



## Planning for housing

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Under the Labour Government, housing requirements were calculated at a national level and targets were set for each regional planning authority. The regional planning authority would then divide that target between each local planning authority (LPA). Each LPA would then have to set aside enough land to satisfy that target. The current Government has now completed its ambition to abolish regional planning and regional planning targets.

Despite the abolition of housing targets local planning authorities still have to set aside enough land to satisfy housing demand. Local planning authorities should have a Local Plan adopted, following examination by a planning inspector, which sets out housing need in the particular area. The Government does not want to lay down in detail the method of calculating housing need. The estimate, however, needs to be based upon robust evidence in order to be approved by the planning inspector. The Government has replaced most of the previous planning guidance with the [National Planning Policy Framework \(NPPF\)](#), published in March 2012. The NPPF gives some broad guidance to local authorities about calculating supply of housing. Further detail is also now given in the web-based [National Planning Practice Guidance](#).

It is [estimated](#) that around 232,000 new homes are required each year. This exceeds the number of homes added to the dwelling stock in recent years by a considerable margin – in the 12 months ending September 2014, 117,070 houses were completed.

The House of Commons [Communities and Local Government Committee](#) has raised concerns, alongside others, that NPPF provisions relating to the viability of housing land are “leading to inappropriate development.” There is mixed reaction from planning professionals as to whether the provisions in the NPPF are working successfully to boost housing supply.

The Government is concerned that there have not been enough homes built to meet the needs of a growing and ageing population. Its aim is to increase the supply of both new-builds and repurposed empty homes. To this end it has announced a number of policies and financial incentives which aim to increase the number of new homes, including: support for new garden cities, reform of neighbourhood planning powers and a starter home exception site policy. This note sets out these issues in more detail. It applies to England only.

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## 1 Abolition of housing targets

Under the Labour Government, housing requirements were calculated at a national level and targets were set for each regional planning authority. The regional planning authority would then divide that target between each local planning authority. Each local planning authority (LPA) in England would then have to set aside enough land to satisfy that target. The LPA would make a development plan, which would make provision for land to be available to build a certain number of houses. Once land had been zoned for housing in that way, individual planning applications were more likely to be approved.

The [Coalition Agreement](#) of May 2010 said that the Government would “rapidly abolish Regional Spatial Strategies and return decision-making powers on housing and planning to local councils.”<sup>1</sup> On 6 July 2010 in a [written statement](#) to the House, the Secretary of State for Communities and Local Government, Eric Pickles, announced that regional spatial strategies would be revoked.<sup>2</sup> The *Localism Act 2011* provided for the abolition of regional strategies in a two-stage process. The first stage, to remove the regional planning framework and prevent further strategies from being created, took effect when the *Localism Act* received Royal Assent on 15 November. The second stage was to abolish each existing regional strategies by secondary legislation.<sup>3</sup>

Legal challenges had delayed the revocation and the abolition of regional spatial strategies, but the process has now been completed, as of 20 May 2013 when the final Order abolishing the last regional spatial strategy took effect. Some individual policies from certain regional spatial strategies remain. Further details about what remains for each strategy is published by the UK Government in a “Post Adoption Statement” for each region.

## 2 Calculating housing supply

Despite the abolition of housing targets local planning authorities still have to set aside enough land to satisfy housing demand. Local planning authorities need to have a Local Plan, which can include a core strategy, adopted by a planning inspector which sets out housing need in the particular area. The Government does not want to lay down in detail the method of calculating housing need. The estimate, however, needs to be based upon evidence in order to be approved by the planning inspector. Guidance about how to calculate housing targets is set out in the NPPF (see section 2.1 below).

On 9 April 2013 the Government published its [Household interim projections \(2011 to 2021\) in England](#). The NPPF requires that assessment of future housing requirements in local plans should have regard to current and future demographic trends and profiles and take into account evidence, including the Government’s latest published household projections. The household projections therefore provide an important part of the evidence base for the assessment of future requirements for housing.<sup>4</sup>

At no point does the NPPF state that local authorities must use these National Statistics figures on which to base this calculation, although many local authorities do base their housing numbers on these figures. Some local authorities have used these and Office for National Statistics figures as a starting point, but then invested in their own reviews and

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<sup>1</sup> Cabinet Office, [The Coalition: our programme for Government](#), May 2010, p11

<sup>2</sup> HC Deb 6 July 2010 [cc4-5WS](#)

<sup>3</sup> HL Deb 25 July 2012 [cWS66-8](#)

<sup>4</sup> Department for Communities and Local Government, [Household interim projections \(2011 to 2021\) in England](#), 9 April 2013, page 20

evidence to modify these numbers. See for example, [Cheltenham Borough Council, Independent review makes recommendations for the Joint Core Strategy about trends in household size](#), 17 January 2013 and [Swindon Core Strategy: Economic Testing A Final Report by Regeneris Consulting](#), September 2012.

For further information about using different figures, assumptions and methodology see the Local Government Association guidance, [Ten key principles for owning your housing number finding your objectively assessed needs](#), July 2013 and Cambridge Centre for Housing and Planning Research, [Choice of Assumptions in Forecasting Housing Requirements Methodological Notes](#), March 2013.

## 2.1 The National Planning Policy Framework

The Government has replaced most of the previous planning guidance with the [National Planning Policy Framework](#) (NPPF), published in March 2012. Planning policies and applications have to be determined in accordance with the NPPF “unless material considerations indicate otherwise”.<sup>5</sup> The NPPF gives some broad guidance to local authorities about calculating supply of housing. It stipulates that more land should be zoned for housing than was required under previous guidance. An extra 5% buffer is required “to ensure choice and competition in the market for land”, this should be increased to 20% in some circumstances:

47. To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable<sup>[6]</sup> sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
- identify a supply of specific, developable<sup>[7]</sup> sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will

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<sup>5</sup> *Planning and Compulsory Purchase Act 2004* s.38(6)

<sup>6</sup> NPPF definition: To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.

<sup>7</sup> NPPF definition: To be considered developable, sites should be in a suitable location for housing development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged.

maintain delivery of a five-year supply of housing land to meet their housing target;  
and

- set out their own approach to housing density to reflect local circumstances.

In June 2012, two local authorities were required to provide a full 20% buffer. Wigan Metropolitan Borough had to withdraw from the examination of its core strategy. Hull City Council asked for a six month suspension of examination of its core strategy.<sup>8</sup> The magazine *Planning* noted that the buffer was imposed even upon plans that were submitted in draft before publication of the NPPF in March 2012.

[P]erhaps the biggest question raised by these cases is how the inspectorate is defining “under delivery” of housing by local authorities. Neither ministers nor the inspectorate has yet been prepared to spell this out. But we understand that, in some places at least, inspectors are judging councils’ delivery records by the number of completions. This is clearly undesirable, as authorities with exemplary records of allocation could find themselves classed as “under deliverers” simply because of a stagnant housing market in their areas.<sup>9</sup>

Central Lancashire was the first authority to have its core strategy approved since publication of the NPPF. One of the changes required by the planning inspector was acceptance of housing targets in the Regional Strategy.<sup>10</sup>

Paragraph 50 of the NPPF sets out the range of homes and housing mix which should be supplied:

50. To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:

- plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes);
- identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand; and
- where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.

The NPPF also encourages local authorities to bring back empty houses and building into use:

51. Local planning authorities should identify and bring back into residential use empty housing and buildings in line with local housing and empty homes strategies and, where appropriate, acquire properties under compulsory purchase powers. They

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<sup>8</sup> “Two councils hit core strategy trouble” *Planning*, 15 June 2012

<sup>9</sup> “Framework bites on housing land supply”, *Planning*, 15 June 2012

<sup>10</sup> Planning Portal News, *First Core Strategy approved since new planning framework*, 21 June 2012

should normally approve planning applications for change to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate.

A later section in the NPPF directs that local planning authorities should have “a clear understanding of housing needs in their area” and should prepare a Strategic Housing Market Assessment and a Strategic Housing Land Availability Assessment:

Local planning authorities should have a clear understanding of housing needs in their area. They should:

- prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:
  - meets household and population projections, taking account of migration and demographic change;
  - addresses the need for all types of housing, including affordable housing and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes); and
  - caters for housing demand and the scale of housing supply necessary to meet this demand;
- prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period.<sup>11</sup>

In December 2014 the Planning Minister, Brandon Lewis, wrote to the Chief Executive at the Planning Inspectorate about strategic housing market assessments. This letter set out the relationship between housing figures produced as part of a Strategic Housing Market Assessment and those in a Local Plan:

However, the outcome of a Strategic Housing Market Assessment is untested and should not automatically be seen as a proxy for a final housing requirement in Local Plans. It does not immediately or in itself invalidate housing numbers in existing Local Plans.

Councils will need to consider Strategic Housing Market Assessment evidence carefully and take adequate time to consider whether there are environmental and policy constraints, such as Green Belt, which will impact on their overall final housing requirement. They also need to consider whether there are opportunities to co-operate with neighbouring planning authorities to meet needs across housing market areas. Only after these considerations are complete will the council's approach be tested at examination by an Inspector. Clearly each council will need to work through this

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<sup>11</sup> Department for Communities and Local Government, *National Planning Policy Framework*, March 2012, para 159

process to take account of particular local circumstances in responding to Strategic Housing Market Assessments.<sup>12</sup>

## 2.2 The duty to cooperate

The *Localism Act 2011* also introduced a legal “duty to co-operate” on local planning authorities in preparing plans that relate to “strategic matters” (including housing) that would have a significant impact on at least two planning areas. Once the plan is made it must pass independent examination by a Planning Inspector. This examination now includes an assessment of whether the planning authority has complied with the legal duty to cooperate – i.e. the Planning Inspector will look for evidence that the different relevant bodies have worked together. If the Inspector is not satisfied that the local authorities have cooperated as necessary, their plan could be found unlawful. Guidance about the duty is contained in the NPPF and guidance from the Government’s [Planning Advisory Service](#).

An article in the *Guardian* reported that Councils in Hertfordshire had experienced problems with the duty to cooperate and agreeing housing numbers:

Stevenage contends that the other nine district councils in Hertfordshire are lowering their housing targets. They claim that this will lead to a short-fall of 50,000 homes by 2033. One of these councils is Liberal Democrat-controlled Three Rivers, which reduced its house-building targets from 5,000 to 4,500. Despite this, their core strategy was approved by the planning inspector at the end of 2011.

The duty to co-operate is flawed, because local politics breeds different – sometimes conflicting – local visions for everything from employment to housing. Without a regional level of oversight to knock heads together, more councils could become locked into long disputes over housing and as a result, new homes will take longer to deliver.

The Hertfordshire councils are currently working on a memo of understanding over the duty to cooperate; the result may give us a clue as to whether the policy will survive at all.<sup>13</sup>

## 2.3 National Planning Policy Guidance

In March 2014 the Government launched its web-based [National Planning Policy Guidance](#) (NPPG). One of the aims of the guidance is to give more information to planners about how the policies from the NPPF should be applied and interpreted. The section of the NPPG on [Housing and economic development needs assessments](#) provides local authorities with more detail on defining housing needs and housing market areas, choosing a methodology to use, assessing housing market need, which trends and market signals should be used, and how to calculate need for affordable housing.

The Government amended this part of the NPPG in October 2014, aiming to clarify the relationship between housing figures and green belt boundaries:

**Do housing and economic needs override constraints on the use of land, such as Green Belt?**

The National Planning Policy Framework should be read as a whole: need alone is not the only factor to be considered when drawing up a Local Plan.

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<sup>12</sup> Letter from Brandon Lewis to the Chief Executive at the Planning Inspectorate about [strategic housing market assessments](#), 19 December 2014

<sup>13</sup> “True localism or selfish politics? Why the duty to cooperate is failing” *The Guardian*, 28 January 2013

The Framework is clear that local planning authorities should, through their Local Plans, meet objectively assessed needs unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted. Such policies include those relating to sites protected under the Birds and Habitats Directives, and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park or the Broads; designated heritage assets; and locations at risk of flooding or coastal erosion.

The Framework makes clear that, once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. (Paragraph: 044 Reference ID:3-044-20141006)

### **Do local planning authorities have to meet in full housing needs identified in needs assessments?**

Local authorities should prepare a Strategic Housing Market Assessment to assess their full housing needs.

However, assessing need is just the first stage in developing a Local Plan. Once need has been assessed, the local planning authority should prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period, and in so doing take account of any constraints such as Green Belt, which indicate that development should be restricted and which may restrain the ability of an authority to meet its need. (Paragraph: 045 Reference ID:3-045-20141006)<sup>14</sup>

## **2.4 Gallagher Homes Case and Regional Spatial Strategy Figures**

In April 2014 the High Court, in the case of Gallagher Homes Ltd,<sup>15</sup> upheld a judicial review by Gallagher Homes that Solihull Metropolitan District Council had failed to take into account policy changes introduced by the National Planning Policy Framework in calculating its housing supply. The Council had used figures from the now revoked regional spatial strategy figures for the area, from 2009, and argued that there had been no significant change in demographic trend since then. Gallagher homes argued that this housing supply figure was not supported by a figure for objectively assessed housing need. The judge said “extreme caution” should be taken when using housing data from the former regional spatial strategies:

Where housing data survive from an earlier regional strategy exercise, they can of course be used in the exercise of making a local plan now – paragraph 218 of the NPPF makes that clear – but where, as in this case, the plan-maker uses a policy on figure from an earlier regional strategy, even as a starting point, he can only do so with extreme caution – because of the radical policy change in respect of housing provision effected by the NPPF.<sup>16</sup>

Following this judgement planning and house building commentators in *Planning* magazine have speculated about whether this will mean that any local plan which is based on regional

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<sup>14</sup> National Planning Practice Guidance, [Housing and economic land availability assessment](#), updated 6 October 2014

<sup>15</sup> [Gallagher Homes Ltd & Another v Solihull Metropolitan Borough Council](#) [2014] EWHC 1283 (Admin) (30 April 2014)

<sup>16</sup> Ibid, para 98

spatial strategy figures will now be open to challenge if it is not also supported by an objective housing market assessment. There was also speculation that local authorities with plans adopted after the NPPF was published in March 2012, but which were supported by regional spatial strategy figures could also now be vulnerable to challenge.<sup>17</sup>

## **2.5 Accounting for shortfall: Liverpool and Sedgfield methods**

The NPPF directs that the housing supply calculation should be updated annually.

The Department for Communities and Local Government research document, [Land Supply Assessment Checks](#), May 2009 uses case studies from Liverpool and Sedgfield about how these authorities calculated housing figures in their (now abolished) regional spatial strategies. In particular it highlights Liverpool and Sedgfield as being “good examples” for calculating historic undersupply of housing in a “clear and transparent manner”.

The **Sedgfield** method of calculating land supply involves adding any shortfall of housing in the local plan from previous years over the next five years of the plan period, whereas the **Liverpool** method spreads the shortfall over the whole remaining plan period.

An article from the specialist publication, Planning highlighted that the Sedgfield method is currently used most often by Planning Inspectors at appeal:

Experts says there has been a shift towards the Sedgfield method, shown in appeal decisions, since the NPPF. Savills director Chris Rees says: "This ensures the current housing shortfall is made up quickly, and not simply averaged out over a much longer time frame."

Barton Willmore senior partner Ian Tant says: "A lot of councils recognise that housing need cannot wait until 2026."

But the Sedgfield method is not always upheld, as an appeal decision in January on a 91-home scheme in Groby, Leicestershire, shows.<sup>18</sup>

## **3 House building statistics**

It is generally accepted that not enough new homes are being built to meet growing need. [Housing projections](#) up to 2033 were published in November 2010 which indicated that around 232,000 new homes would be required each year. This exceeds the number of homes added to the dwelling stock in recent years by a considerable margin – in the 12 months ending September 2014, 117,070 houses were completed. In that same year 139,500 homes were started in the 12 months to September 2014, a 17 per cent increase from the 12 months to September 2013.<sup>19</sup>

Statistics and Live tables on house building are available from the [Government website](#).

## **4 Comment on housebuilding and the NPPF**

### **4.1 Policy Exchange Report by Tetlow King Planning 2012**

A December 2012 report commissioned by Policy Exchange from Tetlow King Planning said that English local authorities were planning for 272,720 fewer homes than were provided for

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<sup>17</sup> “Local plan ruling 'a warning'” [Planning](#), 9 May 2014

<sup>18</sup> “The struggle for sites” [Planning](#), 31 May 2013

<sup>19</sup> Department for Communities and Local Government, [Housing Statistical Release](#), 3 December 2014

under the 2010 regional strategies (including the unadopted strategies); a seven per cent reduction.<sup>20</sup>

An article in *Planning* magazine cautioned that interpreting these results it should be noted that not all regional strategies were adopted; that housing figures tended to reduce as they progressed towards final approval. It also noted that not all the figures from local authorities on projected housing numbers came from approved plans; that Planning Inspectors may well increase some of the figures at examination stage.<sup>21</sup>

#### 4.2 BNP Paribas Real Estate report 2013

A BNP Paribas Real Estate report, *Housing the Nation Summer 2013*, from June 2013 reported mixed views on how effective the NPPF had been in boosting housing delivery:

**Since its introduction, how effective has the National Planning Policy Framework been in boosting housing delivery?**

Not very according to Harry Downes of FizzyLiving. He explains: “as a driver, it has been fairly ineffective because despite its many policies and proposals, there has not been any noticeable increase in planning approvals for the stock which is needed. The average age of first time buyers continues to grow and the ‘presumption in favour’ policy appears to have made no impact at all.”

Adrian Owen agrees that it has not been hugely effective: “whilst Planning Officers follow policy, including the NPPF, and make recommendations for approval; Planning Committees are often too political and ignore these recommendations resulting in too many schemes having to be Appealed and go to Inquiry.”

This is certainly not a view reflected within Government. “The National Planning Policy Framework has been very effective” John Howell states. “There has been a 21.7% increase in planning permissions on the previous 12 months. The signs are that the Framework is helping to provide the homes that we need. It reflects the positive planning principles of the NPPF and the robust appeals system being applied,” he added. The success of the NPPF is also shared by Andrew Cunningham at Grainger, who is cautious at the same time “the NPPF has been an important step in simplifying the planning system, but it will undoubtedly require further improvement and tweaks as it embeds and is tested through market activity” he says.<sup>22</sup>

#### 4.3 Nathaniel Lichfield & Partners Report 2014

A Nathaniel Lichfield & Partners report, *Positive Preparations A review of housing targets and Local Plans*, from March 2014, reported that producing objectively assessed housing figures had been a cause for delay in making local plans:

A review of the 109 Local Plans that have been examined or submitted for examination since the NPPF was introduced confirms that the key reason Plans have stalled is the policy requirement to meet objectively assessed needs, with the housing target remaining the key battleground at examinations. Just over half of Plans propose less housing than had been proposed by former Regional Strategies, but a third of sound plans end up having to increase their target to pass examination.

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<sup>20</sup> Tetlow King Planning for Policy Exchange, *Updated research on the impact of the impending revocation of regional strategies on proposed and adopted local housing targets across England*, December 2012, p2

<sup>21</sup> “Rights and wrongs of regional plan abolition” *Planning*, 11 January 2013

<sup>22</sup> BNP Paribas Real Estate, *Housing the Nation Summer 2013*, June 2013, p11

Half of the plans submitted for examination since the NPPF have experienced delays. Progress of many plans has stalled as LPAs take stock of their evidence base before proceeding with the rigorous examination process.<sup>23</sup>

#### 4.4 National Trust Report 2014

A December 2014 report by the National Trust, *Positive Planning: the NPPF and plan-led development*, suggested that housing developers had been “gaming” the planning system to get new housing estates built on greenfield sites even though local authorities had never intended for them to be built on. It explained that because local authorities which hadn’t earmarked suitable land to meet housing demand over the next five years had to adopt a “presumption in favour” of approving applications for planning permission, that this had “opened the door to challenges from streetwise developers, undermining the local planning process and bypassing local opinion.” A press release said that “the problem has been intensified by the NPPF requirement for councils to clear any housing backlog within five years.”

#### 4.5 Communities and Local Government Committee report 2014

A House of Commons Communities and Local Government Committee report, *Operation of the National Planning Policy Framework*, 16 December 2014, found that provisions in the NPPF relating to the viability of housing land were “leading to inappropriate development”.<sup>24</sup> It recommended that the Government work with local government and the house building industry to revise its guidance on strategic housing market assessments and produce an agreed methodology. Inspectors should then be required to test SHMAs against this methodology.<sup>25</sup>

### 5 Government planning policies to encourage more housing

The Government is concerned that there have not been enough homes built to meet the needs of a growing and ageing population. Its aim is to increase the supply of both new-builds and repurposed empty homes.<sup>26</sup> To this end it has announced a number of policies and financial incentives which aim, either directly or indirectly to increase the number of new homes.

Non planning related policies to incentivise house building are outside the scope of this note, but are set out in:

- [The Department for Communities and Local Government website](#); and
- Library standard note [Stimulating housing supply - Government initiatives](#).

The following sections of this note are Coalition Government planning policies which have an aim to encourage more housing development.

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<sup>23</sup> Nathaniel Lichfield & Partners, *Positive Preparations A review of housing targets and Local Plans*, from March 2014, p1

<sup>24</sup> House of Commons Communities and Local Government Committee report, *Operation of the National Planning Policy Framework*, 16 December 2014, Fourth Report of Session 2014–15, HC 190, 16 December 2014, p3

<sup>25</sup> Ibid, p36

<sup>26</sup> Department for Communities and Local Government website, [Increasing the number of available homes](#) [on 15 January 2013]

## 5.1 Neighbourhood planning

The *Localism Act 2011* placed a legal duty on local planning authorities to support and advise parish councils and neighbourhood forums that want to do neighbourhood planning. Neighbourhood planning can be carried out by anyone who wants to set up or join a group including residents, business and local councillors who are designated a “neighbourhood forum” by the local authority.

Neighbourhood forums and parish councils can use the neighbourhood planning powers to establish general planning policies for the development and use of land in a neighbourhood. These are called “neighbourhood development plans.” Neighbourhood planning can also be used to permit development in an area without the need for planning applications. These are called “neighbourhood development orders.” A Neighbourhood Development Order can grant planning permission for major development schemes, new houses, a new shop or pub, or permit extensions of a certain size or scale across the whole neighbourhood area.

Neighbourhood development plans or orders do not take effect unless there is a majority of support in a referendum of the neighbourhood. They also have to meet a number of conditions before they can be put to a community referendum and legally come into force.

The *Localism Act 2011* powers also give communities the power to make a Community Right to Build order. This is an order which gives permission for small-scale, site-specific developments by a community group.<sup>27</sup>

On 10 January 2013 the Department for Communities and Local Government *announced* that in areas where there is a neighbourhood development plan in place, the neighbourhood will be able to receive 25% of the revenues from the Community Infrastructure Levy arising from the development that they have chosen to accept.<sup>28</sup> Under the proposals the money would be paid directly to parish and town councils and could be used for community projects such as re-roofing a village hall, refurbishing a municipal pool or taking over a community pub.

To incentivise the use of neighbourhood planning powers, neighbourhoods without a neighbourhood development plan but where the community infrastructure levy is still charged will receive a capped share of only 15% of the levy revenue arising from development in their area.<sup>29</sup> This incentive has now come into force, on 25 April 2013, through the *Community Infrastructure Levy (Amendment) Regulations 2013* (SI 2013/982).

In the July 2014 *Technical Consultation on Planning*, the Government proposed a number of changes to the existing neighbourhood planning process, in order to make the process faster:

1.5 We are proposing to set a statutory time limit of 10 weeks (70 days) within which a local planning authority must make a decision on whether to designate a neighbourhood area that has been applied for by a parish or town council or prospective neighbourhood forum (or community organisation bringing forward a community right to build proposal). This time limit will apply where the area applied for follows parish or electoral ward boundaries and there is no existing designation or outstanding application for designation, for all or part of the area for which a new designation is sought.

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<sup>27</sup> Department for Communities and Local Government website, *Neighbourhood Planning* [on 8 January 2012]

<sup>28</sup> Department for Communities and Local Government, *Communities to receive cash boost for choosing development*, 10 January 2013

<sup>29</sup> Planning Portal, *Cash for communities that choose development*, 10 January 2013

1.6 We propose removing the current statutory requirement for a minimum of six weeks of consultation and publicity by those preparing a neighbourhood plan or Order.

1.7 We propose to require those preparing a neighbourhood plan to consult certain landowners.

1.8 We intend to introduce a new statutory requirement (basic condition) to test the extent of the consultation undertaken during the preparation of a neighbourhood plan or Order (including a community right to build order).

1.9 We intend to clarify the information that should be submitted with a neighbourhood plan in order that its compatibility with obligations under the Strategic Environmental Assessment Directive can be assessed. We will do this by setting out in regulations that a neighbourhood plan proposal, when it is submitted to a local planning authority, must be accompanied by either:

- a statement of reasons why the proposed plan is unlikely to have significant environmental effects (a screening opinion);
- an environmental report;
- an explanation of why the proposed plan does not require screening or environmental assessment.

The [Government Response](#) to this consultation was published on 31 December 2014. It set out that most of these proposals would go ahead, with the exception of those relating to changing the pre-submission consultation and publicity process, which will not go ahead.

For further information on neighbourhood development plans see Library standard note, [Neighbourhood Planning](#) and the [My Community Rights website](#).

## **5.2 Affordable housing and other section 106 obligations**

Section 106 agreements, sometimes known as “planning obligations” or “planning gain” stem from agreements made under section 106 of the *Town and Country Planning Act 1990* (TCPA), as amended. They are agreements made between the developer and the LPA to meet concerns that an LPA may have about meeting the cost of providing new infrastructure or about the impact on the local area. These agreements can require that, for example, the developer must provide a certain number of affordable homes in order to be given planning permission to build a development of market value homes.

On [6 September 2012](#) the Government confirmed that it would introduce legislation to allow any developer of sites which were unviable because of the number of affordable homes required through section 106 agreements, to ask the local planning authority to modify it and then to appeal to the Planning Inspectorate if the local authority does not modify it as required. This policy is now contained in the [Growth and Infrastructure Act 2013](#). The Government Minister, Nick Boles, confirmed at the House of Commons Committee stage that this clause in the then Bill was aimed at getting more homes built, even if it led to a reduction in the number of affordable homes:

Our view—which I accept is not his view or that of his hon. Friends—is simply that we are not in the business of fetishising agreements, targets or percentages. We want homes built. We want them built now, and if that means fewer of them can be affordable, because more of them have to be market, because market values have decreased and the potential for cross-subsidy has therefore declined, so be it. Let us

get them built. We can always go back to those higher percentages and higher targets when values return in a few years' time.<sup>30</sup>

Further information about this policy is now set out in the Government publication [Section 106 affordable housing requirements: review and appeal](#), 26 April 2013.

In the [Autumn Statement 2013](#) the Government said it would consult on introducing a new 10 unit threshold for section 106 contributions relating to affordable housing contributions, in order to reduce costs for smaller builders. In the 23 March 2014 consultation [Planning performance and planning contributions: consultation](#), the Government set out plans for introducing a 10-unit and 1,000 square metres gross floor space threshold for affordable housing contributions through section 106 planning obligations. Rural Exception Sites would be excluded from this threshold. The consultation also proposed that buildings brought back into use should be excluded from section 106 requirements, other than proportionately for any increase in floor space.

The [Government responded](#) to this part of the Consultation in November 2014 and confirmed that it would go ahead with the changes as follows.<sup>31</sup> The Government said that it would make these changes by amending planning policy in the Government's online National Planning Practice Guidance (NPPG). These changes are now reflected in the NPPG's pages on [Planning Obligations](#).

In the [Autumn Statement 2014](#) and the [National Infrastructure Plan 2014](#) the Government said that it would take further measures to speed up section 106 negotiations to speed up the end-to-end planning process. Specifically this would include issuing revised guidance, consulting on a faster process for reaching agreement, and considering how timescales for agreement could be introduced, and improving transparency on the use of section 106 funds.<sup>32</sup>

### **5.3 Speeding up planning decisions**

Following concern about the time it took for planning applications to be determined, as part of the [Plan for Growth](#) in March 2011, the Government committed to a "Planning Guarantee" that "no planning application should take longer than one year to reach a decision."<sup>33</sup> Further details about the guarantee were announced in July 2011.<sup>34</sup>

The guarantee sets a clear time limit within which all planning applications should be decided, including where an appeal has been made. It does not replace the existing statutory time limits within which planning authorities should decide on applications (13 weeks for 'major' applications, 8 weeks for 'others' and 'minor' applications). To contribute to the overall guarantee being met, Local Planning Authorities (LPAs) and the Planning Inspectorate (where an appeal is made), are given a timeframe of 26 weeks to determine applications. This therefore includes time as well for an appeal to be determined if the initial application is refused by the LPA.

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<sup>30</sup> PBC Deb 27 November 2012 c267-8

<sup>31</sup> HM Government, [Planning Contributions \(Section 106 planning obligations\): Government response to consultation](#), November 2014

<sup>32</sup> HM Government, [National Infrastructure Plan 2014](#), December 2014, para 15.23

<sup>33</sup> HM Treasury, [Plan for Growth](#), March 2011, para 2.24

<sup>34</sup> Department for Communities and Local Government, [The Planning Guarantee and information requirements](#), 29 July 2011

Clearly unhappy with progress by some LPAs in meeting the guarantee, and consequently the time it took for new development to be approved, the Secretary of State for Communities and Local Government, Eric Pickles, announced in a [Written Ministerial Statement](#) of 6 September 2012 his intention to allow the Planning Inspectorate (PINS) to determine planning applications instead of LPAs where the LPA has been “designated” as having a track record of “consistently poor performance in the speed or quality of its decisions.”<sup>35</sup> This policy is now contained in the [Growth and Infrastructure Act 2013](#) and would apply only to “major” planning applications.<sup>36</sup>

Further information about this policy has since been published in the Government publications:

- [Planning performance and the planning guarantee: government response to consultation](#), 4 June 2013
- [Improving planning performance: criteria for designation](#), 4 June 2013

A [league table of planning authorities’ performance](#) has also been published by Government. Blaby District Council was the first to be designated under this new regime.<sup>37</sup>

In the [Autumn Statement 2013](#) the Government said that it would consult on increasing the threshold for designation from 30% to 40% of decisions made on time. On 23 March 2014 the Government published a consultation, [Planning performance and planning contributions: consultation](#) which consulted on raising threshold for designation as follows:

We are proposing that the threshold for designating authorities as under-performing, based on the speed of deciding applications for major development, should increase to 40% or fewer of decisions made on time. The threshold may be raised further at a future stage. Authorities that have dealt with an average of no more than two applications for major development, over the two year assessment period, would be exempt from designation based on their speed of decisions. The document setting out the criteria for designation would set out the types of exceptional circumstances that may be taken into account, prior to designations being confirmed.

The Government responded to this part of the consultation on 13 June 2014 and confirmed that the threshold for designation would be raised to 40%.<sup>38</sup> In respect of this it laid a [revised criteria for designation document](#), 13 June 2014, before Parliament for its statutory 40 day period, which has now come into effect.

In the [National Infrastructure Plan 2014](#) the Government said that the government will keep the speed of major decisions under review, with “minimum performance thresholds increasing to 50% of major decisions made on time as performance improves.”<sup>39</sup>

#### **5.4 Change of use of existing buildings**

The *Town and Country Planning (Use Classes) Order 1987* puts uses of land and buildings into various categories known as “Use Classes”. The categories give an indication of the

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<sup>35</sup> [HC Deb 6 September 2012 c32WS](#)

<sup>36</sup> “Major development” is currently defined in section 2 of the *Town and Country Planning (Development Management Procedure) (England) Order 2010* (SI 2184)

<sup>37</sup> Department for Communities and Local Government, [Councils must provide an efficient planning service](#), 8 November 2013

<sup>38</sup> HM Government, [Planning performance: government response to consultation](#), 13 June 2014

<sup>39</sup> HM Government [National Infrastructure Plan 2014](#), December 2014, box 15.A

types of use which may fall within each use class. It is only a general guide and it is for local planning authorities to determine, in the first instance, depending on the individual circumstances of each case, which class a particular use falls into. Permitted development rights allow for change of use between certain classes without the need for full planning permission.

The current Government has made a number of changes to change of use permitted development rights, including allowing offices to change to residential use and allowing existing agricultural buildings to be converted into homes. A July 2014 [Technical Consultation on Planning](#) has proposed further changes allowing further changes to residential use. For further information about these proposals and recent changes see Library standard note, [Planning: change of use system](#).

## 5.5 Community Infrastructure Levy

On 15 April 2013 the Government published a consultation, [Community infrastructure levy further reforms](#). The Consultation proposes to give relief from paying the Community Infrastructure Levy to cover homes built or commissioned by individuals, families or groups of individuals for their own use and that will be owner-occupied. The aim was to make it cheaper for people to self-build their own homes.

The Government responded to the Consultation in October 2013, [Community Infrastructure Levy: Consultation on further Regulatory Reforms: Government Response](#). It confirmed that it would proceed with the majority of the proposals as set out in the consultation document, including the proposed exemption from the levy for self build homes.

The [Community Infrastructure Levy \(Amendment\) Regulations 2014](#) (SI 2014/385) have now brought all these changes into force as of 24 February 2014. This followed [scrutiny](#) in Parliament of the regulations by the First Delegated Legislation Committee on 10 February 2014.

## 5.6 Statutory consultation reduction

The [National Infrastructure Plan 2013](#) said that there would be a consultation on reducing when statutory consultation would be required as part of the planning process:

7.44 To prevent delays for applicants, the government will consult on proposals to reduce the number of applications where unnecessary statutory consultations occur, and key statutory consultees will commit to a common service agreement. The government will also pilot a new scheme to provide a single point of contact for cases where a point of conflict in advice cannot be resolved locally.

The Government's [Technical Consultation on Planning](#), July 2014, chapter 4 gave more detail about this proposal and included, for example, to change to the requirement to consult Natural England, English Heritage and the Highways Agency before the grant of planning permission in certain circumstances. The Government has not yet responded to this part of the Consultation.

## 5.7 Garden Cities

In the [Budget 2014](#) the Government announced that it would support a new Garden City at Ebbsfleet in Kent, for up to 15,000 new homes based on existing brownfield land, to be driven forward by a development corporation with compulsory purchase powers. In April 2014 the Government published a prospectus [Locally-led Garden Cities](#) setting out a support

package for local areas which are interested in forming a new garden city. Proposals put forward should have the full backing of all local authorities in which the new garden city would be sited and should be at or above a level of 15,000 homes. At the same time that the Prospectus was published the Government also launched the [Large Sites Infrastructure Programme](#), which is aimed at accelerating the development of large housing sites.

For more information see Library standard note, [Garden Cities](#).

## 5.8 Discharge of planning conditions

The power to impose conditions when granting planning permission is very wide. They can be used to enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission.<sup>40</sup> They can cover a wide range of issues such as design and landscape to restricting hours of operation of a business. Under the [National Planning Policy Framework](#) planning conditions should “only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”<sup>41</sup>

In the [National Infrastructure Plan 2013](#) the Government expressed concern about delays with local planning authorities discharging planning condition and committed to making changes to the system:

7.43 Delays associated with the discharge of planning conditions can hinder the effective delivery of development. The government will legislate so that where a planning authority has failed to discharge a condition on time, it will be treated as approved, and will consult on using legislative measures to strengthen the requirement for planning authorities to justify conditions that must be discharged before any work can start.

It was confirmed, in the Queen’s Speech on 4 June 2014 that this changes would be taken forward as part of the “Infrastructure Bill” for the 2014-15 session.<sup>42</sup> The [Infrastructure Bill 2014-15](#) has now been published and would allow for certain types of planning conditions to be regarded as discharged if a local planning authority has not notified the applicant of their decision within a set time period. For further information about this provision see Library standard note, [Infrastructure Bill: Planning Provisions](#).

## 5.9 Environmental Impact Assessment Thresholds

The Government’s [Technical Consultation on Planning](#), July 2014 proposed changes to “reduce the number of projects that are not likely to give rise to significant environmental effects that are screened unnecessarily.”<sup>43</sup> For further information see Library Standard Note, [Planning Reform Proposals](#).

## 5.10 Householder benefits of infrastructure

With the aim of reducing the extent to which development is blocked or delayed as a result of active opposition by local residents, in the [National Infrastructure Plan 2013](#) the Government said that it would develop a pilot of a system by where individual householders were given a “share of the benefits” of infrastructure:

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<sup>40</sup> Government, [Circular 11/95: Use of conditions in planning permission](#)

<sup>41</sup> [National Planning Policy Framework](#), para 206

<sup>42</sup> [Queen’s Speech 2014: background briefing notes](#), p25

<sup>43</sup> HM Government, [Technical Consultation on Planning](#), July 2014, para 5.17

7.45 The government wants to ensure that households benefit from developments in their local area. Building on the measures it has already put in place at the local authority and community level (including the neighbourhood funding element of the Community Infrastructure Levy, 'Community Benefits' in the energy sector and the New Homes Bonus), the government will work with industry, local authorities and other interested parties to develop a pilot passing a share of the benefits of development directly to individual households.

In September 2014 the Government published [Development benefits pilots: Invitation for expressions of interest](#). The document sets out that the Government has a budget of £3.5m for piloting the development benefits model and invites expressions of interest from local planning authorities and parish councils or neighbourhood forums. It explained that where a development attracts development benefits, eligible households would receive a direct financial payment when the site for housing is allocated or when that development goes ahead. Payments could be varied to reflect distance from the development or be a single figure. The legal basis on which planning decisions are taken would not change.<sup>44</sup> The document gives further information about what it proposed and how it would operate. The invitation for expressions of interest closed on 24 October 2014 and the Government has not yet announced which areas will be involved in this pilot.

### 5.11 Brownfield Land

In the [Mansion House Speech 2014](#) on 12 June, the Chancellor George Osborne announced that Councils would be required to put local development orders on over 90% of brownfield sites that are considered suitable for housing. He suggested that this would mean planning permission for up to 200,000 new homes.

This speech was later followed by a [written statement](#) in the House of Commons by the Secretary of State for Communities and Local Government, Eric Pickles, which set out further the Government's plans to increase housebuilding on brownfield land:

Councils will play a critical role in bringing forward suitable unused and previously developed land. They will consult on and put in place local development orders, which are a flexible, proactive way to provide outline planning permission for the scale and type of housing that can be built on sites. This will provide greater certainty for both builders and local residents, helping developers to work up suitable schemes and ultimately speeding up the building of new homes. Our aim is to see permissions in place on more than 90% of suitable brownfield sites by 2020—which could provide up to 200,000 new homes.

We are providing a £5 million fund, to be launched before the summer, to support the first wave of new local development orders; we will also be providing a set of local development order "templates" for smaller brownfield sites, and will consult on other measures to underpin this programme later in the year. The Mayor of London will be given new powers to drive forward local development orders in the capital. But this drive for planning permissions will retain key safeguards—as with any planning application, councils will need to take account of the views of local people when preparing an order, as well as environmental issues like minimising flood risk.<sup>45</sup>

Information is also given in the accompanying Government press release, [Government initiatives to help build more new homes on brownfield land](#), 13 June 2014.

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<sup>44</sup> HM Government, [Development benefits pilots: Invitation for expressions of interest](#), September 2014, para 9

<sup>45</sup> [HC Deb 16 June 2014 c72WS](#)

A Local Development Order (LDO) grants permission for a certain type of development and thereby removes the need for a planning application to be made by the developer. The legal basis is sections 61A-61D of the [Town and Country Planning Act 1990](#). The idea is that they can allow developers to progress development proposals with greater speed and certainty. Associated costs may be lower with an LDO as there will not be a planning application fee or need to commit the resources associated with the preparation of an application. The procedure for making an LDO is set out in section 34 of the [Town and Country Planning \(Development Management Procedure\) \(England\) Order 2010](#), SI 2010/2184. Further information about LDOs is set out in the [National Planning Practice Guidance](#).

In August 2014 the Government issued an [invitation to bid](#) which provided more information on how Councils could bid for funding to support their local development orders. Bids were encouraged from local planning authorities which could identify brownfield sites that were suitable for housing, could accommodate in the region of 100 dwellings or more and where work on a local development order could commence in the autumn this year with a view to being in place in 2015. The invitation to bid ran until 30 September 2014 and is now closed. The Government has not yet responded to this invitation.

A summary of reaction to the proposals on brownfield land policy from planning and house building professionals is available on the [Planning Blog](#), 13 June 2014.

## 5.12 Compulsory Purchase

In the [Autumn Statement 2014](#) the Government announced, that in respect of compulsory purchase reform, it would “publish proposals for consultation at Budget 2015 to make processes clearer, faster and fairer, with the aim of bringing forward more brownfield land for development.”<sup>46</sup>

## 5.13 A “right to build” (self-build plots)

The [Budget 2014](#) announced that the Government would consult on creating a new “right to build” which would give people who want to build their own homes a right to a plot from a council and access to a repayable fund.<sup>47</sup>

In July 2014 the Department for Communities and Local Government published an [expression of interest](#) for “right to build vanguards”, inviting expressions of interest from local planning authorities. It explained that a right to build would be a requirement on local authorities to:

(a) Open and promote a register for prospective custom builders. A key purpose of the register is to measure effectively the demand for custom build housing in the local area. We are considering options on how this register might operate, including, for example, that eligibility for registration would be open to those who are resident in the local authority area and potentially also those with a direct family connection to the area.

The proposed requirement to open and promote a register builds upon existing national planning policy and guidance. The National Planning Policy Framework requires local authorities to have a clear understanding of housing need in their area and plan to address the need for all types of housing, including the demand from those people wishing to build their own homes. The Government’s Planning Practice Guidance states that plan makers should, therefore, consider surveying

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<sup>46</sup> HM Government, [Autumn Statement 2014](#), para 2.49

<sup>47</sup> HM Treasury, [Budget 2014](#), 19 March 2014, para 1.142

local residents, possibly as part of any wider surveys, to assess local housing need for this type of housing, and compile a local list or register of people who want to build their own homes; and

(b) Make available, for sale at market value, a sufficient number of suitable serviced plots for those on the register within a reasonable period of time. Land for plots could come from local authorities' own landholdings or land from other landowners.<sup>48</sup>

In October 2014 the Government published, *Right to Build: supporting custom and self build: consultation*. The consultation set out that 11 local authorities had been selected to become Right to Build Vanguard. It also confirmed that the Government would support Richard Bacon MP's Private Members' *Self-Build and Custom Housebuilding Bill 2014-15* which aims to enact the first element of the Right – the establishment by local planning authorities of a register of prospective custom builders who are seeking a suitable serviced plot of land. The consultation seeks views on the technical aspects about how the right to build should work in practice. The consultation closes on 18 December 2014. For further information see Library standard note, *Self-build and custom build housing sector*.

#### **5.14 Starter homes exception sites policy**

In December 2014 the Government published a consultation, *Stepping onto the property ladder: Enabling high quality Starter Homes for first time buyers – a consultation*. This consultation proposed to create a new policy in the National Planning Policy Framework (NPPF) to allow applications for starter homes to be built on “exception sites on under-used or unviable industrial and commercial land that has not been identified for housing.” These houses would be offered for sale at a minimum of 20% below normal market price, to people who have not previously been a home buyer, and who were below the age of 40 at the time of purchase. Purchasers would then be prevented from re-selling the property at open-market value for a five to fifteen year period, in order to prevent a windfall profit being made. Developers of these homes would be able to claim an exemption from any applicable section 106 planning obligation charges or community infrastructure levy payments.

The consultation proposes to implement this scheme by inserting a new section into the NPPF (following a written ministerial statement being made in Parliament) and by making amendments made to community infrastructure levy regulations. It also proposed that local authorities could use planning obligations and/ or planning conditions at the time of planning permission being granted for a starter home under this scheme to ensure that the sale is restricted to first time buyers under a certain age and to prevent resale of the property at full open market price within a specified time period. The consultation closes on 9 February 2015.

## **6 Further reading**

- National Trust, Positive Planning: *The NPPF and plan-led development*, December 2014
- Nathaniel Lichfield & Partners, *Positive Preparations A review of housing targets and Local Plans*, March 2014
- BNP Paribas Real Estate, *Housing the Nation Summer 2013*, June 2013

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<sup>48</sup> Department for Communities and Local Government, *Right to Build Vanguard: Invitation for expressions of interest*, July 2014, para 9

- Nathaniel Lichfield & Partners, *Objectively Speaking 12 months of applying the NPPF to housing targets in Local Plans: A review of examinations*, April 2013
- Savills, *National Planning Policy Framework (NPPF) One Year On*, March 2013
- Tetlow King Planning for Policy Exchange, *Updated research on the impact of the impending revocation of regional strategies on proposed and adopted local housing targets across England*, December 2012
- BNP Paribas Real Estate, *Housing the Nation; the effect of localism on housing supply*, summer 2011
- Town and Country Planning Association, *Policy analysis of housing and planning reform*, March 2011
- National Housing and Planning Advice Unit (NHPAU), *Housing Supply and Planning Controls: The impact of planning control processing times on Housing Supply in England*, January 2010
- Killian Pretty Review, *Planning applications: A faster and more responsive system*, 2008
- Office of Fair Trading, *Homebuilding in the UK: A Market Study*, 2008
- National Audit Office, *Planning for Homes: Speeding up planning applications for major housing developments in England*, 2008
- Audit Commission, *The planning system: Matching expectations and capacity*, 2006
- HM Treasury, *Barker Review of Housing Supply*, March 2004