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Dominic Raab MP
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Ministry of Housing, Communities and Local Government
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Sent via email to planningpolicyconsultation@communities.gsi.gov.uk

9 May 2018

Dear Mr Raab

**South East England Councils response to
National Planning Policy Framework (NPPF) consultation**

1. Introduction and Summary

- 1.1 We respond on behalf of South East England Councils (SEEC). SEEC is the cross-tier voice of local authorities in the South East, representing 9.1 million residents. We are a voluntary membership body, bringing together county, unitary and district councils to promote the views and interests of all tiers of local government across the South East, an area comprising 74 local authorities.
- 1.2 We welcome the opportunity to comment on the National Planning Policy Framework (NPPF) and associated Planning Policy Guidance (PPG), implementing the Government's reforms to planning policy. SEEC previously raised members' views on last year's [Housing White paper](#) and '[Planning for the right homes in the right places](#)' consultations. SEEC members were pleased to meet you at your office in March to discuss key NPPF issues, which – as we promised – are reflected in more detail in this consultation response.
- 1.3 The Government has confirmed its aim to substantially increase home building to 300,000 a year nationally (up from 217,000 in 2016-17). South East councils recognise the need for housing and have demonstrated their commitment, enabling over 99,700 homes in the 3 years to March 2017 – the UK's highest delivery rate. However, our member councils face challenges in continuing to increase housing delivery, including:
 - A South East infrastructure funding gap estimated at £15.4bn by 2030.
 - Over 1 million acres of protected land in the South East alone: including National Parks, AONB, SSSI and Green Belt.
 - At least 60,000 unimplemented planning permissions in the South East – almost 2 years' supply of homes. This backlog is caused by factors such as land agents who delay appointing developers or slow building rates by developers who wish to avoid damaging profits by flooding the market with new homes. We are pleased that Sir Oliver Letwin is exploring this point.
- 1.4 SEEC members have welcomed earlier-than-expected publication of the NPPF and the greater clarity it has brought in areas such as transition periods for local plans nearing completion. **However, whilst the South East has an excellent track record in enabling new homes, our members have concerns that they will not be able to continue to deliver the Government's housing ambitions unless councils have more tangible powers to incentivise delivery and adapt to local circumstances. SEEC's response, below, focuses on three key outstanding issues. Individual member councils will also respond reflecting their local experience and views.**
 - **Housing need calculation methodology** – SEEC makes recommendations to amend the methodology to address unexpected results, which currently include increases for many parts of the South East with current high growth levels but limited further capacity, and reductions in other parts of the South East which could undermine their local growth plans.

- **Tackling unimplemented or slow delivery of planning permissions, and the housing delivery test on councils** – SEEC makes recommendations for a fuller toolkit of discretionary ‘carrots and sticks’ for councils to ensure permitted homes are built by developers.
- **Infrastructure funding, including affordable homes and viability** – SEEC makes recommendations on actions to address the growing South East infrastructure funding gap, to help deliver the transport, utilities/broadband and affordable homes needed to support sustainable communities. *Note, we have also made a separate response to your associated consultation on [developer contributions](#).*

1.5 Whilst our response is focused on the NPPF and its delivery, we recognise some of the actions our members need fall beyond the immediate scope of the NPPF. Examples of these include possible secondary legislation to introduce new delivery levers for councils, and fiscal measures to support infrastructure that enables/supports development. The range of policy changes needed highlights the importance of Government taking a holistic approach to tackle the issues if it is to unlock the homes and sustainable communities and economies we all want. We also look forward to hearing further progress on Sir Oliver Letwin’s review to tackle building barriers.

Detailed comments - Key issues that need further action by Government:

2. Housing need calculation methodology

- 2.1 The draft NPPF and PPG include Government’s proposals on a new standard housing need calculation methodology, unchanged from the ‘Planning for the right homes in the right places’ consultation. SEEC previously asked Government to review its proposed approach, given multiple unexpected results from the methodology compared to current assessed needs in the South East and beyond. This fuels concerns among SEEC members that it is too blunt an instrument to reflect local circumstances. Examples of members’ concerns include:
- **Many parts of the South East see large increases in housing that will be difficult to achieve given local constraints such as very large amounts of land subject to statutory protections, eg.**
 - The methodology allocates a 27% housing increase to South Bucks DC despite 87% protected land. Through Duty to Cooperate South Bucks and others are working well with Aylesbury Vale DC, which is able to accommodate some of its neighbours’ unmet need. However Aylesbury’s capacity may not stretch to cover further increases in homes under the new need methodology for itself and its neighbours.
 - Tonbridge & Malling BC would see its housing figure rise by 23% despite 77% protected land. The council is on track to submit its local plan during the NPPF transition period but if this was not the case, the new figure of 859 homes pa is not sustainable and has only been achieved on a few occasions since monitoring began in the area due to limits on the market’s ability and desire to deliver.
 - New NPPF proposals suggest increased density and higher-rise buildings with more flexible standards on daylight access as a way to increase housing numbers. However, such changes will not always be appropriate (eg. in or near AONB) and are highly likely to attract local objections. Such objections will delay delivery and add to costs.
 - **Other parts of the South East see unexpected decreases in housing figures, which could undermine local growth plans, eg.**
 - Comparing current and MHCLG’s proposed new needs assessments, Oxford City Council has seen its needs figures approximately halve (from 1,200-1,600 homes pa to 746 pa). Some councillors are concerned this could undermine local housing growth plans, which aim to tackle the significant locally-identified existing affordable and market housing need in its area. They call for a common-sense check of the new methodology before the approach is finalised by Government.
 - Reading BC would see around a 13% reduction from its latest assessed needs figures (reducing from 699 homes pa to 611 pa), despite high levels of locally assessed need for affordable homes. West Berkshire Council has an 18% cut (reducing from 665 homes pa to 545 pa).
 - The proposed new housing needs figures suggest that Shepway DC has seen a fall in its proposed needs assessment, despite the council having identified significant housing growth need and potential – including a proposal to build a new Garden Town. Shepway

is concerned as MHCLG's new need figure (490 homes pa, as published alongside the 2017 'Planning for the right homes in the right places' consultation, using the same methodology as the draft NPPF/PPG propose) is artificially constrained by Government's arbitrary 40% 'cap' above the existing local plan target, rather than the significantly greater level of housing need identified by both the council's own 2016 assessment (633 pa) and the Government's new formula if it were 'uncapped'. Shepway also considers that the term 'cap' is misleading as it suggests a maximum, when the consultation makes clear that this figure is a minimum.

- These councils recognise they can exceed these minima, but there are concerns that setting higher figures may leave them open to time-consuming – and potentially costly legal – challenges from local interest groups.
- **There are also reductions in urban areas in other parts of country, eg.**
 - Outside the South East, cities with major growth ambitions see large cuts in housing need figures: Leeds (–1,011pa), Birmingham (–873pa) and Manchester (–459pa).
 - While councils can exceed minimum numbers, a methodology that shows reduced housing need in these areas risks undermining Government's aim of boosting economic growth in cities, including those in the northern powerhouse and midlands engine.
 - Without a better way of reflecting these areas' growth ambitions, Government will simply increase housing and economic pressures in the South East rather than meeting its aim of rebalancing parts of the economy.

2.2 To make sure methodology outputs are deliverable, SEEC asks Government to:

- Review its proposed affordability criteria. Some SEEC members suggest it would be better to base this on average salaries by residence, rather than workplace (as proposed). This change will better reflect the true 'spending power' of people living there. It will also avoid increased targets, where these would be unsustainable and unachievable, in councils where a large proportion of residents commute out of the area to work. Large scale commuting can in some areas mean local workplace salaries are disproportionately weighted towards lower-paid service sector roles, as local areas may not be able to sustain higher-paid workplaces in competition with larger cities nearby.
- Ensure it is clear that any 'reduced' needs figures do not take precedence over locally-led higher-growth plans.
- Use PPG to provide clear information for councils on factors to include when the local evidence base seeks to specify deliverable housing figures (either more or less than the standard need assessment). Specifying factors that will be supported by Government and planning inspectors at Examination in Public (EiP) is important to help avoid unnecessary and costly challenges in court or at EiP. Relevant factors would cover issues such as Green Belt and protected land (to clarify Government support for these) and development capacity, and how locally agreed growth plans which are higher than the new 'standard' figures will be taken into account.

2.3 Greater clarity on these issues could also help Duty to Cooperate (DTC) discussions by providing more certainty on a council area's capacity, and assist in agreeing the new Statements of Common Ground that will form part of DTC.

3. Tackling unimplemented or slow delivery of planning permissions, and the housing delivery test on councils

3.1 SEEC agrees with Government that action is needed to tackle slow delivery of homes once planning permission is granted. However members are concerned that the NPPF confirms Government's intention to implement a delivery test on councils, but does not include any significant extra levers for councils to incentivise builders. SEEC has previously asked Government for further actions to ensure permitted homes are built-out more quickly, including tools such as charging powers to incentivise delivery. This would assist in unlocking agreed housing plans and help tackle the South East's growing number of unused permissions – at least 60,000 are unimplemented, almost 2 years' supply of homes.

3.2 Councils set local ambitions and strategy for housing in their local plans, but as they do not build the majority of homes they need 'carrot and stick' powers to get stubborn sites moving. For example where land agents delay appointing developers, councils should be able to use discretionary powers to charge council tax when homes remain unbuilt after an agreed period.

3.3 Whilst NPPF support for a 'use it or lose it' type approach to slow delivery of approved planning permissions is a move in the right direction, good local authorities already use all the tools in the proposed PPG housing test action plan but still face barriers to delivery. If councils do not have better tools to meet the test there is a widespread risk of failure and an end to the plan-led system. This will undermine the principle of locally-led planning, opening areas up to unmanaged development that could add pressure to encroach unnecessarily on protected land and add to infrastructure needs if homes are built away from existing services.

3.4 To unlock unimplemented permissions and give effective carrots and sticks for the delivery test on councils, SEEC members are keen to see additional tools including:

- Giving councils discretionary powers to charge council tax or other fees on unnecessarily stalled permissions. The Minister mentioned the possibility of secondary legislation on this when we met, and we would welcome further details about this.
- Powers for councils to influence better targeting of skills funding to improve construction sector capacity.
- More clarity on how allocated sites and outline permissions will be treated in the delivery test.
- Greater discretion on smaller site developments. There is uncertainty about why 20% of development on smaller sites has been chosen. To avoid arbitrary targets, we ask for local discretion on appropriate targets to reflect local circumstances on this, which may be higher or lower than 20%.
- Stronger measures to deter vexatious challenges to council decisions to refuse planning permission when applications do not match local plan requirements. There are concerns that the NPPF will encourage more challenges when a council deems a planning application is undeliverable or not needed for 5-year land supply. For example, West Berkshire Council has successfully defended several Section 78 planning appeals in the past 16 months but at a cost of £100,000. This is expensive, resource-intensive and detracts from delivery of locally agreed plans.

3.5 We welcome the preliminary thoughts from Sir Oliver Letwin's review of barriers to housing delivery, [published on 13 March](#), and note his focus on tackling delivery delays on large sites by major housebuilders. We are keen to see his forthcoming findings as soon as possible, as we understand these will inform further action by Government alongside the NPPF/PPG, so need taking forward in a complementary timeframe and as part of a holistic package.

4. Infrastructure funding, including affordable homes and viability

4.1 SEEC members are clear that the Government's focus on delivering homes must not be at the cost of creating sustainable communities and economies, including supporting infrastructure. South East voters will not thank us if new homes are built without good infrastructure, for example transport, utilities/broadband and community facilities, as well as affordable housing.

4.2 SEEC has asked Government for more action to address the growing South East infrastructure funding gap. Whilst the Housing Infrastructure Fund (HIF, £224m so far across the South East) and proposals to improve Section 106 agreements and address viability issues could be helpful if they lead to increased local infrastructure funding, they will not be enough to address the £15.4bn (by 2030) South East infrastructure funding gap. More powers/funding flexibility for councils would help them play a greater part in funding local infrastructure needs and build more homes themselves.

4.3 In addition, the draft revised NPPF increases focus on small sites but it can be hard for councils to secure developer contributions on such sites - and it is unclear whether a collection of small sites will attract central infrastructure funding (such as HIF). Also, permitted development rights for conversion to residential uses have the effect of increasing pressure on existing infrastructure while providing no developer contributions to address the needs arising from the development. In the case of office to residential conversions this can also have a negative impact for local economies as the former employees will no longer be supporting local businesses, local residents (including those occupying the new homes) will have fewer local employment opportunities and have to commute further afield for work. Local authorities will also lose business rates income, reducing their funding further.

4.4 We understand Government wants to encourage small builders by reducing their costs, but residents have high expectations of infrastructure, so we want to work with Government to find new ways of funding these needs. Options we want Government to further consider include:

- Ensuring developments of all sizes make a contribution to funding infrastructure – we ask you to rethink the existing Ministerial Statement (made by your predecessor) which Government proposes to include in NPPF. This excludes sites of 10 units or less from making infrastructure contributions through s106 agreements. This change would help ensure all new developments can contribute to infrastructure and affordable housing (which is excluded from CIL), helping South East authorities respond to local demands.
- Allowing councils to receive some of the rise in land value when a site gains planning permission, which would enable them to invest in additional infrastructure to serve communities and businesses.
- Giving South East councils access to a share of Stamp Duty the first time a home is sold, to help fund the infrastructure needed for new developments.
- Allowing South East authorities to group together collections of small sites that could then qualify for funding from national funding sources, such as the HIF.
- Ensure there are ongoing opportunities for the South East to access further HIF funding, and introduce longer timeframes to allow for the larger projects that can unlock strategic growth sites to be brought forward.
- NPPF proposals to firmly embed ‘viability testing’ into the local plan itself are welcome if this brings certainty of securing necessary infrastructure funding. However further information is needed about how this will work in practice, to ensure it does not effectively double the potential for challenges from developers both at the plan-making and application stage. With 5 yearly reviews of local plans it will also be important to avoid making viability vulnerable to challenge within that review process.

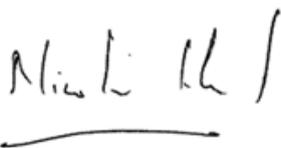
4.5 SEEC was pleased that the Housing White Paper recognised the role councils could play in increasing the supply of much-needed affordable housing, and urges Government to put in place three key actions to further support this:

- Relaxing the cap on borrowing under Housing Revenue Account (HRA) rules for all councils would allow councils to build more affordable homes themselves. Recent Government proposals allowing councils to bid for this opportunity are a move in the right direction, but borrowing flexibility should be made available to all councils as a matter of course to release their own housebuilding capacity.
- Reviewing Right to Buy (RtB) to enable local authorities to sustain stocks of affordable homes by ensuring funding retained by councils is adequate to deliver 1 for 1 replacements. While supporting RtB, some SEEC members argue it kicks in too soon and that the discounts are too high to adequately fund replacements.
- Active Government encouragement for councils building homes through new models such as local housing companies and joint ventures to deliver affordable housing, as well as elderly persons extra-care housing and key workers housing. We want an open dialogue with Government to inform how it can support and encourage these types of delivery vehicles.

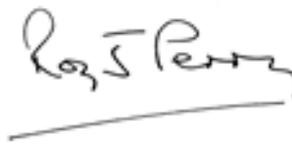
4.6 SEEC has also responded to Government’s separate consultation on developer contributions, reinforcing the points above.

We look forward to continued engagement with you on these important issues.

Yours sincerely



Cllr Nicolas Heslop
Chairman, South East England Councils
Leader, Tonbridge & Malling Borough Council



Cllr Roy Perry
Deputy Chairman, South East England Councils
Leader, Hampshire County Council