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# Plan making reforms

## A response from the TCPA to the consultation by the Department for Levelling Up, Housing and Communities August 2023

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### 1 Summary

The Town and Country Planning Association (TCPA) acknowledges the need for an effective plan-led system which reflects the aspirations of local communities to secure a sustainable future. The Association also supports measures which can increase genuine public participation and the efficiency and the effectiveness of the system. We believe that the key barrier to these goals remains the need for the system to be adequately resourced and we are concerned that the additional burden the implementation of the new local plan system will place on local planning authorities will exacerbate rather than alleviate this problem. We are also concerned about the delay that will be created by the complex transitional arrangements set out in chapter 11. Such delays will slow the system's response to climate change and housing provision.

To achieve the goal of beautiful and sustainable development, local plans must reflect the aspirations of local communities as well as finding solutions to the health, housing and climate crises. Plans should be well-evidenced and clearly expressed but they must also reflect the complexity of how real places work as interactive systems.

To be effective in securing positive outcomes plan policy will need to offer holistic policy solutions to the complex problems of, for example, climate adaptation and community resilience. The TCPA is concerned that at no point does this consultation recognise the complex reality of place-making but instead implies that simplification will deliver effectiveness. Unless carefully handled, simplification can produce precisely the opposite effect.

Successful local plans will need to preserve the full breadth of existing evidence and include new sources particularly around climate mitigation and health and well-being. The objective should not be to artificially reduce the scope of local plans but to understand how such data can be efficiently handled.

The consultation seeks views on a new system which has yet to become law. With the introduction of this new system there is a lack of clarity on key issues such as precisely what an acceptable 'local' plan policy will mean and what will be dealt with nationally. We note that the NDMP consultation, published in December 2022, did not provide a precise and workable answer to this question. As a result, it is impossible to know how the Government's objective of reducing plans only to 'local' issues will operate in practice.

Taken together the TCPA has significant concerns about the proposals for local plan making set out in this consultation for five primary reasons:

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- While we welcome the opportunity for a third statutory period of consultation at the beginning of plan making, other proposals around reducing the notification period of hearings and prescribing the form of consultation responses are likely to lead to the exclusion of certain groups from the planning process. The lack of a ‘right to be heard’ for the public in the preparation of supplementary plans is a major setback for public participation in planning. It will mean, for the first time, that the preparation of documents with the full force of development plan status in law offers no legal right to be heard in person in front of an independent examiner.
  - The consultation fails to explain how the evidence base for plans on critical issues such as health and well-being and climate change will be handled.
  - The proposals remove important aspects of the soundness test which will lead to less rigorous policy outcomes.
  - The proposals remove important obligations to publish the entire evidence base used by local authorities in plan making.
  - The consultation contains proposals for community land auctions which are complex, will undermine public trust and are unlikely to provide significant financial returns.

## **2 Introduction**

### **2.1 About the TCPA**

The Town and Country Planning Association’s (TCPA’s) vision is for homes, places and communities in which everyone can thrive. Our mission is to challenge, inspire and support people to create healthy, sustainable and resilient places that are fair for everyone.

Informed by the Garden City Principles, the TCPA’s strategic priorities are to:

- Work to secure a good home for everyone, in inclusive, resilient and prosperous communities which support people to live healthier lives.
- Empower people to have real influence over decisions about their environments and to secure social justice within and between communities.
- Support new and transform existing places to be adaptable to current and future challenges, including the climate crisis.

The TCPA is a charity and company limited by guarantee.

### **2.2 About this response**

The TCPA has chosen to respond to a small number of significant issues which reflect our current direct engagement with the local plan making process. We have found responding to this consultation difficult because of the provisional nature of much of the material. The proposed approaches under the chapters are often vaguely drawn, reference future consultations on national policy and contain no specific examples of the expected outcomes. As a result, on issues such as the simplification of the evidence base for plans it is impossible to understand what is being proposed in practice. Since the stated objective of this consultation is to simplify the evidence base for local plan making it should have clearly stated which areas of evidence the government intends to exclude from the process.

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### 3 Response to specific proposed changes

#### 3.1 Plan content (chapter 1)

The TCPA strongly supports the objective of visionary local plans. It is the role of government guidance to encourage ambition and innovation in the way we meet community needs as well as how we address national priorities around health, housing, local economies, and climate change.

National guidance on the contents of plans should set out minimum requirements but in no way restrict the scope of plans to deal with the full range of spatial challenges confronting communities. Guidance should make clear the areas of local plan content which are required by law (i.e. sustainable development, climate change mitigation and adaptation, good design and net gain for biodiversity). It should also make clear those areas where the Government would encourage flexibility and innovation. This should include, for example, the full range of measures which can galvanise community action, from community-led flood defence to the creation of areas of a local food production, or the specific allocation of land for community housing and energy projects.

The consultation lacks clarity on the implementation of the alignment test, which will replace the Duty to Cooperate. Many of the critical issues that local plans must address are cross-boundary in nature and require an effective approach to strategic planning. The consultation suggests a shift whereby local plans will focus on 'locally specific matters'. For some complex policy issues such as climate change, where radical mitigation and adaptation strategies are required at national, regional, and local levels, policy opportunities such as transport planning, natural flood management and water catchment planning, risk being missed.

National guidance on the content of local plans must make clear the importance of comprehensive evidence and detailed policy in the following areas **not** identified in the consultation document:

- **Health and well-being**, including tackling the wider determinants of health through the built and natural environment by, for example, the promotion of active travel and walkable neighbourhoods and the promoting positive mental health outcomes through the provision of green infrastructure and access to nature.
  - **Tackling health inequality** by ensuring local plans highlight spatial inequalities in health and consider the impacts of development on those living with the highest levels of deprivation.
  - **Climate mitigation** through a full range of measures from energy, housing performance and reducing the need to travel that comprehensively support the Climate Act 2008 budgeting regime.
  - **Climate adaptation** through the full range of measures necessary to build economic and community resilience to flood risk, drought and heat stress.
  - **The promotion of social cohesion and equality** by ensuring safe civic spaces for all sections of the community.
  - **The promotion of civic art and spaces** for diverse cultural activities.
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- **The promotion in planning decisions of innovation** in genuine public participation through citizens' assemblies and the co-creation of design guides and master plans.
- **New sustainable technologies** are accommodated in energy, housing design, food production and transport.

We are concerned that there is only one reference to health in the consultation and that it is framed as 'protecting' health e.g. 'maximising opportunities to protect the environment and human health'<sup>1</sup>. This, and the text as a whole, suggests that while the Government has some appreciation of the role of planning in 'health protection' (i.e. protecting populations from harms) it is oblivious to the powerful role that planning plays in 'health creation' (i.e. shaping places in which it is easy for everyone to thrive). This is a huge omission.

The built and natural environments are now widely recognised as important 'determinants of health'<sup>2</sup>. The NHS, through its 42 new Integrated Care Boards, is putting increased emphasis on the need to improve the determinants of health in order to prevent illness. Other government departments and agencies – including the Department of Transport, Defra, Natural England, Sport England and Active Travel England – recognise the role they need to play in shaping places to support good health. DHLUC, which through planning policy has the most powerful influence over our built and natural environment, looks increasingly isolated in its refusal to prioritise creating places where people can easily live healthy lives. At a time when 2.5 million people are out of work due to long-term sickness<sup>3</sup>, this lack of focus on creating healthy places seems negligent and likely to add to the low productivity and poor economic performance of the country that economists<sup>4</sup> recognise is linked to poor population health.

### 3.2 Evidence and the Test of Soundness (chapter 5)

In our response to the consultation on changes to the National Planning Policy Framework (NPPF) published in December 2022, we made clear our concern about the proposal to remove the requirement that policy be justified as part of the soundness test of local plans. The Association believes this test was and is vital to ensure that policy is evidence-based and rigorous. The paradox of plans which no longer have to be 'justified' but still have to be 'evidenced' is compounded by the proposed approach set out in the consultation to reduce the use of evidence in the examination of local plans. Paragraph 100 states:

*Combined with clearer guidance on what evidence is required, and a distinction made between evidence to support the examination and wider plan-making activities, we believe that fewer evidence base documents will be required to be submitted and therefore formally considered at examination. It should be noted that this would not prevent planning authorities choosing to publish wider materials to help to explain decisions taken. It would also not preclude the Inspector from requesting additional evidence at examination if they felt it was necessary. The gateway assessments process might also make recommendations on evidence required to demonstrate soundness.*

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<sup>1</sup> See section 'Speeding up the process for preparing a plan'.

<sup>2</sup> See 'Spatial Planning for Health – an evidence review.' Public Health England. (2017)

<sup>3</sup> ONS. 26 July 2023. 'Rising ill health and economic inactivity because of long-term sickness UK 2019-2023.'

<sup>4</sup> See 'Health is wealth', lecture by Andrew Haldane for the Health Foundation (2022)

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The proposed approach set out in paragraph 100 is both confused and counterproductive. The creation of a two-tiered definition of ‘evidence’, some of which is useful background material to plan making, and some of which will be used to test the soundness of the plan, will lead to confusion in the system. It is logical that any and all evidence upon which local planning policy has been developed and upon which final policy has been justified must be available to all parties at the plan examination stage. It should not be a matter of choice for local planning authorities to publish materials to ‘explain decisions taken’. If evidence is being used for plan-making purposes which has no relationship with any kind of policy formulation, why is it being used at all? If it has any relationship, contextual or direct, with the development of policy it must be published and submitted to the examination.

Since the consultation does not provide any indication of the kinds of evidence which would now not be submitted to an examination it is hard to provide any further, meaningful feedback on the proposals.

We note in paragraph 99 of the consultation the suggestion that there would no longer be any requirement upon the local planning authority to publish such evidence. ‘

This will clearly undermine transparency and public trust, but it is also ultimately unworkable because, it is hard to think of any circumstances where evidence used in plan formulation would not be ‘strictly necessary’ to test the soundness of the plan.

The consultation is silent on the kinds of data which central government expects to see in the evidence for plan making. Making the overall scope of the evidence base clear in guidance would be a useful clarification. At present the detail of evidence requirements are scattered through the NPPF and National Planning Guidance resources without a single clear articulation of the scope and parameters of local plan evidence.

Guidance should set out these parameters and move quickly to map the areas where such evidence is already provided by national bodies such as the Environment Agency. In setting out the scope of the evidence base for local plans in guidance the Department should draw on the analysis of the Climate Change Committee report<sup>5</sup> in relation to climate mitigation and carbon handling. Guidance should make clear that local authorities remain at liberty to prepare evidence on specific issues that relate to local circumstances and priorities.

In relation to just one example, human health and well-being, we expect as a minimum the evidence for local plan making to include the following and for local plan policies to seek to address the issues accordingly:

- A requirement for all local plans to include, and respond to, evidence from the most recent local Joint Strategic Needs Assessment and Health and Wellbeing Strategy.
- A map of the index of multiple deprivation showing inequalities (including health inequalities) across the local authority area, and a requirement to demonstrate how the plan policies will seek to reduce those inequalities.

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<sup>5</sup>Spatial planning for climate resilience and Net Zero (CSE & TCPA) - Climate Change Committee ([theccc.org.uk](https://theccc.org.uk))

- Local data from the ONS health index<sup>6</sup>, and requirement for policies to seek to address local deficiencies.
- Natural England's green infrastructure maps of the local authority area demonstrating which places do / do not meet the Green Infrastructure Standards for England<sup>7</sup>, and a requirement to demonstrate how the plan policies will seek to address any deficiencies.

Most, if not all, of the above data is already collected and available digitally so should be straightforward to include.

**The 'freezing' of data** - The consultation states at paragraph 97 that data and evidence might be frozen in the later stages of the local plan process to avoid new information resulting in delay. As a general principle we should not exclude important evidence which may be administratively inconvenient but could reveal real harm to the public. The Environment Agency holds part of the core evidence base which determines, for example, the extent of floodplains and areas of vulnerability from coastal flooding and surface water flooding. The data which determines these areas of vulnerability is included in the climate change flood risk allowances which are regularly updated. **It would be a grave mistake for any local plan, even in the final stages of preparation, to ignore updates to the flood risk allowances which can significantly change the extent and risks in relation to all forms of flooding.**

There is a particularly important economic dimension of this problem which is that homes consented after 2009 are not subject to the Government's reinsurance scheme which means in practice that homes built in vulnerable locations will ultimately become uninsurable. Government must be specific in guidance as to the key exceptions to this proposed approach.

### 3.3 Plan examination (chapter 7)

**Notification of hearings** - The TCPA notes the provisions of chapter 7 in which the public notification period for hearings is three weeks. This is an unacceptably short period for many community groups and parish and town councils which meet on a monthly basis. It will positively exclude participation for non-professionals and create a perception of a process that is designed for the convenience of administrators and not the public interest. Six weeks is minimum acceptable period for the notification of local plan hearings.

**Revising the Matters, Issues and Questions (MIQs) stage** - The TCPA strongly objects to the exclusion of community representation from MIQs which is one of the most critical stages in the examination process where inspectors and local planning authorities define the key areas of inquiry for the examination. Communities must continue to be allowed to submit to this stage, partly to help build public trust, but mainly to recognise the unique knowledge communities have about the social, economic and environmental circumstance of their localities.

### 3.4 Community engagement (chapter 8)

The TCPA has provided detailed responses to the Department as to why the local plan framework set out in the Levelling Up and Regeneration Bill significantly centralises power over issues which used to be determined locally. It also creates new parts of the local development

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<sup>6</sup> [The Health Index 2020 – measuring the nation's health | National Statistical \(ons.gov.uk\)](https://www.ons.gov.uk/health-inequalities-and-social-determinants-of-health/health-inequalities-and-social-determinants-of-health-reports/health-index-2020)

<sup>7</sup> [Green Infrastructure Standards for England Summary \(naturalengland.org.uk\)](https://www.naturalengland.org.uk/infrastructure/green-infrastructure/standards-for-england)

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plan (i.e. Supplementary Plans) for which, for the first time, the public have no right to be heard. Taken together this creates a system which excludes people from critical decisions about the future of their area. We have also made clear that while digital engagement offers opportunities to increase access to the system it requires careful handling so as to complement and not replace existing notification and consultation methods.

Within this context the TCPA welcomes the commitment in the consultation to create a third stage of public consultation at the beginning of the local plan making process. Regulations should be prescriptive as to the minimum requirements for this consultation, allowing the public at least eight weeks to respond, and clarifying how the local planning authority will respond to the feedback. As a minimum, the planning authority will need to publish an analysis of the consultation responses and how such feedback will shape the draft plan. Guidance to support this stage of the process should focus on the availability of innovative forms of public engagement, including the use of citizens' assemblies, which can guide the whole plan making process.

The proposal to remove the requirement to produce a Statement of Community Involvement leaves a potential gap where authorities consider the qualitative aspect of their engagement with communities. This would include targeted engagement with seldom-heard groups including minority ethnic communities, young people, people with disabilities and faith groups. Paragraph 140 indicates that project initiation documents *may* include considerations for this engagement, but this should be strengthened to a requirement.

**Machine-readable response templates** - Chapter 8 indicates that machine-readable response templates will be the standard method for community feedback on local plan proposals. Providing such a template can be useful for administrators but all submissions in whatever format should continue to be regarded as valid. Templates can limit and control the scope of community feedback by determining the questions that are set and even the space allowed for feedback. They can also reinforce digital exclusion. Community knowledge is diverse and often much better acquainted with local circumstances than a hard-pressed local plan team. Children and young people may wish to submit all kinds of media in response to a plan from pictures to video clips. As a result, templates should remain advisory for those who find them useful, and guidance should make clear that all forms of submission are welcome in the local plan process.

### 3.5 Supplementary Plans (chapter 11)

The TCPA recognises the need for local planning authorities to be able respond flexibly to changing circumstances. The introduction of Supplementary Plans fulfils this need by creating a document with full development plan status but with a more focused remit around design and site-specific requirements. There has, however, always been a right to be heard for the public in the examination of development plan documents that form the local plan. Supplementary plan documents were not subject to this requirement on the basis that they did not have development plans status. This is, therefore, a very important distinction.

The failure to have a clear right to be heard for the public in the examination of Supplementary Plans will undermine public trust and reinforce the impression the public are excluded from key decision-making arenas. Since the preparation of Supplementary Plans is already limited to one round of public consultation it is essential that the right to be heard is restored, or that guidance and regulations make clear that no-one who has made a representation on a

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Supplementary Plan should be excluded from being heard in person in front of a relevant examiner.

### 3.6 Community Land Auctions (chapter 13)

There are five significant problems with the proposed approach to Community Land Auctions (CLAs).

1. **Undermining the Government's objectives for sustainable development.** In the context of local government austerity, the provisions on CLAs risk incentivising local authorities to allocate sites with the greatest returns rather than according to the principles of sustainable development e.g. the most valuable development sites located in high demand areas on greenfield land. The provisions disincentivise the development of more complex brownfield sites, or sites that may be in sustainable locations but with more complex land ownership patterns. This means the provisions risk having significant unintended consequences of undermining the Government's other planning policy objectives.
  2. **The scheme assumes landowners will accept major reductions in profit.** Since each development site is radically different in terms of infrastructure needs, environmental constraints and policy requirements, the process of establishing a realistic option price will be extremely complex. All the infrastructure needs for a development site will need to be understood and costed and there is no guarantee that land values will meet those costs. Since almost all land surrounding towns and villages in England is already optioned by developers or intermediaries in the land market it will be extremely difficult to get landowners to accept the radically lower prices which the scheme implies. Since the process is voluntary many landowners will simply refuse to treat on the reasonable expectation that such a scheme will be short lived. In the past, effective land-value capture on this scale has only worked when supported by the use of compulsory purchase orders.
  3. **Undermining public trust.** Public trust in planning is at a historically low ebb, with concerns that the system is dominated by the development industry. Any system which is founded on a financial deal between a local planning authority and the landowner as to which sites will be allocated in a local plan, is bound to fuel the perception of a system which is no longer concerned with the wider public interest. Ultimately the selection of sites in the local plan has to be open to democratic scrutiny and the participation of local communities and should not be determined on the financial benefit to the decision maker.
  4. **A regressive taxation measure.** Community Land Auctions represent a deeply regressive taxation measure since the highest yields accrue in high demand areas with high land values. Communities with more complex development needs, such as a high proportion of brownfield land, will gain little or nothing from them.
  5. **We have better ways of capturing land value.** One of the main reasons CLAs were dismissed in the past is because the Government already has effective mechanisms to capture land value through:
    - the right-pricing of land by setting clear policy requirements which create costs to developers which are then passed on to landowners in lower prices;
    - section 106 and the community infrastructure levy;
    - national mechanisms such as land tax stamp duty;
    - national and locally led development corporations for specific scale growth.
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All these existing mechanisms could be made more effective in capturing land values and all of them benefit from established practice on the ground<sup>8</sup>. It is simply unclear why introducing CLAs, even as a pilot, would make any significant contribution to improving this system.

For all of these reasons the introduction of CLAs is likely to be both controversial and ineffective. It is particularly unhelpful in securing the levelling up 'missions' since by far the greatest yield will be areas such as the southeast.

**For more information, please contact Dr Hugh Ellis. [Hugh.Ellis@tcpa.org.uk](mailto:Hugh.Ellis@tcpa.org.uk)**

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<sup>8</sup> These issues are explored in further detail in [Unlocking the potential of large-scale new communities \(tcpa.org.uk\)](#)

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