

The Government's proposed reforms to the National Planning Policy Framework and other changes to the planning system

Statement of representation from the Leaders and Chief Executives of North Essex Councils

Please accept this statement on behalf of the Leaders and Chief Executives for the Local Authorities in North Essex, as a duly-made representation on the new Government's *'Proposed reforms to the National Planning Policy Framework and other changes to the planning system'* as launched by the Deputy Prime Minister on 30 July 2024.

This is a jointly-prepared statement by the Leaders and Chief Executives of the following authorities:

- Braintree District Council;
- Chelmsford City Council;
- Colchester City Council;
- Epping Forest District Council;
- Essex County Council;
- Harlow District Council;
- Maldon District Council;
- Tendring District Council; and
- Uttlesford District Council.

This statement is submitted for the Government's consideration in addition to, and without prejudice to any duly-made representations submitted separately and individually by the above authorities in response to the detail of the Government's consultation, including the 106 individual questions within it; as well as the advice offered, from a technical and practical perspective, by the Chief Planning Officers of our Councils as part of the Essex Planning Officers Association (EPOA).

It does; however, represent and demonstrate the authorities' shared commitment to working together, strategically, to assist the Government in delivering upon its ambition and objectives around economic growth, infrastructure provision and housebuilding –

whilst acknowledging and respecting the wide geographic, economic, demographic and political diversity across our constituent parts and the way in which the challenges around growth differ significantly from authority to authority.

North Essex Councils have an extremely strong record of working together positively and constructively to deliver and create the conditions for employment and housing growth in a challenging economic climate – with a consistent record of exceeding existing delivery targets and being at the forefront of bringing forward major new Garden Communities including at Harlow Gilston, North East Chelmsford and the Tendring Colchester Borders.

Further to that, with our partners in South Essex we are in the process of preparing an Expression of Interest to explore opportunities around devolution and have invested time and resources in assessing and identifying opportunities for joint working and provision of joint services across a range of topics and disciplines. Our authorities are also making positive progress in developing a coordinated Economic Growth Plan that not only highlights the wide range of existing projects, incentives and developments already underway or in the pipeline; but which is being updated in response to the Government's proposed planning reforms – looking ahead at identifying locations for additional future growth and the strategic investment in infrastructure that will be required to make that growth happen.

The North Essex Leaders and Chief Executives acknowledge the fundamental change in the approach to setting housebuilding targets for Local Plans proposed by the new Government. This reflects the ambition to deliver 1.5million new homes nationally over five years and to address long-standing structural deficiencies in housing supply, generate sustainable economic growth and get Britain building again.

The Government must already anticipate that there will be Councils and communities up and down the country that will express serious concerns about the introduction of top-down mandatory housebuilding targets in the way that is being proposed, particularly as the revised standard methodology results in a significant and sharp increase in housebuilding expectations for many authorities, including ours – despite already high levels of delivery. However, as a group of authorities we recognise the need for growth and the economic and social imperatives behind a strategy of substantially increased housebuilding targets and we understand that the Government will be keen to push ahead with reforms to the planning system that seek to achieve that goal.

It is in the spirit of collaboration, coordination and long-term strategic thinking, therefore, that the Leaders and Chief Executives for North Essex Councils offer constructive feedback on the Government's proposed changes to the National Planning Policy Framework (NPPF) and the ambition around housebuilding; commitment to working constructively with the Government to identify and deliver the measures that will make the ambition happen; and suggestions that could address

some of the serious practical issues we have identified in respect of the current proposals.

Mandatory housebuilding targets

The Government’s proposed standard methodology generates housebuilding targets across the country that together seek to achieve the national ambition for 1.5million homes over five years. The targets are however based mainly on proportionate increases on existing population sizes rather than household projections or other market/need indicators. They do not reflect any practical or local considerations of land availability, infrastructure provision, housing market delivery or other macro or micro-level physical or environmental constraints. For that reason, whilst we support the ambition for growth, the North Essex Councils are concerned that the proposed targets are over ambitious and are unlikely, in practical terms, to be achievable unless there is significant Government funding and support and other changes to what is proposed – as explained later.

For the Local Planning Authorities in the North Essex area, the comparison of housebuilding targets generated by the existing method of calculating local housing need and those following the new proposed methodology is set out in the following table:

LPA	Current SM	New SM	Increase	% Change
Braintree	813	1,098	285	35%
Chelmsford	913	1,406	493	54%
Colchester	1,043	1,290	247	24%
Epping Forest	725	1,210	485	67%
Harlow	514	648	134	26%
Maldon	276	544	268	97%
Tendring	770	1,043	273	35%
Uttlesford	675	749	74	11%
NORTH ESSEX TOTAL	5,729	7,988	2,259	39%

These targets represent a total increase of 2,259 homes a year above current targets but with significant increases of different levels in each of our constituent authorities. The challenges arising from these increases, and the nature of those challenges, vary considerably and dramatically from one location to another. Some of our authorities have significant physical and environmental constraints that will naturally limit the ability to deliver with the pressure passing, unfairly and impractically, to their neighbours.

Some of our authorities do not physically have the land; some have the land but not the infrastructure to enable development of a scale and within the timescale envisaged; some would have growth expectations well in excess of the significant levels of development already being achieved or otherwise over and above what is already in the pipeline through major Garden Communities and strategic urban

extensions; and some are faced with all of the above. In addition, some authorities have worked hard to get 95% of the way through the plan-making process with the possibility that they may need to go back a stage to incorporate these significant target increases.

Because of these genuine, substantial and practical challenges, we are strongly of the view and are extremely concerned that the Government will not achieve its ambition for housing delivery and economic growth unless it puts measures in place to proactively assist Councils in:

1. supporting authorities, like ours, that positively and constructively work together in a collaborative way to plan for growth sensibly, strategically and sustainably – by firstly removing the unhelpful threat of short-term punitive measures i.e. the ‘tilted balance’ to the presumption in sustainable development and the related prospect of ‘planning by appeal’ as a consequence of short-term deficiencies in five-year housing supply measured against significant and sharply increased housing targets;
2. for authorities thinking strategically like ours, forward or grant-funding the delivery and acceleration of time-critical key infrastructure (particularly around transport, health and education) that will enable strategic-scale Garden Community or urban extensions and any accumulation of smaller and medium-sized housing schemes to come forward in a coordinated and timely manner;
3. addressing gaps in viability and the delivery of affordable/social housing delivery to enable local authorities, housing associations and other registered providers to participate actively in the delivery of new homes alongside the private market and for SME housebuilders to better access finance;
4. incentivising developers to deliver the homes for which permission is granted, including measures aimed at tackling issues around ‘land-banking’ and the prioritisation of sites for commercial reasons – to ensure it is not Councils and communities that are punished for the development industry’s inability or commercial unwillingness to deliver whilst consented; and
5. addressing staffing and resource shortages – not just local authority Planning Officers, but resources across the whole of the planning system, development industry and supporting public services that feed into it including at County Council level in relation to infrastructure advice and delivery, within statutory consultees and government agencies (e.g. Natural England, Environment Agency, Historic England), within the NHS Integrated Care System organisations and in the development industry itself.

If the Government is prepared to work with us to address these matters, then our authorities are very prepared to work with Government to do what is necessary to make these important ambitions for growth happen.

Five year supply and the ‘tilted balance’

We expect that Councils up and down the country will respond to the Government’s consultation to highlight practical and fundamental concern about the proposed re-introduction of the requirement for Local Planning to demonstrate, on an ongoing basis, a five-year supply of deliverable housing sites – irrespective of whether a Council has an up-to date Local Plan.

The theory behind this requirement is widely understood; it is a mechanism by which the lack of up-to-date Local Plan coverage or insufficient land supply for other reasons is not an impediment to overall housing delivery. Councils that fail to demonstrate a deliverable five year supply (with an added flexibility buffer) are expected to follow what has been termed the ‘tilted balance’ to the presumption in favour of sustainable development – in other words an expectation to grant planning permission for housing development on sites outside of or as a departure from the Local Plan to help make up the shortfall – or otherwise risk permission being granted, on appeal, by a government-appointed Planning Inspector.

Because appeal decisions can override local and democratic decisions, a weak five-year supply situation in an authority’s can lead to the submission of poor quality speculative planning applications and what is often referred to as ‘planning by appeal’ – the antithesis of the plan-led planning system the Government is wanting to promote. A huge amount of time, staff resource and public money needed to put Local Plans in place and deliver sustainable and good-quality development solutions can sadly be diverted and swallowed up by the fight against speculative and often inferior, poorly-planned development proposals under a planning by appeal scenario which we are sure the Government will want to avoid.

Introducing significantly increased mandatory housebuilding targets as well as re-introducing the requirement to maintain a five-year housing supply against those targets will result in many authorities, including most of our ours, being forced into a position – literally overnight – of having a comfortable five year housing supply against existing targets on one day, and having a significant shortfall against the new targets the next – thus immediately falling prey to a period of potential planning by appeal. We are sure that Government will appreciate not only the limited resources available to most Councils to deal with a planning by appeal scenario, but also the significant number of additional Planning Inspectors that would need to be trained and employed to deal with such a likely increase in appeals.

For many authorities, as best as we try, it will not be practical nor possible to identify enough sites with reasonable prospect of housing delivery within five years to address

the 5-year supply requirement for the new standard methodology – particularly where local geography might dictate that larger strategic developments requiring a planning lead in time and up-front infrastructure investment are required to create well designed places for people and not just opportunistic housing developments.

Whilst we understand Government's urgency in wanting to increase housing delivery, there needs to be some sensible transitional arrangements put in place - firstly to allow Councils to move smoothly from existing to new targets without fear of speculative development, planning by appeal and the huge damage it does to the effective use of limited public resources, the resulting poor quality planning outcomes and the almost irreparable negative impact on public confidence in our planning system.

As well as transitional arrangements, we would strongly insist on immunity from the need to demonstrate an ongoing 5-year supply of housing land and/or the tilted balance to the presumption of sustainable development for authorities, like ours in North Essex, that are working together to plan for housing, employment and infrastructure in a sensible, strategic and sustainable way to help achieve the Government's ambitions for growth. Without such provisions and the breathing space to progress a strategy within sensible timescales, we will find that the valuable resources needed to make growth happen in a proper coordinated way could be squandered on dealing with speculative planning applications and appeals – with hugely negative and damaging results at a national level and counter to the government's aims and objectives to delivering good quality homes and economic growth.

As well as the above, we believe that where it is necessary for the five-year housing supply requirement to apply the test of whether a site can be classed as 'deliverable', it should be amended to be fair, proportionate and clear and that Councils should not be punished for development industry under-delivery factors that are outside of their control. This sadly is the present situation. It would be fairer and more practical for housing land supply to be monitored more against the amount of land allocated or granted planning permission, and less against actual delivery – which is largely beyond a local authority's control.

The Government should also consider increasing the amount of time for Local Plans being classed as up to date from the current five years to six or more years in order to allow some additional time for authorities to either get their new Local Plans in place or otherwise manage the transition from one housing target to another.

Strategic infrastructure and funding

For North Essex, like many parts of the country, the infrastructure is not in place to be able to accommodate, deliver and support the scale of housebuilding the Government is proposing through its new mandatory housing targets. Transport, utilities, healthcare and education provision are among the key areas of strategic infrastructure that will

require substantial investment in order for the growth ambition to be realised – not only for housing but for the economic and employment growth, private inward investment and regeneration that many of our communities desperately need.

Whilst there is scope for development to either be of a scale to justify and deliver infrastructure off the back of s106 legal obligations or for developer contributions secured through Community Infrastructure Levy or other similar means, the sheer level of growth now proposed by Government and the critical infrastructure needed to unlock and support the necessary developments cannot be delivered off the back of land value capture and developer contributions alone. Certain infrastructure will have to be delivered early and forward funded or grant funded by the Government through the treasury – as is done in other countries - with the scope to recoup contributions from developments, but only to a level that is financially viable and enables development to proceed.

The Housing Infrastructure Fund (HIF) has been utilised with some success across the country, with specific examples in North Essex where funding has been secured or bid for to help unlock opportunities for strategic housing growth and Garden Communities. However, to help local areas achieve increased levels of growth Government will need to revisit and extend such a programme to support the delivery of even more developments in order to achieve the level of growth being envisaged and that funding will need to be flexible in order to extend funding awards in response to the ever-changing conditions of fluctuations in the economy and effects on housing market conditions and cost of labour and materials.

We welcome the Government's New Homes Accelerator programme – from which some assistance and resource is to be directed towards schemes in North Essex like the Tendring Colchester Borders Garden Community. This development is a classic example of where the delivery of homes could be accelerated if key elements of infrastructure like the A1331 link road, currently expected to be delivered in two phases, could be funded and accelerated for delivery in one phase – de-risking the short, medium and long-term delivery of homes at this nationally-significant scheme. Widening the New Homes Accelerator programme to identify and fund shortfalls in capacity, capital infrastructure or viability gap funding would be strongly welcomed and would help increase further delivery both within Essex and nationally.

As a group of local authorities working together to identify growth opportunities and infrastructure requirements to assist the Government in achieving mandatory housing targets in a sensible, strategic and coordinated manner, North Essex would strongly recommend that Government prioritises and enters into long-term funding arrangements with authorities like ours to fund and support a coordinated programme of infrastructure delivery and for it to be a simple and flexible arrangement that can adjust to changing circumstances whilst aiming to keep our overall programme of growth on schedule.

If, as we understand, the Government is minded to bring forward and formalise arrangements for strategic planning at a regional or sub-regional level by the end of the current parliament, our Councils would strongly advocate the definition of practical geographic boundaries and economic corridors recognised through the cross boundary and partnership working that is already underway in areas like North Essex; rather than strict adherence to existing county-level or other administrative boundaries.

Through the Councils' joint work and strong leadership to date on Garden Community projects, including the setting up of Joint Planning Committees for cross-boundary developments, the Government should recognise our commitment to growth with the support that is necessary.

Without such a dialogue and arrangement with Government in place, North Essex authorities will not be able to deliver anywhere near the scale of growth envisaged through the proposed mandatory target.

Viability and affordable/social housing

In a free market economy, we know that developers will only build houses if it is economically viable to do so and that landowners will only release land to developers at a price that is reasonable, viable and acceptable to them. From current experience, where there are issues with economic viability – having considered construction costs, property values, benchmark land values, finance costs and a myriad of other factors, it either results in developments stalling, slowing down or not starting at all, or Councils having to renegotiate on s106 planning obligations – often resulting in a reduction in the mitigation measures secured and the percentage of affordable housing, despite growing needs for affordable accommodation.

There has also been the experience of local authorities, housing associations and other registered providers not being able to access the funding necessary to either build or acquire property, even at a discount from developments for the provision of affordable and social housing; or issues with taking on stock across a range of sites due to operational management and resource issues. In some cases this has led to Councils accepting commuted payments from developers or other alternative arrangements for affordable housing provision that results either in lower levels of delivery or new communities without a proper mix and balance of accommodation.

We note the Government's intention to review arrangements around Compulsory Purchase Powers as a means of addressing the problem of developers over-paying for land and the Government's desire to see a Council Housing and social housing revolution which may, in part, help to address some of the issues around viability. However, we would add that when government funding for affordable housing has been available in the past, Councils and registered providers have been able to deliver homes at times when the private market is going through periods of turbulence and thus the ability to develop affordable housing alongside private housing will be key to

the success of any long-term strategy to boost housing delivery and meet the mandatory housebuilding targets.

We would also highlight experiences of having to negotiate lower levels of affordable housing on development on viability grounds because practice guidance assumes a developer profit level of at least 20% on all schemes. Whilst we understand the economics of development and appreciate the importance of profit in terms of risk and reward and access to finance, there are clearly circumstances in which much needed affordable housing is being lost and we therefore urge the Government to consider how the provision of affordable housing can be more robustly safeguarded through the planning process in the future. Options could include, but not be limited to) tightening up viability methodology so it is more dependent on site specific conditions as opposed to rates taken from construction cost indexes, 2) explicitly supporting review mechanisms post scheme completion so if developers make more profit on a scheme they previously argued viability, they are compelled to compensate for the lack of affordable secured, 3) applying mandatory affordable housing % requirements across market areas with sites unable to be developed without this threshold being met (this would force land values down but done across a whole market area, developers would still bring sites forward and sites would continue to transact, albeit at a lower value per acre).

Related to the above, our Councils are concerned that local small to medium sized (SME) housebuilders that often employ local people and can deliver smaller schemes that could contribute positively to short-term housing supply do not have the access to finance with the ease that some of the larger volume housebuilders do. This could partly be related, in part, to financial institutions' over-optimistic expectations around developer profit margins but could potentially be assisted by government by offering loans to development companies on favourable terms that enable them to participate positively in the market for housebuilding and to deliver alongside volume housebuilders to achieve the Government's ambitions. There is merit in Homes England taking on a more pro-active strategic Master Builder role in bringing forward bigger sites which could then be serviced and subdivided for the benefit of SME building firms.

There will be cases however where there is genuinely a fundamental viability gap – particularly in locations with lower house prices where developments might not start, they might stall, they might develop slowly, they might negotiate significant s106 reductions or they might just be given lower priority by volume housebuilders within their portfolio of sites. In cases where there is a genuine viability gap, which will apply in a few places North Essex, alongside Government support for infrastructure delivery there needs to be grant funding to deliver affordable housing and plug the viability gap to enable sites to deliver and for housing targets to be met.

Incentivising the development industry

Councils understand the dynamics of a free-market economy and the factors that impact upon the housing market and the housebuilding industry; they need to for the purpose of sound plan-making and decision-taking. However, it is house builders and not Councils who are ultimately responsible for building homes for sale and it is house builders that will deliver the majority of the homes the Government wants the country to build. Despite this, the Government's proposals seem heavily focussed on Councils and reforming the planning system in order to increase the supply of land available for housebuilding and in turn increase the number and speed of planning permissions being granted for development.

Whilst Councils can do what they can to identify and grant planning permissions, the test of whether mandatory housebuilding targets are achieved and whether Councils can demonstrate an ongoing supply, it will be up to the development industry to deliver and a whole host of wider economic and market factors that impact upon its ability to do so.

Most housebuilders are commercial businesses that will build at the rate they can sell, sell at a price that will achieve a positive return and deliver at rate limited by the availability of workforce, materials and finance. These are factors over which Councils have limited influence and which the Government also needs to consider with greater scrutiny if targets are ever going to be achieved.

In some cases there are genuine commercial and viability reasons why developments do not proceed or they slow down and stall, but in some cases developments do not proceed through the commercial choice of developers who might wish to 'landbank' or prioritise certain sites over others within their portfolio to maintain a desired level of return. Combined with the aforementioned issues with Councils having to demonstrate a five-year supply of deliverable sites or else face the prospect of speculative development and planning by appeal, authorities can find themselves having to grant planning permissions or have permissions granted on appeal for developments that do not proceed in any event and giving developers a range of options from which to choose the most viable and profitable for delivery.

This is not the practice of all housebuilders; however, there ought to be some means by which developers can be incentivised or motivated to bring developments forward to avoid the temptation to landbank or prioritise for commercial reasons. Some suggestions could include shorter timeframes for the implementation of planning permissions (or else permissions lapses) or introducing the ability for Councils to charge developers Council Tax (or partial Council Tax) on homes with planning permission but that are yet to be built, or make the whole construction site liable for Business Rates until they are completed and not just the usual elements of storage compounds and showhomes. This latter measure may help to create more competition and see the bigger businesses aligning to what they can deliver and not taking on sites which they reasonably cannot deliver – thereby providing more opportunities to SMEs.

Resources and staff

Local Plans will not be produced, planning permissions will not be granted and homes will not be built unless there is sufficient capacity within the workforce in all quarters of the planning and development industries to resource the work that is necessary.

Whilst the Government has already committed an additional 300 planning officers; this is less than one per local planning authority. The Government's consultation talks of increasing the number of qualified Planning Officers for Councils, this needs to be undertaken at far greater scale and pace to meet the Government's growth ambitions. Most Councils across the country are under-resourced and often have too few experienced officers, as evidenced by the Local Government Authorities research carried out in 2023 for Essex local planning authorities. The private sector too will need to increase its planning resources to bring forward planning applications to the local authorities, which could impact upon local government recruitment efforts. Then there is the need for all the various professions that feed into the planning process to ensure sufficient resource including transport, archaeology, ecology and flooding expertise at County Council level; as well as additional staff within statutory consultees and Governmental organisations like the Environment Agency, Natural England, Historic England and National Highways whose comments on planning applications will be required for decisions to be made in a timely manner.

Then of course there is the resources and infrastructure required by the private sector, development industry and supply chain industries which will struggle to deliver upon such a sharp increase in expectations around growth as envisaged by the Government consultation. The changes introduced by the Building Safety Act 2022 and the dramatic impact this has had on those choosing to continue to practice in Building Control in public and private sectors will be felt in housing delivery over the next 5 years as there are no longer as many qualified and registered buildings inspectors as there were two years ago. A significant investment in training – both academic and through apprenticeship opportunities across a range of sectors will be required, as well as greater encouragement of the career choices available to younger people. There are also too few university Planning Schools providing course to train the planners of the future. For example, Anglia Ruskin University based in Chelmsford Essex no longer provides an undergraduate town planning degree.

Conclusion

The Government's ambition for growth is acknowledged and understood by the Leaders and Chief Executives of the local authorities in North Essex and whilst these ambitions and targets, and the way in which they are proposed to be introduced will not be popular in many parts of the country and within our own communities, we understand that the Government will want to push ahead.

However, there are practical issues which need to be addressed. Without these key matters being resolved the Government will not be able to achieve its target of 1.5 million new homes in five years and the economic benefits of housing growth will not be maximised. North Essex Councils are a group of local authorities that are pro-growth, have a good track record of delivery under challenging conditions and are ambitious enough to bring forward new Garden Communities and other strategic schemes. We aspire to embrace devolution and are taking a joined up, positive approach to developing a comprehensive Economic Growth Plan for development to be brought forward in a sensible, strategic and coordinated way. We ask for Government to support us in our efforts and to work with us to address the challenges to achieving the Government's ambitions that we have set out.

The support and good will of local authorities is vital to achieving the Government's ambitions for growth and that support and good will not come without mutual support from Government – not just in terms of funding and assistance, but through the above suggested incentives and protections from the, we are sure, unintended consequences of going too hard and too fast without proper transitional arrangements in place and proper consideration of resource implications.

Our response to the Government's consultation is both a menu of carefully-considered, constructive and practical advice and an open invitation to work with you; and for you to work with us to make the growth this country desperately needs happen, but in the right way with the critical support from our local authorities and communities.

Yours faithfully,

North Essex Councils