views on how this common standard and specification should be developed?*

The Council is of the opinion that the specification should be developed so that it closely aligns with the data that local authorities currently collect as part of their Strategic Housing Land Availability Assessments (SHLAA).

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

Whilst the Council does not have any detailed comments, we would wish to reiterate our concerns that the resources required to compile, maintain and publish such data on an annual basis could prove onerous for a planning authority the size of Surrey Heath. We consider it would be prudent therefore to publish the baseline brownfield land supply alongside, or potentially as part of the SHLAA.

**Question 5:** *Do you think that the designation of under-performing planning authorities in the way suggested would provide an effective incentive to bringing forward planning permissions on brownfield land?*

This proposal suggests the designation of authorities as under-performing where they do not meet the targets for the coverage of Local Development Orders, or have provided insufficient evidence that the objective has been met. The Council considers this to be somewhat of an excessive and unmerited form of ‘incentive’, particularly where the Council has an up to date Local Plan and/or can demonstrate a 5 year housing land supply. The Council is also unclear as to how the Government would identify whether a Council had met its target or not.



**Question 6:** *Do you agree that:*

- a) *Authorities should be designated from 2020 if they have not met the 90% objective?*
- b) *Performance against the 90% objective should be calculated on the extent to which the brownfield land suitable for housing identified a year earlier is covered by local development orders?*

The Council does not agree that authorities should be designated from 2020 if they have not met the 90% objective. As noted above, any designation seems uncalled for where the Council otherwise has an up to date Local Plan and/or can demonstrate a 5 year housing land supply. It is also unclear as to whether the 90% target will be calculated by the number of sites, on land area, a 90% proportion of potential dwellings or by any other alternative means. If minded to introduce such a proposal, local authorities will need clarification in respect of this matter. It is also considered that for an authority the size of Surrey Heath, the need to redirect resources to the preparation of Local Development Orders is likely to have a notable detrimental effect upon other valuable plan making work.

**Question 7:** *Do you agree that:*

- a) *Authorities should be assessed against an intermediate objective in 2017?*
- b) *Having local development orders in place on 50% of brownfield land identified as suitable for housing (and which does not already benefit from planning permission) in the preceding year is an appropriate intermediate objective?*

The Council does not agree that authorities should be assessed against an intermediate objective in 2017. The consultation suggests that the assessment will be based on information published the year before. This would mean that the 2017 target should be assessed against information published in 2016. It is not clear when the requirement to publish a set of housing data would come in to force and how this requirement would then be linked with meeting an interim target. However, bearing in mind the work involved, this seems a challenging timetable and the Council does not consider an interim target of 50% to be achievable.

**Question 8:** *Do you agree that authorities should be designated from 2017 if they have failed to make sufficient progress against the intermediate objective?*

The Council does not agree with this for the reasons already set out in response to question 6 above.

**Question 9:** *Do you agree:*

- a) With our proposed approach to identifying and confirming designations, including the consideration of whether exceptional circumstances apply?*
- b) With our suggested approach to de-designating authorities from 2020?*
- c) That the provisions for handling applications made to the Secretary of State should be the same as where an authority is designated under the existing performance measures?*

The Council would re-iterate the concerns already expressed that the designation of authorities for failing to deliver a target of Local Development Orders seems inappropriate where the Authority has an up to date local plan and/or a five year housing land supply. The Council would also express concerns that for an Authority to have applications considered by the Secretary of State, particularly where an up to date Local Plan and/or a 5 year housing land supply are present, will be difficult for the community to understand and will devalue both the local plan making process and ethos of Localism.

**Question 10:** *Do you:*

- a) Think the policy-based approach would provide an effective incentive for authorities to put local development orders in place on suitable brownfield land?*
- b) Agree with the proposed thresholds and dates at which this measure would take effect?*

Whilst preferable to the designation-based approach, the Council contends that the policy based approach would also be inappropriate, undermining the work of local planning authorities whereby they are required to provide an objective assessment of whether they have a five year housing supply. In Surrey Heath, we have recently published an updated Strategic Housing Land Availability Assessment (SHLAA), which demonstrates that we have a housing land supply in excess of 8 years. Were the Council to be subject to the measure set out in Option 2 above, this objective assessment of a very healthy housing land supply would be overlooked, simply because the Borough did not have in place the requisite coverage for Local Development Orders.

Furthermore, the Council would draw to the Department for Communities and Local Government's attention Paragraph 119 of the NPPF, which advises that the presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.

**Question 11:** *Do you agree that the measures proposed for failing to publish information on progress are proportionate and effective? If not, what alternative would you propose and why?*

The proposals suggest that where inadequate data is provided, either designation or the policy measure will automatically be applied. The proposals set out in this consultation document are considered likely to be resource intensive, and the Council does not therefore agree that measures should be in place as suggested for those authorities who do not publish relevant data, particularly in relation to the interim target for 2017. The Council does not wish to suggest any alternatives.

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

A requirement to implement Local Development Orders as set out in the consultation document will have a resource implication for local authorities, alongside a reduction in revenue generated from planning application fees. We do not consider the package of measures available to local planning authorities will 'bridge' this potential funding gap and therefore more thought should be given to the financial support being made available to authorities.

The Council would not wish to suggest any further measures that could help to deliver Local Development Orders on brownfield land suitable for new housing. This is because the Council does not consider that the comprehensive provision of Local Development Orders will necessarily increase the number of new homes or the rate at which they are delivered. The residential use of brownfield sites is commonly supported through the plan making process whether sites are allocated or not and as a result, planning permissions on brownfield land are more likely to be acceptable in any event. As such it is unclear what value will be added to the planning process by the enforced provision of Local Development Orders on nearly all brownfield land.

Please note that due to Committee timetables, the comments in this letter will not be considered by the Borough Council's Executive until after the closing date of the consultation. As such these comments represent an Officer response until they have been through the formal Committee process. I would be grateful if you could contact me if this is likely to be an issue or invalidates the Council's response.

Yours sincerely,

Kate Baughan  
Senior Planning Officer  
Planning Policy and Conservation