



## **CONSULTATION RESPONSE BY UKELA (UK ENVIRONMENTAL LAW ASSOCIATION) TO THE WHITE PAPER: PLANNING FOR THE FUTURE**

1. UKELA (UK Environmental Law Association) comprises approximately 1,400 academics, barristers, solicitors and consultants, in both the public and private sectors, involved in the practice, study and formulation of environmental law. Its primary purpose is to make better law for the environment.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response to the *White Paper: Planning for the Future* (MHCLG, Aug 2020) (the White Paper) has been prepared primarily by the Planning and Sustainable Development Working Party but with input from UKELA's Governance and Devolution Group (GDG) which includes representatives from each of its working parties. These submissions do not necessarily, and are not intended to, represent the views and opinions of all UKELA members but have been drawn together from a range of its members. In this context it is important to note that many of the questions (e.g. questions 2 and 4 on planning in local areas) are not applicable to UKELA as a UK-wide organisation. Page and paragraph references are to the White Paper unless otherwise stated.

### **INTRODUCTION**

3. UKELA welcomes the recognition (at para. 1.1 ) that the planning system has an important role to play “in combating climate change; improving biodiversity; supporting sustainable growth”, and the promise (at para. 1.27) that “for our children and grandchildren, our reforms will leave an inheritance of environmental improvement.”

4. This also accords with the government's ambitions as set out in the 25 Year Environment Plan<sup>1</sup> (the 25 Year Plan), in which the then Prime Minister, Theresa May, stated: "We hold our natural environment in trust for the next generation. By implementing the measures in this ambitious plan, ours can become the first generation to leave that environment in a better state than we found it and pass on to the next generation a natural environment protected and enhanced for the future."
5. UKELA welcomes the impulse to reform a planning system that can be overly complex, unsustainable and undemocratic in operation. However we believe that any reform must be mindful of the goals set out in the 25 Year Plan. Furthermore, the quest for radical change must not obscure the need to retain and support those parts of the current system that work well. There are measures, checks and processes which have been proven to ensure that development does not cause unsustainable environmental damage. To extend the analogy adopted by Prime Minister Boris Johnson in the foreword, it would be a mistake to blow up the entire village in a rush to demolish an old shed.
6. UKELA welcomes change to the planning system which facilitates a more efficient and sustainable approach to development and that delivers better quality affordable housing. However, it is our concern that the attempt to frontload almost the entirety of the planning decision making process into the Local Plan is highly unlikely to create either efficient development or genuinely secure sustainable development. The quality of decision making is also at risk from the requirement that all data, assessment and consultation, be concluded in advance and in less than three years. Furthermore, the system is likely to stymie future decision making by burdening it with too many set factors and imposing unnecessary complexity and rigidity prior to allowing any development coming forward.
7. Finally, it is also of grave concern to UKELA that the current proposals appear to reduce significantly and potentially exclude any meaningful and comprehensive assessment of environmental impacts and effects, either of the new Local Plans or of those individual developments that will come forward within them. UKELA is concerned that this will not only undermine any meaningful consultation in the planning process, but also undermine the quality of the decisions taken, with severe consequences for places, people and the environment.

---

<sup>1</sup> *A Green Future: Our 25 Year Plan to Improve the Environment*, (HM Government, Jan 2018)

8. Section 1 of the 25 Year Plan stated: “We want to put the environment at the heart of planning and development to create better places for people to live and work.” This is welcome, however it is UKELA’s position that significant changes are required to the proposals set out in the White Paper if the government’s own stated goal is to be achieved.
  
9. As a further preliminary point, UKELA is concerned that the proposals planned in the White Paper for England risk increased divergence between the land use planning regimes throughout the UK. It is acknowledged that the systems in each country are already distinct and operate to a degree of autonomy, however the proposals are likely to create more radical differences, the consequence of which is difficult to predict. UKELA suggests that a more democratic approach to any planning reform would be to use 2021 to undertake a collaborate review of the four land use planning systems currently in operation across the nations. This could include analysis of what aspects of those particular systems are working well, which could then form the basis for any subsequent reforms.

## **PILLAR 1: PLANNING FOR DEVELOPMENT**

### **Q1. What three words do you associate most with the planning system in England?**

10. UKELA is unclear why this question has been asked. No comment.

### **Q2. Do you get involved with planning decisions in your local area?**

11. This question is not applicable to UKELA which is a UK wide organisation.

#### **Q2(a). If no, why not?**

12. N/A

**Q3. Our proposals will make it much easier to access plans and contribute your views to planning decisions. How would you like to find out about plans and planning proposals in the future?**

13. It is not clear from the White Paper that the government's proposals will make it easier to access plans and contribute views to planning decisions. It is UKELA's concern that the reverse is the more likely outcome.
14. UKELA recognises and supports the aim to increase digital access to plans and planning information. However, our review of the White Paper indicates that the changes as a whole are likely to reduce opportunity for the public to contribute to both planning decisions and the content of local plans in the future. This is particularly significant as the proposals largely remove any ability to comment on individual developments, especially in areas zoned as 'Growth'.
15. In terms of the specific question about finding out about plans and proposal in the future, UKELA does not tend to comment on individual plans and planning proposals.

**Q4. What are your top three priorities for planning in your local area?**

16. As indicated in reply to Q3, UKELA does not comment on land use planning in any given local area.

**Proposal 1: The role of land use plans should be simplified.**

**Q5. Do you agree that Local Plans should be simplified in line with our proposals?**

General points

17. UKELA does not agree that the Local Plans should be simplified in line with the proposals. While a degree of simplification and clarity in the Local Plan could be of

value, UKELA considers the rigid zoning of the entire country into three categories of development (or development control) is likely to have an extremely detrimental impact on the flexibility of the planning system and its ability to respond either to environmental, social and economic change, or to take into account the unique circumstances of individual sites.

18. The current proposals fail to provide clarity on what development would be considered acceptable. It is also of concern that there is no evidence that these decisions would be informed by the principles of sustainable development (as this concept is understood by the scientific community). In addition, it is nowhere made clear how the proposals will take into account cross-zonal issues such as infrastructure, air quality or biodiversity concerns such as migration patterns for fauna.
19. Given the primacy of the new Local Plan in all future planning decisions, meaningful consultation on the Local Plan will be vital. There is no indication as to what weight (if any) will be given to stakeholder responses (statutory, charity, local community, commercial) in forming the Local Plan. Nor is there any indication as to what weight will be given to any stakeholders 'heard' as a part of the final determination as to whether the Local Plan constitutes or more properly contributes towards 'sustainable development'.
20. Without any indication that the views of consultees are to be given any material weight, the significance of any alleged engagement risks amounting to little more than a marketing exercise, and an opportunity to ensure that the best planning decisions are taken will have been lost. Furthermore, such an approach is also unlikely to comply with the government's commitments and obligations under the Rio Declaration 1992 and Aarhus Convention 1998.

#### Environmental assessment if permission is granted on the adoption of a Local Plan

21. In the light of the proposal to abolish Sustainability Appraisals during the development of the Local Plan and in the absence of an application for outline planning permission, UKELA is unclear how environmental impacts and effects will be screened, scoped and assessed for any specific scheme coming forward in a Growth Area.

22. For this reason, the proposal for assessment to only take place at the Local Plan creation stage is strongly resisted by UKELA. It is axiomatic that a Local Plan that is simply a division into three zones and a collection of accompanying technical specification documents, cannot have full knowledge of the detail of all future development.
23. Furthermore, any judgement of 'sustainability' at the Local Plan stage will be necessarily premature and meaningless without further assessment of individual developments. This is especially so given that the Growth area developments are specified as being large-scale.

### Zoning

24. UKELA accepts there may be a role for 'automatic' planning permission for certain development. However, this should be in specific and restricted scenarios only. All other areas of land should continue to be identified for different forms of development in ways determined properly by the local planning authority (LPA) taking into account policy in the National Planning Policy Framework 2019 (NPPF 2019), as well as the views of the community it serves, and be subject to the existing development management process which tests it.
25. Any rigid "planning zone" approach must not be at the expense of reflecting the existing and potential local character and individuality of place, nor compromise existing levels of environmental protection and enhancement.
26. It is also important to recognise that impacts (such as bird migration or flooding) cannot be neatly demarcated into zones. The discretion within the current planning system, along with legislation such as the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 SI No. 407 recognises that the environment is necessarily cross-boundary and such a rigid approach cannot ensure its protection. UKELA is concerned that the current proposals eradicate such necessary flexibility.
27. The White Paper is also unclear what level of environmental protection is going to be considered acceptable for the different zones. UKELA considers that further detail on this aspect of the proposal is necessary, as no zone must allow for an unacceptable level of environmental degradation.

### Status of Environmental Net Gain

28. It is unclear to UKELA how the regime proposed by the White Paper is intended to work alongside the provisions being introduced by the Environment Bill (2019-2021) including e.g. the new 'biodiversity gain' provisions at clauses 90 and 91 (Net Gain).
29. UKELA understands the proposed reforms to mean that an outline planning permission would be conferred by the adoption of the local plan for Growth Areas. There would therefore be no need to submit a further planning application for outline permission. To obtain full planning permission, further details would need to be agreed as to how the issues which remain outstanding should be brought forward and assessed, such as by way of a reformed reserved matters process. It is presumed that this would be where the Net Gain planning condition introduced by the Environment Bill might be applied, however it is important that any legislation emerging as a result of the White Paper fully integrates the obligations set out here.
30. The importance of the biodiversity net gain regime has been recognised by the government in the 25 Year Plan, where the then Secretary of State, Michael Gove stated in the introduction that: "[...] we will ensure that we support development and the environment by embedding the principle that new development should result in net environmental gain – with neglected or degraded land returned to health and habitats for wildlife restored or created."
31. This is reiterated in Section 1 of the 25 Year Plan which includes in the section: *Actions we will take*: "1. Embedding an 'environmental net gain' principle for development including housing and infrastructure.
32. It is vital that these principles of environmental net gain are embedded in the new planning regime, but it is our view that the proposals do not demonstrate this will be the case.

### **Proposal 2: Development management policies established at national scale and an altered role for Local Plans**

**6. Do you agree with our proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally?**

33. While UKELA recognises that Local Plans can be voluminous, we do not accept the proposal to restrict planning policies in the Local Plan to data: it is not the case that relevant policy is wholly quantitative. It is our concern that the purpose of this restriction (of policy to data) appears to be driven by an aim of: “automatically screen developments and help identify where they align with policies and/or codes [...] enabling automation of more binary considerations.” (para. 2.15); rather than the aim of making the best possible planning decisions.
34. Thus, UKELA does not agree with an attempt to drive the planning process towards decision by algorithm, not simply because such technology is unproven and the data insufficient (although both these are likely to be true), but because land use planning decisions are fundamentally not quantitative decisions but require qualitative judgements and assessments as to weight. Whilst digital tools are helpful, they cannot replace human discretion. UKELA does not support a trajectory towards automated planning decisions as it is not accepted that all matters of material importance can be evaluated by such a system. The quality of planning decisions is therefore highly unlikely to be improved by this proposal.
35. It is UKELA’s position that the alternative option proposed by the White Paper is the correct approach. Local Plan policies should be limited to those not duplicating the NPPF (2019), with some reduction in the raft of extra explanatory material which does not at present regularly form part of the policy considered by LPAs as a part of their planning decisions.

**Proposal 3: Local Plans should be subject to a single statutory “sustainable development” test, replacing the existing tests of soundness**

**Q7(a). Do you agree with our proposals to replace existing legal and policy tests for Local Plans with a consolidated test of “sustainable development”, which would include consideration of environmental impact?**

36. UKELA does not recognise the description and criticisms of the environmental impact regime as inherently problematic (or at all), either in the form of strategic environmental assessment (SEA) or environmental impact assessment (EIA).
37. Paragraph 1.16 states that; “Local Plans should be subject to a single statutory “sustainable development” test, and unnecessary assessments and requirements that cause delay and challenge in the current system should be abolished [...]”
38. UKELA is unclear what is being proposed in para 1.16 which is itself of concern. However, in the absence of evidence to the contrary, it appears to be the White Paper’s intention to remove the need to conduct a formal SEA or EIA of either the Local Plan or individual developments. Instead this regime will be replaced by a single consideration of whether the Local Plan complies with a new legislative definition of ‘Sustainable Development’. UKELA strongly resists such an approach, as it is likely to have grave consequences in terms of the quality of environmental decision making.

#### Value of Environmental Impact Assessment

39. When undertaken properly, EIA is a necessary and helpful process for developers and decision makers to come to an understanding of the full spectrum of impacts which a development (or collection of developments) will have upon the environment. If the intention is to retain environmental assessment in the planning system, UKELA is unclear as to when or whether these will be required by a developer (at the reserved matter stage, or only at the assessment of sustainability of the Local Plan).
40. In the absence of clarity on this point, it appears the planning system will be left without meaningful environmental assessment at any stage. Without genuine environmental assessment, developments risk significant unforeseen adverse environmental impacts. These can make the developments not only unsustainable, but also uninhabitable (e.g. if flood risk is not properly assessed).

#### Value of Strategic Environmental Assessment

41. Where EIA deals with specific developments, SEA is central to the making of good quality plans. These assessments are designed to support decision-making by identifying, characterising and evaluating the likely significant effect of the plan on the

environment and determining how adverse effects may be mitigated or where beneficial effects may be enhanced.

42. If Local Plans are effectively going to operate to grant a series of outline planning permissions (with extremely limited scope for additional EIA at the reserved matters stage) a comprehensive SEA will be fundamental to their success.
43. If, however, the proposals intend to entirely remove the need for SEA, then this is a matter of deep concern to UKELA, as there will be no meaningful assessment of the environmental impacts of the new Local Plans. This will result in decisions which are likely to severely damage both the environment and heritage assets, as well as risking the exacerbation of a range of existing problems (from food security, through to climate change and flooding) all for lack of an informed decision-making process.

#### Sustainable Development

44. UKELA notes that neither a definition of sustainable development, nor a methodology for settling on such a definition is indicated anywhere in the White Paper. This is particular concern given the centrality that this definition will play in the approval of any Local Plan. The only indication in the White Paper as to what form this definition will take is in para 2.7, which states that Local Plans should be: “assessed against a single statutory “sustainable development” test to ensure plans strike the right balance between environmental, social and economic objectives.”
45. UKELA considers this proposal concerning in three respects.
  - 1) its lack of clarity makes it difficult to comment on something which appears to be the lynchpin to approving Local Plans;
  - 2) there is no indication as to how the ‘right’ balance between environmental, social and economic objectives will be determined. It is UKELA’s view that a definition of sustainable development which considered the ‘right’ balance to be one that places significantly greater weight on economic objectives over environmental, would be highly unlikely to result in the accepted definition of sustainable development.

- 3) this approach misrepresents and misunderstands the scientific consensus on what sustainable development actually means, something that presents a problem with the current planning regime.

### Understanding sustainable development

46. The NPPF 2019 acknowledges the societal role that sustainable development plays by reference to UN General Assembly Resolution 42/187<sup>2</sup>; something that is developed in the report: *Our Common Future* (WCED, 1987)<sup>3</sup>.
47. This is consistent with the description at paragraph 7 of the NPPF 2019 that provides:
- “The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.”
48. As a concept, sustainable development focuses on present needs (with emphasis on the world’s poor) and the notion of limits set by social organisation and environmental limits. This approach is alluded to in the NPPF 2019 at paragraph 8 and 11, but the document then shifts from the original definition towards an unnecessarily myopic focus on buildings and physical structures (e.g. is this building ‘sustainable?’). UKELA considers this problematic, as the use of ‘sustainable development’ to refer to physical form and structures frequently results in bad decision-making e.g. the existence of a bus stop in a proposed housing development is considered to amount to ‘sustainability’, but fails to consider whether the bus stop will be used in a manner that results in any material change in (for example) CO<sub>2</sub> emissions.

---

<sup>2</sup> “The General Assembly, Concerned about the accelerating deterioration of the human environment and natural resources and the consequences of that deterioration for economic and social development, Believing that sustainable development, which implies meeting the needs of the present without compromising the ability of future generations to meet their own needs, should become a central guiding principle of the United Nations, ...

1. Welcomes the report of the World Commission on Environment and Development entitled "Our Common Future"; ...

4. Agrees further that an equitable sharing of the environmental costs and benefits of economic development between and within countries and between present and future generations is a key to achieving sustainable development; ...

7. Calls upon all Governments to ask their central and sectoral economic agencies to ensure that their policies, programmes and budgets encourage sustainable development and to strengthen the role of their environmental and natural resource agencies in advising and assisting central and sectoral agencies in that task; ...”

<sup>3</sup> “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- the concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given; an
- the idea of limitations imposed by the state of technology and social organization the environment’s ability to meet present and future needs.”

49. Until planning policy integrates the notion of sustainable development as a societal concept rather than linking its application to simplistic notions of physical development of land and buildings then UKELA considers any attempt to meet critical environmental concerns including air pollution, biodiversity loss and climate change will fail.

**Q7(b). How could strategic, cross-boundary issues be best planned for in the absence of a formal Duty to Cooperate?**

50. UKELA is unclear how cross-boundary issues in this context is consistent with the zoning approach. More clarity is sought before any comment can be made on this.

**Proposal 4: A standard method for establishing housing requirement figures which ensures enough land is released in the areas where affordability is worst, to stop land supply being a barrier to enough homes being built. The housing requirement would factor in land constraints and opportunities to more effectively use land, including through densification where appropriate, to ensure that the land is identified in the most appropriate areas and housing targets are met.**

**8(a). Do you agree that a standard method for establishing housing requirements (that takes into account constraints) should be introduced?**

51. UKELA does not consider it clear from the details provided how sustainability and environmental protection will be taken into account (e.g. through strategic assessment) under the proposed method. Nor is it clear how environmental impact will be weighted against any final figure settled upon by a LPA. In the absence of any indication that this will take place. It is UKELA's view that it is in fact unlikely that it will be subject to meaningful consideration, thus making potentially significant and damaging environmental impacts more likely.
52. UKELA notes the 25 Year Plan, which provides that: "We will seek to embed a 'net environmental gain' principle for development to deliver environmental improvements locally and nationally. This will enable housing development without increasing

overall burdens on developers." However, there is no indication that this approach has been integrated into the operation of the Standard Method.

53. UKELA also notes that such a prescriptive and top-down approach is likely to have a severe impact on local level democracy, forcing potentially unsustainable housing levels on local areas.
54. Finally UKELA highlights the importance of recognising that the land use planning system is not solely responsible for England lacking enough homes in the right places. Many other factors are likely to influence the deficiency of suitable, high-quality and sustainable homes, including the systemic failure of landowners and house builders to implement planning permissions that have been granted<sup>4</sup>.

It is UKELA's position that any reform of the land use planning system be progressed alongside other societal reforms. Paragraph 1.29 of the White Paper recognises that: "[...] fixing the planning system alone will not be enough – it will require a collective effort between Government, communities, businesses and developers over the long-term [...]". Addressing these wider issues will also be crucial, otherwise the reforms proposed here are likely to fail in their stated goal of significantly increasing housing development, regardless of the methodology adopted.

**Q8(b). Do you agree that affordability and the extent of existing urban areas are appropriate indicators of the quantity of development to be accommodated?**

55. Whilst UKELA does not comment on the appropriateness of affordability and the extent of existing areas as appropriate indicators, the absence of environmental impact as an indicator of the quantity of development is of concern for the reasons set out in 8(a), above.

**Proposal 5: Areas identified as Growth areas (suitable for substantial development) would automatically be granted outline planning permission for the principle of**

---

<sup>4</sup> See e.g. according to the Times (27.2.2020) Taylor Wimpey has the largest land bank of any listed housebuilder, with about 140,000 plots, of which 76,000 have some form of planning consent and about 36,800 have implementable consent and are being developed [full article behind firewall]

**development, while automatic approvals would also be available for pre-established development types in other areas suitable for building.**

**Q9(a). Do you agree that there should be automatic outline permission for areas for substantial development (Growth areas) with faster routes for detailed consent?**

56. UKELA strongly resists the suggestion that outline permission should be granted for Growth Areas, at least in the manner currently proposed in the White Paper. However, without further information it is impossible to evaluate the form, and therefore the impact that such outline permission would take.
57. UKELA also notes that no indication is given as to the size of these 'Growth Areas'. If the intention is for these zones to cover only small areas (in the fashion of simplified planning zones or enterprise zones) then UKELA recognises the potential for some limited application of the concept. However, we would also question the need for such radical reform when our current planning system already contains the tools necessary to achieve these goals.
58. If, however, the intention is that the majority of the country is intended to be designated as Growth or Renewal, then it is UKELA's position that the concept is likely to have significant environmental impacts. This is a matter of acute concern given that there is no mechanism for these to be properly evaluated or weighted under the new system.

**Q9(b). Do you agree with our proposals above for the consent arrangements for Renewal and Protected areas?**

59. See comment 9(a) above

**Q9(c). Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime?**

60. It is not possible to comment in full on this matter, without significantly more detail. However, UKELA would resist the use of Nationally Significant Infrastructure Projects (NSIPs) as a mechanism for bringing forward large scale development (urban extensions and new settlements) in such a way that would limit scope for community engagement and local democracy. This would remain a particular concern as long as NSIPs are excluded from the biodiversity net gain system, as they are at present.

**Proposal 6: Decision-making should be faster and more certain, with firm deadlines, and make greater use of digital technology**

**Q10. Do you agree with our proposals to make decision-making faster and more certain?**

61. See response to Q6 above.
62. Meaningful consultation is essential in the interest of robust and high quality decision-making and UKELA is concerned by the stated intention to: “streamline [remove] the opportunity for consultation at the planning application stage, because this adds delay to the process [...]” (para. 1.18). UKELA does not accept that consultation at the planning application stage adds unnecessary delay. Rather it is the only opportunity most people have to comment on planning decisions in their area. This process can also present new material considerations for decision makers, potentially leading to better decisions. UKELA therefore strongly resists its removal.

Consultation on the Local Plan

63. It is clear from the White Paper that the only opportunity for consultation will be at the formulation of the new Local Plan. Given the centrality of the Local Plan to land use planning decisions, it is vital that they are meaningfully consulted on, if they are to be compliant with Principle 10 of the Rio Convention 1992 and the Aarhus Convention 1998 (e.g. right to environmental information and consultation). However, it is unclear to UKELA that this will be the case.

Engagement vs consultation

64. UKELA notes a concerning distinction between references to 'engagement' and 'consultation' in the White Paper.
65. The White Paper contains multiple references to engagement, for example stating that Local plans will benefit from "a radically and profoundly re-invented engagement with local communities so that more democracy takes place effectively at the plan-making stage." (para. 1.16)
66. Paragraph 1.17 also states that "Our reforms will democratise the planning process by putting a new emphasis on engagement at the plan-making stage."
67. However, there is no indication as to what weight will be given to local people's opinions, or those of other statutory and non-statutory bodies. This is of particular concern to UKELA given the repeated use of 'engagement' rather than the more widely recognised 'consultation'.
68. In fact, the only reference to consultation (in relation to the proposed planning system) comes at paragraph 1.18, which relates to the design guidance and states: "Expect [sic] design guidance and codes [...] to be based on genuine community involvement rather than meaningless consultation, so that local residents have a genuine say in the design of new development [...]"
69. If these documents, which effectively operate to grant details of reserved matter permission, are the only point at which local people are consulted, UKELA do not consider this adequate.

**Proposal 7: Local Plans should be visual and map-based, standardised, based on the latest digital technology, and supported by a new template.**

**Q11. Do you agree with our proposals for accessible, web-based Local Plans?**

70. UKELA would welcome a genuine improvement of accessibility to up to date environmental information. However, the value of any interactive, map-based Local Plans will only be as good as the data on which they are based.

71. UKELA again notes the intention to limit the text-based component of plans to spatially-specific matters. This is of concern, as UKELA does not accept that a fully comprehensive and robust planning decision can be reduced to the analysis of data points collated prior to the Local Plan publication. As stated elsewhere, it is UKELA's view that there is and will remain a place for text based planning policies if sustainable planning decisions are to be made.

**Proposal 8: Local authorities and the Planning Inspectorate will be required through legislation to meet a statutory timetable for key stages of the process, and we will consider what sanctions there would be for those who fail to do so.**

**Q12. Do you agree with our proposals for a 30 month statutory timescale for the production of Local Plans?**

72. UKELA does not accept that if Local Plans are to become the central crux of the entire planning system, these can be fully researched and completed within 30 months. It is UKELA's view that this represents an unrealistically short timeframe, risks an inadequately robust Local Plan and is likely to see the prioritising of speed over all other outcomes, with a quality of subsequent decision making that reflects this.

**Proposal 9: Neighbourhood Plans should be retained as an important means of community input, and we will support communities to make better use of digital tools.**

**Q13(a). Do you agree that Neighbourhood Plans should be retained in the reformed planning system?**

73. Yes. UKELA believes that there is a role for Neighbourhood Plans, provided that they remain an effective mechanism for community involvement in land use planning.

**Q13(b). How can the neighbourhood planning process be developed to meet our objectives, such as in the use of digital tools and reflecting community preferences about design?**

74. UKELA does not propose to comment.

**Proposal 10: A stronger emphasis on build out through planning**

**Q14. Do you agree there should be a stronger emphasis on the build out of developments? And if so, what further measures would you support?**

75. UKELA does not propose to comment.

**Pillar 2: planning for beautiful and sustainable places**

**Q15. What do you think about the design of new development that has happened recently in your area?**

76. UKELA is unsure why this question is being asked.

**Q16. Sustainability is at the heart of our proposals. What is your priority for sustainability in your area?**

77. UKELA is encouraged to note that sustainability is at the heart of the proposals. However, to be meaningful, the definition of sustainability adopted has to recognise environmental limits. The consultation is incorrect to assume that the notion of sustainability is widely understood. Reference is made to the response to Q7(a).

78. On the specific question of sustainability in your area, UKELA does not comment on local area planning issues.

**Proposal 11: To make design expectations more visual and predictable, we will expect design guidance and codes to be prepared locally with community involvement, and ensure that codes are more binding on decisions about development.**

**Q17. Do you agree with our proposals for improving the production and use of design guides and codes?**

79. UKELA does not propose to comment.

**Proposal 12: To support the transition to a planning system which is more visual and rooted in local preferences and character, we will set up a body to support the delivery of provably locally-popular design codes, and propose that each authority should have a chief officer for design and place-making.**

**Q18. Do you agree that we should establish a new body to support design coding and building better places, and that each authority should have a chief officer for design and place-making?**

80. UKELA does not propose to comment.

**Proposal 13: To further embed national leadership on delivering better places, we will consider how Homes England's strategic objectives can give greater emphasis to delivering beautiful places.**

**Q19. Do you agree with our proposal to consider how design might be given greater emphasis in the strategic objectives for Homes England?**

81. UKELA does not propose to comment.

**Proposal 14: We intend to introduce a fast-track for beauty through changes to national policy and legislation, to incentivise and accelerate high quality development which reflects local character and preferences.**

**Q20. Do you agree with our proposals for implementing a fast-track for beauty?**

82. UKELA welcomes a focus on good design, but cautions against the ambition to achieve these proposed new codes within thirty months. It is paramount that if these are done they are done robustly and well, given the importance they will have in determining future development.
83. It also remains unclear to UKELA how any robust environmental assessment will be applied to such "fast-tracked" developments (if at all), or how those environmental protections provided by the current environmental assessment regime will be retained. It is also unclear whether these national and local design codes will be capable of adequately addressing local and site-specific environmental considerations.

### **Effective stewardship and enhancement of our natural and historic environment**

84. UKELA welcomes the commitment to make all streets tree-lined, provided those trees planted are properly managed over the long-term.
85. UKELA also welcomes the White Paper's recognition that, in line with the 25 Year Environment Plan, the planning system will play a proactive role in promoting environmental recovery and long-term sustainability. UKELA also welcomes the recognition by the White Paper that the planning system must "play a strong part in our efforts to mitigate and adapt to climate change and reduce pollution as well as making our towns and cities more liveable through enabling more and better green spaces and tree cover" (para 3.2.3).
86. Likewise, UKELA welcomes the White Paper's stated intention that the ability to maximise walking, cycling and public transport opportunities will be an important consideration. However, we are concerned that no indication has been given as to how this will operate in practice, especially within the new system of zones.

87. UKELA is also concerned that the government's proposals do not safeguard the planning system's role in promoting environmental recovery and long-term sustainability, and may in fact serve to undermine other legislative efforts to this end. For example, it is not at all clear to UKELA how the provisions in the Environment Bill ( e.g., mandatory net gains for biodiversity as a condition of most new development and Local Nature Recovery Strategies) will align with the White Paper. UKELA also notes that there is no proposal to link the government's long term targets for air quality, water, biodiversity and waste to the planning system, all of which will have an important role in the delivery of sustainable development.
88. As the proposals stand, UKELA has not seen adequate evidence that these are equipped with the necessary tools to provide anything close to effective environmental stewardship, let alone enhance the natural and historic environment.

**Proposal 15: We intend to amend the National Planning Policy Framework to ensure that it targets those areas where a reformed planning system can most effectively play a role in mitigating and adapting to climate change and maximising environmental benefits.**

**Proposal 16: We intend to design a quicker, simpler framework for assessing environmental impacts and enhancement opportunities that speeds up the process while protecting and enhancing the most valuable and important habitats and species in England.**

89. Reference is made to the answer to Q7(a) above. UKELA welcomes the recognition in the White Paper that it is: "vital that environmental considerations are considered properly as part of the planning and development process" (para 3.2.7).
90. However, we are concerned that the proposed reforms do not demonstrate how environmental impacts will be meaningfully assessed (if at all). Without proper environmental impact assessment, the proposals are significantly more likely to reduce protection and damage the most valuable and important habitats and species in England.

91. UKELA is also concerned by the absence of detail on how the proposed new assessment regime will enable compliance with our international obligations.

Speed and simplicity

92. UKELA recognises that simplification can be helpful (where, for example long reports hinder transparency). However, any simplification must not turn into a dilution of the environmental protection afforded by the existing legal framework. If lowering costs and increasing speed results in a sub-standard outcome, this does not represent an efficiency gain.

Use of data

93. UKELA welcomes the use of more data. However, as stated elsewhere, the value of this will depend on its quality. Faster timescales should not be imposed at the expense of gathering the information necessary to make a valid assessment. This is true of the Local Plan process as proposed, and also of any assessment of environmental impacts within it. Furthermore, the environment is, by definition, subject to change and there will be occasions when site assessments are required after the finalisation of the Local Plan. The new regime must not exclude this possibility.

Choice of species to protect

94. UKELA is concerned by the statement in the White Paper that: “Outside of [sic] the European Union, it is also important that we take the opportunity to strengthen protections that make the biggest difference to species, habitats and ecosystems of national importance, and **that matter the most to local communities.**” (para 3.27) (emphasis added)
95. UKELA strongly resists any attempt to replace science-led conservation and habitat protection with alternative methodologies.

**Proposal 17: Conserving and enhancing our historic buildings and areas in the 21st century**

96. UKELA has no comment on this Proposal.

**Proposal 18: To complement our planning reforms, we will facilitate ambitious improvements in the energy efficiency standards for buildings to help deliver our world-leading commitment to net-zero by 2050.**

97. The White Paper states that from 2025, the government expects new homes to produce 75-80% lower CO<sub>2</sub> emissions compared to current levels and that new homes will be what is described as 'zero carbon ready' (para. 3.32). As there is minimal information about how this will be achieved in the White Paper, UKELA awaits further details of how this is to be achieved in the relevant design codes.

98. UKELA notes, however, that net-zero emissions cannot be achieved simply through efficiency drives, but require a range of additional measures, taking into account long-term infrastructure (especially energy and transport), as well as building environmental resilience and carbon sinks in the form of tree planting. It is UKELA's position that such matters cannot be adequately addressed at the design code stage, but will need to be integrated at the Local Plan stage if they are to have a meaningful impact.

99. However, for the reasons set out above, UKELA does not see evidence that this will be achieved by the reforms proposed. A world-leading commitment to net-zero will require a more integrated approach, both at the Local Plan stage and within the planning system as a whole.

**Pillar 3: planning for infrastructure and connected places**

**Q21. When new development happens in your area, what is your priority for what comes with it?**

100. UKELA has no comment on this question.

**Proposal 19: The Community Infrastructure Levy reformed to be charged as a fixed proportion of the development value above a threshold, with a mandatory nationally-set rate or rates and the current system of planning obligations abolished.**

**Q22(a). Should the government replace the Community Infrastructure Levy and Section 106 planning obligations with a new consolidated Infrastructure Levy, which is charged as a fixed proportion of development value above a set threshold?**

101. UKELA has no comment on this question.

**Q22(b). Should the Infrastructure Levy rates be set nationally at a single rate, set nationally at an area-specific rate, or set locally?**

102. UKELA has no comment on this question.

**Q22(c). Should the Infrastructure Levy aim to capture the same amount of value overall, or more value, to support greater investment in infrastructure, affordable housing and local communities?**

103. UKELA has no comment on this question.

**Q22(d). Should we allow local authorities to borrow against the Infrastructure Levy, to support infrastructure delivery in their area?**

104. UKELA has no comment on this question.

**Proposal 20: The scope of the Infrastructure Levy could be extended to capture changes of use through permitted development rights**

**Q23. Do you agree that the scope of the reformed Infrastructure Levy should capture changes of use through permitted development rights?**

105. UKELA has no comment on this question.

**Proposal 21: The reformed Infrastructure Levy should deliver affordable housing provision**

**Q24(a). Do you agree that we should aim to secure at least the same amount of affordable housing under the Infrastructure Levy, and as much on-site affordable provision, as at present?**

106. UKELA has no comment on this question.

**Q24(b). Should affordable housing be secured as in-kind payment towards the Infrastructure Levy, or as a 'right to purchase' at discounted rates for local authorities?**

107. UKELA has no comment on this question.

**Q24(c). If an in-kind delivery approach is taken, should we mitigate against local authority overpayment risk?**

108. UKELA has no comment on this question.

**Q24(d). If an in-kind delivery approach is taken, are there additional steps that would need to be taken to support affordable housing quality?**

109. UKELA has no comment on this question.

**Proposal 22: More freedom could be given to local authorities over how they spend the Infrastructure Levy**

**Q25. Should local authorities have fewer restrictions over how they spend the Infrastructure Levy?**

110. UKELA has no comment on this question.

**Q25(a). If yes, should an affordable housing 'ring-fence' be developed?**

111. n/a.

**Making sure the system has the right people and skills**

112. The White Paper correctly identifies that “the technology in [LPAs] to support modern services is not there [...], documents are submitted electronically, but not in the way of modern digital services such as those now supporting tax services.” (para. 5.1.2)

113. UKELA welcomes a modernisation in the way in which documents are submitted, especially if this results in a genuinely improved accessibility and transparency for interested parties and professionals. However, UKELA is cautious about the proposed shift away from what are described as “discretionary decisions based on vague policies” (para 5.1.4)

114. UKELA recognises the value of utilising quantitative data-based policies. However, the complexity of the planning system is such that qualitative policies will always have an important place in any decision, whether at the Local Plan or individual planning decision stage. The removal of human discretion in planning decisions risks the removal of nuance, broad intelligence and - quite literally - the humanity from planning decisions. It is, therefore, strongly resisted by UKELA.

**Proposal 23: when final proposals for this new planning system are developed, it will include a comprehensive resources and skills strategy**

115. Whilst UKELA recognises scope for the beneficiaries of planning gain (landowners and developers) to contribute fairly to the system, it is important that this does not

undermine the impartiality and objectivity of the LPA in making their decisions, at the Local Plan stage or elsewhere.

**Proposal 24: Strengthen enforcement powers and sanctions**

116. UKELA welcomes the intention to strengthen the existing planning enforcement powers and those sanctions available to LPAs. However, as with any regulatory regime, the planning system is only as strong as its ability to enforce breaches of that system. UKELA seeks more detail on the intended powers to address intentional unauthorised development, higher fines or support for enforcement activity, before any further comment is made.

**Q26. Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?**

117. UKELA has no comment on this question.

UKELA  
29 October 2020

Contact:

Planning & SD Working Party Convenors  
[info@ukela.org](mailto:info@ukela.org)

Dr Paul Stookes  
UKELA Working Party Advisor  
[paul@ukela.org](mailto:paul@ukela.org)

UK Environmental Law Association: better law for the environment  
Registered charity 299498, company limited by guarantee in England 2133283  
Registered office: One Glass Wharf, Bristol, BS2 0ZX [www.ukela.org](http://www.ukela.org)