Consultation response on White Paper: Planning for the Future

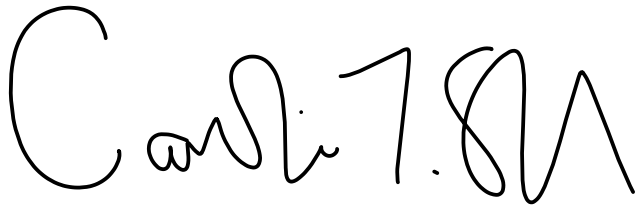
("the consultation document" or "the document")

29 October 2020

Please consider my specific responses in A and B below as well as the feedback I submitted on 29 September 2020 on "Changes to the Current Planning System" ("CCPS"), all taken together, as my full response to the consultation document and to the questions asked. Please refer to my CCPS response for my comments on proposals for the Standard Method for Establishing Housing Requirement

I have not responded individually to the questions asked because the information provided does not allow me to do answer the questions asked in an informed and intelligent way (see A below) and they do not cover the issues that I wish to address in my response.

I have structured my responses to provide feedback on relevant issues I have identified. All of these issues arise from the Proposals laid out in the Consultation Document and my responses should be considered both in the context of any specific issue(s) they address and also in the context of the "wider package of reforms" that you have presented.



Caroline Shah

Consultation feedback on White Paper: Planning for the Future

("the consultation document" or "the document")

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A. General complaints and legal and procedural matters

i. This consultation is premature

International and national laws and policies provide the framework under which all Local Plans will have to be written. It is also laid out in the consultation document that the government proposes to make changes to the National Planning Policy Framework 2019 (NPPF2019) in order to facilitate the proposals laid out in this document

The government cannot legitimately consult on changes to the local planning system before it has confirmed the status of existing national policies and laws or consulted on proposed changes to the national policy and legal framework that underpins development, planning, environmental, biodiversity, health and equalities matters across England.

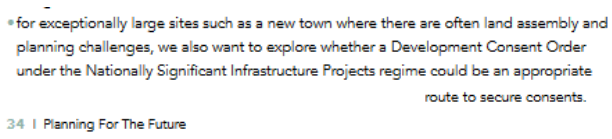
The Planning for the Future document states that there will be a consultation on the National Planning Policy Framework in autumn 2020. The timings do no not allow for informed consideration of government proposals for Planning Reform in their entirety.

This consultation is trivialising national policies and law and undermining their importance and purpose to state that they merely "cover common issues".

ii. There are no impact assessments of the proposals

Proposed reform on the scale suggested should be accompanied by Equalities, Health and Environmental assessments of the possible impact of proposed changes. Such assessments should also compare options put forward with reasonable alternatives. This has not been done

iii. The proposal to treat "exceptionally large sites" as Nationally Significant Infrastructure Projects is likely to result in development of housing and commercial buildings being allowed by default. This will allow harm to species and habitats under the Conservation of Habitats and Species Regulations 2017 ("CHSR2017)



- for exceptionally large sites such as a new town where there are often land assembly and planning challenges, we also want to explore whether a Development Consent Order under the Nationally Significant Infrastructure Projects regime could be an appropriate route to secure consents.

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This is unacceptable. It is an abuse of the democratic process that it is put forward as a possibility in this consultation before changes to national laws and policies have been democratically considered.

The CHSR 2017 states that harm can be allowed to habitats and species when there is an overriding public interest in the plan or project going ahead. If a large planning proposal is treated as a Nationally Significant Infrastructure Project, the Secretary of State is likely to approve such proposals

Considerations of overriding public interest

107.—(1) If the plan-making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

(a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or

(b) any other reasons which the plan-making authority, having due regard to the opinion of the European Commission, considers to be imperative reasons of overriding public interest.

under such provisions. This means that building homes and offices and other similar development will be allowed to cause harm to habitats and species currently protected under the CHSR 2017:

iv. The consultation document conceals a link to proposed disguised reforms to the Land Registry

The wording in the document reproduced below about further proposals is opaque and unclear. There is no way from reading it that the public would know that the consultation referred to is on massive changes to and the digitalisation of the Land Registry nor of the significant implications this will have in terms of facilitating the mass assembly of land across England by developers

> To provide better information to local communities, to promote competition amongst developers, and to assist SMEs and new entrants to the sector, we will consult on options for improving the data held on contractual arrangements used to control land. This can be found at: www.gov.uk/government/consultations/transparency-and-competition-a-call-for-evidence-on-data-on-land-control .

v. The consultation document misleads the public about the timings of the consultation on the proposed reforms to the Land Registry which ends on 30 October 2020. The consultation on Land Registry reforms therefore need to be re-run

The above excerpt from "Planning for the Future" page 68 states that "We ***will consult*** on options for improving data….This can be found at…"

The link takes the reader to a document the *end date for consultation responses is 30 October 2020*, one day later than the end date for the consultation on this main document

Please note that I will respond separately to proposals to reform the Land Registry

vi. The link to the document "Changes to the Current Planning System" is concealed in the text and the earlier deadline for responses is not stated. The consultation on Changes to the Current Planning System therefore needs to be re-run

Please see my response to the consultation on Changes to the Current Planning System for my full comments which I ask you to consider as part of this response.

vii. The consultation conceals the illogicality of giving complete power to the Planning Inspectorate for approving local plans

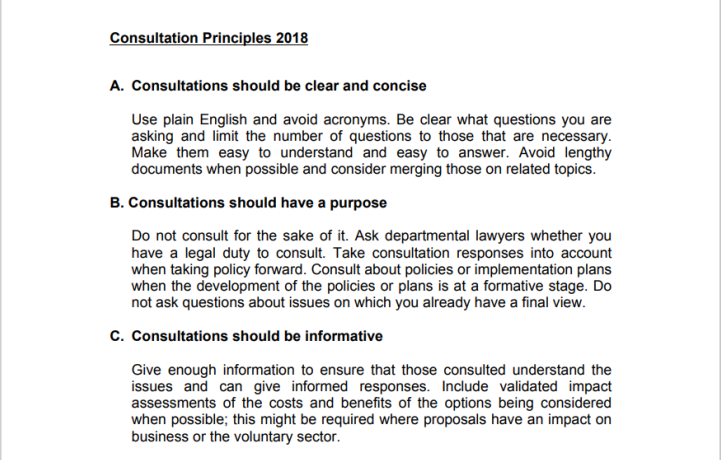
The Planning Inspectorate's aims are aligned with those of the Ministry of Housing, Communities and Local Government (MHCLG) and are expressly stated as helping to ensure delivery of the "homes the country needs"

> Our work plays a critical part in the Ministry of Housing, Communities and Local Government (MHCLG) achieving its objective of delivering the homes the country needs, and we have a clear alignment of our strategy to MHCLG aims. We are a demand-led organisation providing statutory

Planning Inspectorate 2019-24

Removal of the legal test of soundness deprives local communities and organisations of any ability to challenge the decisions made in a Local Plan, giving the Planning Inspectorate total power to approve plans. It is basically an arm of the MHCLG approving plans dictated by the MHCLG

viii. The Consultation breaches the Cabinet Consultation Principles A. to C. below



Consultation Principles 2018

A. Consultations should be clear and concise

Use plain English and avoid acronyms. Be clear what questions you are asking and limit the number of questions to those that are necessary. Make them easy to understand and easy to answer. Avoid lengthy documents when possible and consider merging those on related topics.

B. Consultations should have a purpose

Do not consult for the sake of it. Ask departmental lawyers whether you have a legal duty to consult. Take consultation responses into account when taking policy forward. Consult about policies or implementation plans when the development of the policies or plans is at a formative stage. Do not ask questions about issues on which you already have a final view.

C. Consultations should be informative

Give enough information to ensure that those consulted understand the issues and can give informed responses. Include validated impact assessments of the costs and benefits of the options being considered when possible; this might be required where proposals have an impact on business or the voluntary sector.

a. Consultations should be clear and concise

- The document presents a confusing, ill-explained and only partially thought out mish-mash of ideas that does not allow the reader to understand clearly the intentions of the consultation. It buries important details in layers of random information
- The document uses words that have a subjective meaning and therefore need defining as used. They are not defined which makes their use meaningless. The document also attributes significance to these undefined terms in its proposals and questions.
    - For example, there will be a “fast track to beauty”. What on earth does this mean? This makes an informed response on this document impossible. What is “beauty” and “beautiful”? One person may consider something “beautiful” that other people consider “ugly”. How can design alone be considered to make a place “beautiful”? No evidence is presented to support this assertion.
    - What is “useful” development? And useful to whom?
    - What does retaining the “achievement of sustainable development” mean? How is sustainable development defined and how will you measure if sustainable development is being “achieved”?

> This would consider whether the plan contributes to achieving sustainable development in accordance with policy issued by the Secretary of State. The achievement of sustainable development is an existing and well-understood basis for the planning system, and we propose that it should be retained.

    - The use of the word “we” is completely inappropriate in a planning consultation document and undermines the legitimacy of what should be an objective government document. Use of this term assumes the reader of the consultation document is at one with the author, and shares the opinions and desires of the author. This is misleading and undemocratic as it attempts to remove objective consideration of issues and the forming of objective evidence-based opinions by the reader, aligning him instead with the author’s personal “subjective beliefs”. The

statements beginning “we” are subjective and unsubstantiated: for example: “we have nowhere enough homes” and “in places we want to live at prices we can afford”

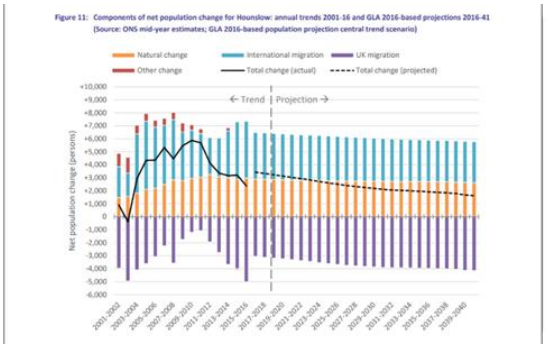
- The document says things that make no sense and confuse the reader
    - What does “move the democracy forward in the planning process mean?
    - What does “re-establish powerful links between… communities and purpose” mean?
- The document frequently does not clarify what it means, for example:
    - “Alternative” options are unclear and confused. They are not presented in a way that allows them to be considered intelligently or that allows an informed response. For example, proposals and alternatives for ensuring sustainability of local plans are unclear and undeveloped in any meaningful way informed comment on them is not possible. The same is true for alternative proposals to proposals for a consolidated infrastructure levy, and in many other areas of the document
    - It is proposed that “exceptionally large sites” may be considered as “Nationally Significant Infrastructure Projects”. The meaning of “exceptionally” large site is not defined. This does not enable an informed response to this comment
    - Information given is often opaque and misleading. For example, in the pre-amble to providing a link to another consultation, the document states: “we will consult on options for improving the data held on contractual arrangements to control land”. This does not state the actual fact that this is a link to consultation proposals to make significant changes to the use of the Land Registry which is running concurrently with the Planning for the Future consultation but which *ends one day later*
    - The consultation document states that statutory consultees will have to be “more responsive and outward looking” but it does not explain what their new roles will be and therefore allow informed response to this comment:

> In addition, other key players, including the Planning Inspectorate and statutory consultees, will have to transform the way they operate in response to these reforms, given their critical role supporting the preparation of Local Plans and decision-making. They too will need to be more responsive and outward looking, and have the necessary skills and resources to undertake their new roles.

b. Consultations should have a purpose

- The purpose of this consultation is unclear, confusing and misdirected. It is also incomplete. Objectives and desired outcomes are not clearly presented and “alternative” options are unclear, not explained properly and not presented in a way that allows meaningful comparison
    - Is it about delivering “sustainable development”? If so, the consultation document lacks completely any proposals to do with *social and environmental elements of “sustainable development”* as laid out in the National Planning Policy Framework 2019 (“NPPF2019”)?
    - Is the proposal to deliver 300,000 dwellings across the country no matter what the cost in terms of anything that might be considered “sustainable” development according to the NPPF 2019?

- Is the proposal to consult on proposals for how allocated targets only for residential development (what about commercial and other types of development that come forward through the planning process?
- What is the specific objective for the construction for offices and other commercial premises? What scale of commercial and office development is envisaged and for whom? Who are the companies that we want to allow o have unfettered access to build their commercial spaces in our neighbourhoods. The term "we want to help businesses expand with readier access to the commercial space *they need* in the places *they want*" is worrying. Proposals for the scale and location of proposed new commercial development needs laying out and clarifying, as well as how the government plans for it to fit with planning for new dwellings
- Assertions that form the basis of the proposals are unsubstantiated and not evidence-based. The document says "we have nowhere enough homes" but many homes being built and planned, for example in Hounslow where massive "growth" is planned in TWO designated "Growth" areas, known euphemistically as "opportunity" areas, have clearly been meeting – and are forecast to continue meeting - "demand" for housing from international buyers as can be seen in the chart of statistics from the Office of National Statistics below:



In this context, the assertions that "we need to address the inadequacies that [not building sufficient new dwellings] …has entrenched is misleading. It is not that an insufficient number of dwellings are being constructed, it is more that the government is building dwellings that are being occupied by new residents to the country and is not therefore meeting existing need for dwellings. On this basis, the government will never fill the gap between supply and demand and it will constantly be raising the number of dwellings it says are needed in England

- The document states that policies will be driven by people's "preferences". This is meaningless as it is not a robust or evidence-based way of decision-making and does not require any for the need to link to be made between people's preferences and the objectives and desired outcomes of proposed planning reforms.

c. Consultation should be informative

- The consultation makes many assertions and statements that are not supported by evidence or sufficient information to allow the reader to make informed comment on the proposals before them

- Proposed changes relating to environmental and biodiversity protections and assessments are hinted at but not explained
- There is no information on equalities issues arising from the proposed planning reforms
- The specific objectives and desired outcomes for proposed changes to the Land Registry are not clear
- Plans for the use of ***technology in planning*** are particularly muddled, opaque and unclear
    - The distinct planned uses of technology in the new planning system need to be laid out clearly with the objectives and outcomes for each
    - The proposals need to differentiate clearly between proposed uses of technology:
        - use of digital technology to help residents and other people access information and give feedback and planning applications
        - use of digital technology to facilitate land assembly by developers and
        - the creation of a digitally traded market in land ownership across England
    - What are plans for the role of the PropTech sector in planning? The PropTech sector is mentioned throughout the document but its precise role is not clarified

B. Additional Responses on Proposals put forward in "Planning for the Future"

i. Removal of democratic involvement in decision-making, removal of local authority accountability and extension of "opportunity area" model

a. Lack of influence of local people on local plans and planning decisions

The proposals to redefine the local planning process *remove almost entirely any influence by local people in planning decisions in their area*. In terms of local plans, people will no longer be able to influence the amount of development or what gets built where, apart from on a very generic basis in terms of contributing their opinion of which areas should be targeted for specific levels of growth. Despite the designation of three types of development area, it is proposed that "unanticipated opportunities" will still be possible in areas of "growth". This is unclear but sounds an unwelcome way in for developers to put forward even larger and more inappropriate developments than are defined in local plans. Similarly, terms on which local authorities will be able to pass their development requirement to other authorities through Joint Planning Agreements needs clarifying so that a situation is avoided both where one local authority area transfers some of its development targets to another area and where this happens without scrutiny of local people because it happens outside of the Local Plan process. It is easy to envisage this happening so that the harmful effects of the Standard Method for calculating housing targets on rich areas, for example Richmond, are avoided because they can pass on some of their development targets to neighbouring authorities, such as Hounslow or Kingston

Even on ***design***, if the local authority fails to compile a design code or involve local people in the creation of a design code, design standards will default to a top-down imposed national design code. This is not "democratising" the planning process by "putting a new emphasis on engagement at the plan-making stage". In addition, it is proposed that in *"growth" areas*, site-specific codes for permission in principle could be done after the local plan has been agreed which means that local people's views will not be taken in to account

This model appears extremely similar to the method by which huge growth areas known euphemistically as "***opportunity areas***" have been designated across London. Targets for massive residential and commercial development have been imposed centrally on areas such as Kingston– with hidden undemocratically scrutinised input from council administrations and executives and with restricted ability of local people to influence design, scale, massing or indeed anything else. *There have been NO environmental or equalities or health assessments of the plans* which are already resulting in planning applications for dense high-rise developments across the Borough.

In addition, the opportunity for local people and organisations to comment on a Local Plan is restricted to a **single period of 6 weeks** after the Local Plan has been drafted and sent to the Secretary of State. This is completely inadequate and undermines the consultation's stated desire to increase democratic involvement in local planning decisions and have a greater say in what gets built in their area.

The proposal to **delegate planning decisions to a local authority planning officer** highlights even further the inability of local people to influence planning decisions under these plans

b. Only Planning Inspectorate wields power to challenge Local Plans

The removal of the legal test of soundness, would leave the power to determine if a local plan can go ahead totally in the hands of the Planning Inspectorate who will decide if the Local Plan represents "sustainable" development.

This is a worrying proposal that should not be allowedbecause the role of the Planning Inspectors is to support the MHCLG specifically in "delivering the homes the country needs" and NOT to ensure sustainable development is delivered. This is shown in the quote from the Planning Inspectorate's 2019-2024 Strategic Plan:

> Our work plays a critical part in the Ministry of Housing, Communities and Local Government (MHCLG) achieving its objective of delivering the homes the country needs, and we have a clear alignment of our strategy to MHCLG aims. We are a demand-led organisation providing statutory

If this change goes ahead, there will be no ability for local people or organisations to challenge a Local Plan through judicial review. Local authorities will be accountable to nobody other than the Planning Inspectorate who is responsible only to the MHCLG on the basis of ensuring that the "homes the country needs" are delivered. The Planning Inspectorate is not tasked with assessing "sustainability" and there is not a clear basis and there are no clear measures for assessing whether a Local Plan represents "sustainable" development

ii. Local authority borrowing to pre-fund the new Consolidated Infrastructure Levy fund - Taxpayers subsidising developer profits and destruction of their neighbourhoods; inadequate cash funds for local community investment

- A model where local authorities borrow in order to forward fund a consolidated infrastructure levy (CIL) due from developers when properties they build become occupied is a public subsidy of developer profit
- The rationale for having a threshold below which CIL is not payable is not adequately explained. CIL should be payable for any development
- There appears to be no mechanism for charging the developer the interest that the local authority has accrued on borrowing related to the liability due from developers. Taxpayers will be paying interest on local authority borrowing that is funding a wide range of infrastructure requirements in the local community that the developer should be funding
- There is no mechanism to protect the taxpayer from non-payment of amounts due from the developer for whatever reason when properties become occupied
- Developers have the option to give land "adjacent" to a development instead of paying the CIL due from a development. The ability of a developer to sell "First Homes" at a discount to market will also offset developers' CIL liability. This will result in a *cash shortfall* to the local authority and *reduce the amount available for infrastructure investment in local communities*
- Alternative options are not laid out in sufficient detail nor assessed in any way to allow an informed comment to be made on them

iii. Proposed Consolidated Infrastructure Levy will not meet community funding requirements

- The consultation document suggests that CIL will fund a huge amount of different activities which are laid out in a vague way with no evidence that it will be sufficient to do so:

> There is scope for even more flexibility around spending. We could also increase local authority flexibility, allowing them to spend receipts on their policy priorities, once core infrastructure obligations have been met. In addition to the provision of local infrastructure, including parks, open spaces, street trees and delivery or enhancement of community facilities, this could include improving services or reducing council tax. The balance of affordable housing and infrastructure may vary depending on a local authority's circumstances, but under this approach it may be necessary to consider ring-fencing a certain amount of Levy funding for affordable housing to ensure that affordable housing continues to be delivered on-site at current levels (or higher).There would also be opportunities to enhance digital engagement with communities as part of decision making around spending priorities. Alternatively, the permitted uses of the Levy could remain focused on infrastructure and affordable housing, as they are broadly are at present. Local authorities would continue to identify the right balance between these to meet local needs, as they do at present.

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iv. Sustainable development: The concept of sustainable development appears to be undermined in respect of environmental, biodiversity and social considerations and is not a real and measurable criterion for assessing, approving and monitoring local plans

- There is no definition of "sustainable" development or growth or "sustainability"
- It is worrying that the government has not stated that the current definition and application of "sustainable development" in the NPPF 2019 will be maintained or strengthened in the context of the huge scale of development planned across the country
- The proposal to treat "exceptionally large sites" as Nationally Significant Infrastructure Projects is likely to result in development of housing and commercial buildings being allowed by default. This will allow harm to species and habitats under the Conservation of Habitats and Species Regulations 2017
- The provision of new green spaces is vital to the delivery of sustainable development on the scale envisaged in these proposals. However, green space is only mentioned six times in the text of the document and each mention is vague: "homes with green spaces and new parks", "better green spaces" and "more green spaces". New development needs to be accompanied by new green spaces if existing green spaces – that are often of high environmental and biodiversity value – are not to be destroyed
- Where are details about how *social and environmental elements* of sustainability will be assured? The only statement made is that the government proposes that the achievement of "sustainable development" is retained. It is impossible to understand what this means:

> This would consider whether the plan contributes to achieving sustainable development in accordance with policy issued by the Secretary of State. The achievement of sustainable development is an existing and well-understood basis for the planning system, and we propose that it should be retained.

- The main government concern in making changes to requirements for sustainability testing appear to relate to speeding up the delivery of vast amounts of housing and other development and have nothing to do with actually making sure that

development of all kinds is "sustainable" in any meaningful way. This is unacceptable

- Proposals and alternatives for ensuring sustainability of local plans are unclear and undeveloped in any meaningful way informed comment on them is not possible
- No detail is given of how the government will ensure that a simplified process of assessing the environmental impact of plans will be effective and offer sufficient protections to the environment? The current system of environmental and habitats assessments is not working. Plan level environmental and habitats assessments as well as local level assessments are often completely inadequate and appear to tell the commissioning authority what they want to hear with little or no scientific evidence or expert opinion to support their assertions and conclusions. How can a shorter, faster system avoid these outcomes?
- It is stated in the consultation document on P28 that the "single statutory sustainability test" will ensure that plans "***strike the right balance between environmental, social and economic objectives***". This statement is not supported by any information on the environmental and social objectives that will form part of the new proposals nor by any defined outcomes in these areas. These proposals are likely to have significant detrimental impacts on both the environment and social inequalities across England without requiring specific and measurable social and environmental outcomes to be met
- There is no mention of the ***social aspects*** of sustainability in the consultation document. The only reference to the **government's equalities duties** is to ask the reader what we think the impact will be:

> We would welcome views on the potential impact on the proposals raised in this consultation on people with protected characteristics and whether further reforms could broaden access to planning for people in diverse groups.

- **Biodiversity** is only mentioned three times in the whole document, barring one question. The government wants to "improve biodiversity", it "supports net gains in biodiversity" and "mandatory net gains for biodiversity" will be a "condition of *most* new development". This is too vague and non-committal. In addition, the concept of net gain can not always be applied. Sometimes a habitat or species needs protecting because its habitat cannot be replicated elsewhere with the required conditions needed for the species to survive; or a habitat cannot be recreated elsewhere for the same reasons

v. No information is given on performance indicators to measure the "sustainability" of outcomes from local plans despite an increased 10 year development requirement, and the dangers of applying the Housing Delivery Test

There is no detail of the sustainable outcomes that will be required under the new proposals. How then can measurement take place effectively of whether "sustainable development" is being achieved?

If so-called "opportunity" growth areas across London are anything to go by, there has been no measurement of the outcomes that these vast developments have delivered although there has

been much evidence presented by local people that growth delivered on this scale and this manner is neither environmentally or socially "sustainable"

The need for specific and relevant performance indicators is even more important given that the proposed reforms will mean that local plans are set a **10 year development requirement.**

> Local Plans will need to identify areas to meet a range of development needs – such as homes, businesses and community facilities – for a minimum period of 10 years. This includes land needed to take advantage of local opportunities for economic growth, such as commercial space for spin-out companies near to university research and development facilities, or other high productivity businesses.

Currently there is only a **5 year requirement for housing delivery**. The retention of the **Housing Delivery Test** will penalise any local authority where development is not coming forward at the required rate. This makes it critical that the term "sustainable development" is carefully and fairly defined so that the "presumption in favour of sustainable development" does not result in developers skirting any locally-agreed development criteria that may have been agreed in the local plan

vi. The role envisaged for statutory bodies in the planning process is not defined or explained

It appears that he role of statutory bodies such as Natural England, Historic England and the Environment Agency will be significantly changed as part of the planning reforms. The statement made in this regard is opaque and ambiguous and does not allow for informed response

> In addition, other key players, including the Planning Inspectorate and statutory consultees, will have to transform the way they operate in response to these reforms, given their critical role supporting the preparation of Local Plans and decision-making. They too will need to be more responsive and outward looking, and have the necessary skills and resources to undertake their new roles.

vii. Plans seek to limit the possibility of Judicial Review of Local Plans

The removal of the test of soundness for Local Plans will require a change to National planning policy and is unjustified. It will prevent legitimate challenge of Local Plans that have been prepared in a way that are irrational or perverse and means that planning inspectors – whose interests are aligned to those of the MHLCG – are no longer accountable to the public for decisions which may have been reached using flawed logic.

Given that the Government wants to ensure development is "sustainable development", I propose that the test of soundness is retained in law:
"Plans are "sound" if they are:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;

- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework."

I disagree completely with the assertion that "*most judicial reviews are about unclearly worded policies or law*". Judicial reviews are more often driven by the failure of public authorities to abide by the laws that they have established or by which they have agreed to abide in preparing local plans.

These proposals appear to be driven more by the desire to prevent legitimate democratic challenge of growth plans across England than by a desire to clarify policies and law.

The ultimate irony is that this consultation document is confused and confusing. It is an insult to democracy.