



Correspondence address:

South East England Councils
Room 215 County Hall
Penrhyn Road
Kingston upon Thames
KT1 2DN

t: 020 8541 8740

e: nickwoolfenden@secouncils.gov.uk

w: www.secouncils.gov.uk

Rt Hon Sajid Javid
Secretary of State for Communities and Local Government
2 Marsham Street
London SW1P 4DF
Sent by email to: planningpolicyconsultation@communities.gsi.gov.uk

8 November 2017

Dear Secretary of State

**DCLG Planning for the right homes in the right places consultation –
Response from South East England Councils**

1. Introduction and summary

- 1.1 South East England Councils (SEEC) is the cross-tier voice of local authorities in the South East of England. We are a voluntary membership body, bringing together county, unitary and district councils. Together we promote the views and interests of all tiers of local government across the South East, representing 9.1 million residents – the largest population in the UK.
- 1.2 SEEC supports the *principle* of Government's national aim to build the "right homes in the right places" to help meet locally identified need, but our members are concerned by some key aspects of the consultation proposals which - if not addressed - could hinder councils' work to sustainably achieve this in the South East.
- 1.3 The South East provides the largest homes growth in England, some 34,900 in 2015-16. But as we highlighted in our [response](#) to this year's Housing White paper, full delivery of local economic and wider growth plans would be much enhanced by additional powers for councils to tackle a large and growing number of unimplemented permissions, more funding options for vital affordable homes and supporting infrastructure, and increasing construction industry capacity/skills constraints. Furthermore, whilst some parts of the South East have significant future growth aspirations and plans, others face considerable challenges accommodating additional growth due to extensive statutory environmental and land use protection, including Green Belt, AONBs, National Parks, Special Protection Areas and SSSIs.
- 1.4 Our response therefore focuses on 5 key areas of the consultation where further Government action is needed. We would be pleased to discuss these with you:
 - i. **SEEC asks Government to review its proposed approach to housing need calculations, given a number of unexpected results from the methodology compared to current assessed needs in the South East. Members have concerns over the results which 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.**Factors to review include the Government's proposed affordability criteria; considering how land use/environmental constraints (which the Government has reiterated its support for) and development capacity might be factored into baseline need figures; making clear that any 'reduced' needs figures do not take precedence over locally-led higher-growth plans;

and ensuring the final methodology results in a deliverable balance of affordable and market homes that meets locally assessed needs.

- ii. **SEEC asks Government for further actions to ensure permitted homes are built-out more quickly, including tools for councils to help tackle the South East's growing number of unimplemented permissions and unlock agreed housing plans.** This is vital if Government proceeds with its proposed delivery test on councils. Tools should include giving councils discretionary powers to charge council tax or other fees on unnecessarily stalled permissions, and powers to better target skills funding to improve construction sector capacity.
- iii. **SEEC asks Government for more action to address the growing South East infrastructure funding gap, to help deliver the transport, broadband/utilities and affordable homes needed to support sustainable communities.** Whilst Government proposals to improve use of Section 106 agreements/address viability issues could be helpful if they lead to increased local infrastructure funding, they alone will not be enough to address the £15.4bn (by 2030) South East infrastructure funding gap. More powers/funding flexibility and support for councils would help them meet local infrastructure needs and build more homes themselves.
- iv. **SEEC asks for clarity from Government about how the new Statement of Common Ground – intended to improve councils' cross-border planning – will work compared to the existing Duty to Co-operate.** Clarity is vital to address councils' concerns that it may add to bureaucracy and duplicate existing processes without resolving problems where a council cannot meet its objectively assessed needs within its own boundaries.
- v. **SEEC asks Government to work with councils on transition to implement new policies once agreed, to avoid the unintended consequence of delaying existing progress on local plan development/delivery during a period of change.** This could include allowing a phased approach for any areas that need to accommodate higher levels of growth. There must also be full public consultation on the review of the National Planning Policy Framework (NPPF) and regulations by which Government proposes to deliver its proposed changes.

1.5 **More information on these key issues is set out below.** Member councils will also be responding to the consultation, reflecting local experience and issues.

2. Key issues/consultation questions

2.1 Proposed approach to calculating local housing need (consultation question 1)

2.1.1 The consultation sets out Government proposals for a new 'starting point' for local plan housing need discussions, which adjusts the current official ONS/DCLG population & household projections with an affordability factor. Based on initial SEEC analysis, the impact of Government's proposal (based on [DCLG data](#)) is to increase overall total housing need in the South East by around +5% (this is comparing the new DCLG assessment to current locally assessed needs eg. SHMAs). There are however considerable South East variations at individual local planning authority level, ranging from approximately +56% increase, to a -47% decrease, compared to current assessed needs. Government also proposes a 'cap' on their new needs calculations of '+40%' above a council's current plan levels (or ONS household projection, if no plan is in place).

2.1.2 SEEC members agree with the Government's *aim* to ensure enough homes are built nationally to meet needs. However concerns have been raised by some members about unexpected impacts of the new needs methodology on local areas in the South East, in two main respects:

- A number of urban areas seem to get housing need cuts, which several councils did not expect or welcome given existing needs and/or growth plans. Examples include Oxford

City, Shepway and Reading. Members recognise that Government says its figures would be a minimum, but councils are concerned about possible challenges from specific local interest-groups if they exceed them, which could delay delivery.

- A number of areas get housing need increases, where there are significant constraints and/or existing high levels of growth. Examples include Tonbridge & Malling, Aylesbury Vale and South Bucks.

2.1.3 Furthermore, the proposed methodology deals only with overall housing needs, and does not look specifically at the needs for social affordable housing. Local planning authorities will still be required to calculate needs for affordable housing locally, and Government proposals could have the unintended consequence of creating a potentially undeliverable mismatch between general needs and affordable needs, particularly where the proposed methodology appears to cut overall housing need. For example the number of affordable homes needed is already almost 60% of the overall housing needs within Reading (Berkshire Strategic Housing Market Assessment calculations). If this affordable housing number is compared to Reading's reduced-growth figure from the proposed new proposed methodology, it would rise to 66% of overall need, which will be extremely challenging to achieve.

2.1.4 SEEC asks Government to review its proposed approach to housing need calculations, to address concerns about unexpected results and potential unintended consequences arising from its proposed methodology. If not addressed, these could result in some parts of the South East having housing need reductions which could undermine their local growth plans, and others facing undeliverable or unrealistic increases. Factors suggested by members for Government to address in a review of the methodology include:

- **Consider the soundness and technical justification/basis for the affordability adjustment (ie. house price vs earnings ratios).** To better reflect 'real' affordability for local people, some members believe residence-based earnings would be more appropriate to use than the proposed workplace-based earnings; and lower rather than median quartile for house price/earnings ratios would better target affordability needs in some areas. Government must also ensure the methodology results in a deliverable balance of affordable and market homes that meets locally assessed needs.
- **Investigate more fully the impact of constraints in areas with existing high levels of growth and/or statutory environmental and other land use protection eg. Green Belt.** Whilst the consultation recognises these are constraints for some areas, it does not factor these into 'starting point' need figures, despite some parts of the South East for example having 94% protected land-area according to DCLG's own figures.
- **Further clarify that the proposed 40% 'cap' in housing need increases should not restrict areas which have locally-led plans to deliver higher levels of growth.**

Government should also clarify how its new standardised approach to the housing need 'starting point' will have the efficiency impacts it claims (eg. reducing Examination in Public conflict, and not just moving disagreements to another stage of the process), given there will still be a range of factors to consider and debate when locally-determining the 'right' level of growth for an area.

Furthermore, given the NPPF specifies that local plans should preferably plan for at least 15 years, the final methodology will need to clarify how the period after 2026 – which is when the consultation methodology currently ends – should be dealt with, to avoid time consuming and costly disagreement in examinations/appeals.

Examples of proposed new Objectively Assessed Need methodology impact in the South East

Reductions in addressed need: The Government's draft new housing needs figures suggest that **Shepway District Council** 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 DCLG's new need figure (490 homes pa) 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'. This should have been made clear in the consultation/supporting data from DCLG. 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.

Similarly, comparing its current and DCLG's proposed new needs assessments, **Oxford City Council** has seen its needs figures significantly reduce (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 existing affordable and market housing need in its area. They call for a common-sense check of the new methodology – which could approximately halve their current housing need figure – before the approach is finalised by Government.

Reading Borough Council 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.

Increases in assessed need: The Government's draft new housing needs figures suggest **Tonbridge and Malling Borough Council** would see a 23% increase on its annual needs figure (rising from 696 to 859 homes pa - an additional 160 pa). The council is concerned that whilst it already delivers well – for example exceeding its former South East Plan targets by some 30% - there is however a finite capacity for the development sector to deliver houses in the area at the same time as increasing build rates elsewhere, as well as constraints from the 77% statutory protected land/Green Belt in the borough.

Aylesbury Vale District Council would see a 55% increase above its latest assessed needs figures (rising from 965 to 1,499 homes pa - some additional 500+ pa), on which its current emerging growth plans are based. However it is concerned that the basis for Government's new figures may be flawed, and is keen to see Government review its approach to affordability adjustments and also check the basis for population growth which it believes is based on incorrect Census-based assumptions.

South Bucks District Council would see around a 28% increase above its latest assessed needs figures (rising from 335-340 to 432 homes pa – an additional 92-97pa), but has 87% protected land according to DCLG's own figures.

2.2 How to ensure homes are built-out more quickly (consultation question 19)

2.2.1 SEEC supports the Government's aim to see permitted homes built faster, and for house builders to deliver more homes more quickly to higher standards. Despite the South East's excellent track record in housing (in 2015-16 the South East saw England's highest number of additions to its housing stock at 34,900; London in 2nd place delivered 30,390), councils are currently unable to unlock thousands more homes that have been granted planning permission but not built by developers – at least a further 66,751 South East homes were unbuilt by March 2015. The number of unused planning permissions is growing and, in the South East, the number had risen by 12,000 since 2009-10, holding back local growth plans.

2.2.2 SEEC is pleased that the Government acknowledges the problem of unimplemented planning permissions and build-out times in this consultation and the Housing White Paper. We welcomed White Paper proposals for some modest tools to help councils tackle slow delivery via development schedules/review mechanisms, and increasing construction skills. However, as we set out in our White Paper response, further action is still needed to deliver the Government's aims of increasing housing supply – especially if the Government's new 'delivery duty'/housing test on councils is to be introduced. Unless councils gain more tangible powers to incentivise development, the housing delivery test could simply reward developers for delivering slowly by giving them more land.

2.2.3 SEEC would welcome action by Government to allow councils discretionary local powers to turn the growing number of unused planning permissions into homes, as set out in our '[Unlock the Housing Blockers](#)' report. These are vital if the Government's proposed Housing Delivery Test on councils, proposed in the White Paper, is to be deliverable. Actions include, for example:

- **Local discretionary powers to charge fees – such as council tax or CIL – or financial penalties on stalled developments which would allow councils to incentivise quicker delivery of finished homes.**
- **Councils to have more say on how skills funding is best used locally, which could help address much-needed construction sector capacity gaps.**

2.3 Funding infrastructure for homes, affordable housing and proposed approach to viability issues (consultation questions 12-15)

2.3.1 S106, CIL & viability issues - The consultation highlights the role of Section 106 and CIL contributions from developers. Whilst these contributions alone are not sufficient to fund all South East infrastructure needs, SEEC agrees they both make an important contribution to the costs of providing affordable housing and wider infrastructure to make new homes sustainable and more acceptable to local residents.

2.3.2 SEEC members have previously expressed concern that planning changes in recent years mean several types of development – such as small sites and starter homes – no longer contribute to these costs. We understand wider reforms of CIL/s106 contributions are still being considered by Government, which we hope will address these issues to ensure all sites contribute. In advance of wider reforms, Government proposes improving the viability assessment process to increase certainty and transparency, to address concerns that it delivers fewer contributions for infrastructure and affordable homes than required by local plans. Our members are interested in this, along with Government's proposals that where policy requirements have been tested for viability, they should not need testing again at planning application stage (unlike at present), and that councils should set out infrastructure requirements to deliver their plans.

2.3.3 Tackling viability issues is particularly important in the South East given generally high land values, and imprecise current NPPF guidance that viability assessment should take account of "competitive returns to a willing landowner and willing developer to enable the development to be deliverable" (NPPF para.173). Examples of challenges highlighted by SEEC members include some developers arguing that their benchmark land value overrides any considerations related to policy compliance; and whilst current viability tests by the Valuation Office ignore the price paid for the land, developers are still over-paying. The impact of both situations is to restrict/reduce much-needed funding for affordable housing. Members suggest there is a need to capture viability before the first sale for development, so the infrastructure contribution is assessed before the first valuation. They also highlight that viability testing at the local plan stage will only work where developers have yet to sign up to an option with a land value.

2.3.4 To ensure proposals to improve s106/CIL and viability are effective, SEEC asks Government:

- **To work closely with councils to ensure changes to viability testing unlock the 'true' levels of developer contributions available for infrastructure, rather than simply shifting discussions to an earlier stage of the planning process with no tangible benefit.** Viability assessments cover a large number of variables and if developers are no longer able to argue that their site should be considered differently to the norm as part of their planning application, it is likely that they will want to make individual cases as part of the local plan and to argue their case at examination. This could lead to lengthy and

expensive local plan examinations. Clear, consistent guidance at the national level – developed with local government – that defines the basis for calculations within viability assessments may assist the process. This could include the need to capture viability before the first sale for development, so the infrastructure contribution is assessed before the first valuation.

- **To work closely with councils to ensure the proposal for councils to set out infrastructure requirements to deliver their plans helps secure infrastructure funding and is deliverable without undue bureaucracy.**
- **To progress findings from the national independent review of CIL, and revisit rules on exempted sites and to allow councils to determine locally-appropriate developer contributions from all sites. This will help ensure all new developments contribute to affordable housing and infrastructure, helping South East authorities respond to local demands.**
- **We also ask Government to work with local government to explore the potential for funding infrastructure through ‘planning gain’, ensuring more of the uplift in land value from granting planning permission is put back into vital infrastructure funding to support growth.**

2.3.5 Wider infrastructure and affordable homes funding – Whilst changes to s106/CIL and existing/recent initiatives such as the Government’s national £2.3bn Housing Infrastructure Fund and New Homes Bonus are welcome and important, SEEC members are concerned that these alone will be insufficient to meet the infrastructure funding gap identified at some £15.4bn for the South East by 2030. SEEC wants to work together with Government to find solutions, including innovative funding mechanisms that leverage investment. South East local authorities appreciate they have some responsibility for contributing towards local infrastructure investment that will support housing and economic growth, but they need greater funding freedoms to be able to do more.

2.3.6 SEEC calls on Government to allow councils access to a guaranteed share of the following, which would help release funds to help councils contribute to essential local infrastructure that will open up new housing sites and support sustainable communities:

- **Business rates - While there is interest in the 100% retention pilots, the current system means that many South East authorities would retain only a small proportion of what they collect. This is despite the South East generating the second highest level of business rates in the UK. We want to see progress on Government’s commitment to reform this flawed system where tariffs and top ups mean that many South East authorities keep only a small percentage of the income they generate. SEEC members want to see a new system that gives clear financial rewards for areas that deliver growth, without adding new statutory spending duties. This will allow them to invest directly or borrow against future income to fund infrastructure.**
- **Stamp duty - Local authority access to a share of stamp duty (eg. first time sale of new homes) would allow councils to play a greater role in funding local infrastructure that supports housing growth and the needs of existing residents.**
- **Council tax - The ability for councils to keep a guaranteed percentage of council tax growth would give certainty over future investments in essential infrastructure and services needed to support a growing number of homes and their residents.**

2.3.7 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 would allow councils to build more affordable homes themselves.**

- **Reviewing Right to Buy (RtB) to enable local authorities to sustain stocks of affordable homes by ensuring retained funding is adequate to deliver 1 for 1 replacement. 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. We want an open dialogue with Government to inform how they can support and encourage these types of delivery vehicles.**

2.4 New 'statement of common ground' (consultation questions 7-8)

2.4.1 The consultation includes Government proposals that all councils with a planning function will need to produce new Statements of Common Ground, which Government suggests will enhance Duty to Co-operate. These would be expected to set out cross-boundary issues (including housing need), distribution and proposals to meet any shortfall, and governance – and indicate where agreement is reached/not reached. There are concerns that a lengthy process may still not resolve problem areas – for example where a council and its near neighbours do not have combined capacity to deliver assessed need for homes. Government proposes that all councils will have to produce a draft within 6 months of the new NPPF (ie. in 2018) and finalise it within 12 months.

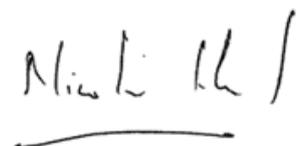
2.4.2 **Given the short timeframe proposed, SEEC asks Government for further clarity about how the Statement of Common Ground (SCG) will work in practice and the relationship with Duty to Co-operate (DTC). Some members have indicated DTC was vague and therefore difficult to introduce, and Government needs to avoid the same problem with SCG. It will be important that any new burdens arising from the SCG are adequately funded by Government.**

2.5 Transition (consultation question 6)

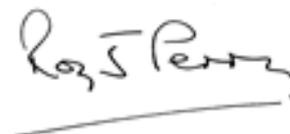
2.5.1 Effective transition to any new policy approaches arising from this consultation is vital for South East councils, to ensure changes do not have the unintended consequence of delaying local plan development/delivery, which Ministers have been clear is a priority.

2.5.2 **Government should work with councils to ensure transition to new proposals is workable and does not undermine current delivery. This includes allowing a phased approach for any areas who may find they need to accommodate higher levels of housing growth as a result of Government's changes (eg. allowing increases in housing numbers to be stepped up over a period of years). Government should also ensure there is full consultation on the review of the National Planning Policy Framework (NPPF) and regulations by which Government proposes to deliver its proposed changes, ensuring the NPPF is consistent with final agreed proposals arising from this current consultation. Final agreed proposals should be progressed swiftly after consultation, to give certainty to all moving forward. Government must also ensure consistency in how the Planning Inspectorate applies new emerging/final national policy in assessing local plans.**

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