

## **Introduction**

This consultation seeks views on a number of proposed changes to planning policy and legislation. Some of these changes were foreshadowed in the housing White Paper. This Paper seeks to provide Epsom & Ewell Borough Council's response to the consultation.

## **Proposed approach to calculating the local housing need**

### **Subsequent changes to the local housing need**

#### **Question 1:**

- a) Do you agree with the proposed standard approach to assessing local housing need? If not, what alternative approach or other factors should be considered?**

No – the Borough Council strongly disagrees with the proposed standard approach for assessing local housing need. The proposed methodology is fundamentally flawed, overly simplistic and relies upon a limited range of datasets that by themselves do not provide a complete assessment of need.

The principal problem, to which the Borough Council strongly objects, is that the government has conflated preparing an objectively assessed housing needs assessment with the identification of a deliverable housing target. For areas such as Epsom & Ewell, it is setting up the local planning authority and the development industry to fail from the outset. It is alienating existing and future residents, and not least raising the spectre of irrevocably harming the Borough's visual character and appearance.

The Borough Council recommends that the government look more closely at the approach taken by the Kingston and North East Surrey Strategic Housing Market Assessment (SHMA). The Borough Council contends that the methodology applied by that SHMA was robust (albeit out of necessity utilising the most up-to-date at the time of preparation) and provided a sound baseline assessment from which a deliverable housing target could be calculated, by each of the four partner authorities. It is worth noting that the outputs from the original SHMA and recent recalculation based on the latest population projections are consistent.

The Borough Council highlights that the resultant outcomes from any SHMA, including the proposed standard methodology must be deliverable; but not deliverable at any costs. On that basis, the Borough Council contends that it is logical that any housing target derived from an assessment must have the ability to take a downward trajectory, as well as an upward trajectory that the government is advocating. Such an approach would be capable of taking account of those factors that affect deliver – namely, housing land supply, industry capacity, infrastructure

capacity and primary constraints. A process, such as that being advocated by the government, that ignores these critical factors is setting itself up to fail– it is also divorced from reality and the principles of sustainability

**b) How can information on local housing need be made more transparent?**

The Borough Council, in conjunction with its Housing Market Area (HMA) partners is already making great strides in making this process transparent to local residents and communities. We have taken positive steps to demonstrate how our objectively assessed housing needs (OAHN) figure has been calculated by publishing our SHMA. We are in the process of preparing supporting evidence that demonstrates how any resulting housing target takes into account the local issues that impact upon availability, deliverability and developability.

In contrast, the proposed national standard methodology only succeeds in creating an illusion of transparency. It is clear to the Borough Council that our residents and communities do not believe the inflated indicative figures that have come out of the government's application of the proposed standard methodology. Driving this is the inference that building more houses will make any new homes more affordable. This is not only unproven but something that we consider that our residents and communities do not believe.

In order to make the process transparent, local planning authorities must have the ability to fully factor in local on-the-ground conditions and market signals when calculating their deliverable and developable housing target. It's only by having that ability that local residents and communities will recognise their OAHN and final housing target.

**Implementing the new approach**

**Question 2:**

**Do you agree with the proposal that an assessment of local housing need should be able to be relied upon for a period of two years from the date a plan is submitted?**

Whilst there is some logic to this proposal we consider that there are many pitfalls facing its implementation. History tells us that short-term planning results in failure. The mechanisms and industry needed to support a constant two year cycle of local housing need assessments would, in our experience, be unduly onerous upon individual local planning authorities. The proposal risks creating a parallel situation within the development industry where there is a constant cycle of challenging OAHNs and housing targets within a very narrow timeframe. This will not provide certainty to market or communities.

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Ironically this proposal could be made to work within an environment of sub-regional/ regional level planning. Particularly, where authorities are willingly and actively working together to try and meet the challenges of the housing crisis. The Borough Council and its HMA partners were at the initial stages of this process when this consultation started. We believe the reintroduction of a strategic planning tier would be widely welcomed by local planning authorities and developers. In this instance it would provide the additional capacity to allow for a never-ending review process.

**Benefits of the new approach**

**Question 3:**

**Do you agree that we should amend national planning policy so that a sound plan should identify local housing need using a clear and justified method?**

No – the Borough Council strongly disagrees with this proposal. The decision whether to use the proposed standard methodology should be left to individual local planning authorities or housing market area partnerships to make themselves. A significant failing of the proposed standard methodology is that it produces an end number that does not reflect, or indeed relate, to local real-world conditions. As a consequence, the proposed standard methodology does not work in locations such as Epsom & Ewell where external on-the-ground factors have a profound influence on the availability, deliverability and developability of housing land. In those instances, local planning authorities are in a better position to judge which approach is best deployed.

There are plenty of examples of national standard practise that the government do not require all local planning authorities adopt. A prime example is the national space standards, which also provide a level playing field but which government insists that planning authorities test and adopt via the local plan process. The government should demonstrate consistency when dictating national policy and housing targets.

**Deviation from the new method**

**Question 4:**

**Do you agree with our approach in circumstances when plan makers deviate from the proposed method, including the level of scrutiny we expect from Planning Inspectors?**

The Borough Council believes that any approach predicated on the assumption that more housing be delivered (above that projected by the proposed national standard methodology) is unworkable. It is clear to the Borough Council that local residents and communities do not believe, or have any faith in the government's assumptions on this matter. More is not always best – particularly in circumstances where there is limited supply or capacity.

Developing a high growth strategy based purely on an overly simplified demand assessment is not sound planning. It is not even planning.

**Implications of a standardised approach for calculating the five year supply for housing the Housing Delivery Test**

**Question 5:**

- a) Do you agree that the Secretary of State should have discretion to defer the period for using the baseline for some local planning authorities? If so, how best could this be achieved, what minimum requirements should be in place before the Secretary of State may exercise this discretion, and for how long should such deferral be permitted?**

Yes – the Secretary of State should exercise discretion. This is especially important in cases, like Epsom & Ewell and its HMA partners, where a local planning authority is substantially advanced in preparing its housing delivery strategy. The Borough Council believes that in such cases longer transitional arrangements should apply. The consequences of not providing longer transitional periods are potentially harmful to the delivery of growth. We are already aware that some of our neighbours are taking ‘strategic pauses’ in their plan-making in response to the constant stream of changes being introduced by government. The Secretary of State should allow those authorities who are planning positively for growth to get on with it.

- b) Do you consider that authorities that have an adopted joint local plan, or which are covered by an adopted spatial development strategy, should be able to assess their five year land supply and/or be measured for the purposes of the Housing Delivery Test, across the area as a whole?**

Yes – the Borough Council agrees with this proposal.

- c) Do you consider that authorities that are not able to use the new method for calculating local housing need should be able to use an existing or an emerging local plan figure for housing need for the purposes of calculating five year land supply and to be measured for the purposes of the Housing Delivery Test?**

Yes – the Borough Council agrees with this proposal.

**Transitional arrangement for the proposed approach**

**Question 6:**

**Do you agree with the proposed transitional arrangements for introducing the standard approach for calculating local housing need?**

No – the Borough Council disagrees with the proposed timetable for transitional arrangements. The identified dates appear highly arbitrary. We suggest that the Secretary of State adopts a more sympathetic approach to this issue and determine transitional timetables on a case by case basis. Many local planning authorities, including Epsom & Ewell, are making good progress with revision to their local plans; but through no fault of their own may not be able to meet the March 2018 deadline. It appears illogical that a local plan submitted in the final week of March 2018 will be found sound (in terms of how it calculates OAHN) yet if submitted a week later will be unsound.

**Statement of common ground**

**Determining the primary authorities and signatories**

**Question 7:**

**a) Do you agree with the proposed administrative arrangements for preparing the statement of common ground?**

The Borough Council agrees that the proposed statements of common ground should be based on the area defined by their Housing Market Area. The Borough Council is already pursuing this form of sub-regional planning arrangement with its HMA partners.

**b) How do you consider a statement of common ground should be implemented in areas where there is a Mayor with strategic plan-making powers?**

The Borough Council believes that there are significant inequalities in how the current Duty (to co-operate) functions. Specifically between those boroughs and districts that border Greater London and London itself. Experiences at local plan examinations and during attempts at strategic planning demonstrate that the GLA and London Borough's are treated differently from others when it comes to discharging the Duty to Co-operate. Given that parts of Epsom & Ewell Borough are contiguous with the London Borough of Sutton these disparities are troubling. If the government is intent on making changes to national policy and associated legislation we suggest they use the opportunity to address the differences in the Duty between London and neighbouring areas, such as Epsom & Ewell. Failure to do so is likely to undermine the ability for meaningful strategic planning to take place.

**c) Do you consider there to be a role for directly elected Mayors without strategic plan-making powers, in the production of a statement of common ground?**

Epsom & Ewell is not an area with a directly elected Mayor and for that reason the Borough Council has no further comments to make on this matter – other than to reiterate the comments made above, in relation to the real inequalities encountered between Greater London and those authorities immediately outside of London (such as Epsom & Ewell).

**Production of the statement of common ground and keeping the statement of common ground up to date**

**Question 8:**

**Do you agree that the proposed content and timescales for publication of the statement of common ground are appropriate and will support more effective co-operation on strategic cross-boundary planning matters?**

Yes – the Borough Council agrees in principle to the proposed timescale for the introduction of outline statements of common ground. However, the Borough Council requests that the Secretary of State notes that such agreement is given on the basis that work towards meeting this proposal is already underway in Epsom & Ewell. The Secretary of State should understand and acknowledge that in other parts of the country such work will be less advanced and other authorities may need more time to meet this proposal.

**Statements of common ground and strategic investment in infrastructure**

**Question 9:**

**a) Do you agree with the proposal to amend the tests of soundness to include that:**

**i) Plans should be prepared based on a strategy informed by agreements over the wider area; and**

Yes – the Borough Council agrees with this proposal. Any proposals that result in the speedy return of regional planning are welcomed. The Borough Council suggests that where authorities are actively collaborating to bring back formalised strategic planning that they be allowed to do so.

- ii) **Plans should be based on effective joint working on cross-boundary strategic priorities, which are evidenced in the statement of common ground?**

Yes – the Borough Council agrees with this proposal.

- b) **Do you agree to the proposed transitional arrangements for amending the tests of soundness to ensure effective co-operation?**

We believe that the Duty to Co-operate has been a total failure. The lack of formal guidance and policy has resulted in Planning Inspectors making unannounced, and largely unwelcomed, interventions to deliver a “strategic planning” component to emerging local plans through the examination process. This has been very clearly and in some case painfully demonstrated by recent local plan reports. The Borough Council believes that the Secretary of State should do more to restore the missing strategic planning pieces that were removed by the last government.

## **Planning for a mix of housing needs**

### **Question 10:**

- a) **Do you have suggestions on how to streamline the process for identifying the housing need for individual groups and what evidence could be used to help plan to meet the needs of particular groups?**

In line with our answers relating to OAHN, the Borough Council strongly believes that there is no easy route for streamlining the assessment of housing need for specific groups. Such assessment cannot, and should not be reduced to three part calculations – to so would be unsound and unwise.

- b) **Do you agree that the current definition of older people within the National Planning Policy Framework is still fit-for-purpose?**

The current definition is linked to the retirement age for which there is no longer a default age. For local plans currently being prepared, the minimum age to receive a state pension is set to increase twice (in 2020 and between 2026 and 2028) and potentially subject to further review by Government within the plan period. In addition, for many people financing their retirement is predicated on the value of their home.

In light of this, the Borough Council suggests that it may be appropriate to review the definition.

## **Neighbourhood planning**

### **Question 11:**

- a) Should a local plan set out the housing need for designated neighbourhood planning areas and parished areas within the area?**

In Epsom & Ewell to date there has been no interest in bringing forward a neighbourhood plan, however, the borough has been a Residents Association council since established in the 1930s and, as such, embodies the principles of true localism.

Moreover, it should not be assumed that a neighbourhood development plan would seek to include housing growth within its remit.

- b) Do you agree with the proposal for a formula-based approach to apportion housing need to neighbourhood plan bodies in circumstances where the local plan cannot be relied on as a basis for calculating housing need?**

Notwithstanding the Borough's concerns over the mechanics of the standard methodology, we consider the dissemination of housing need figure by the government to a neighbourhood planning area without any consideration of the local context and constraints conflicts with the spirit of localism. It would be unfair to give communities with limited knowledge of the 'on ground' conditions a pro-rata annual housing figure, which their plan would need to account.

We consider the rudimental apportionment calculation based on the size of an existing population is completely flawed when applied to the more urbanised and compact neighbourhoods plan areas. The principle would lead to a higher housing need figure in those areas which are least likely to have opportunities (i.e. developable and deliverable sites) for significant housing growth and the necessary supporting infrastructure.

The apportionment formula would in itself be a strong deterrent to establishing a neighbourhood plan area.

Rather than delegating downwards, the Borough Council believes that the distribution of housing across a Housing Market Area (HMA) is most appropriately addressed at a strategic level, by Local Planning Authorities and their HMA partners.



## Proposed approach to viability assessment

### Question 12:

**Do you agree that local plans should identify the infrastructure and affordable housing needed, how these will be funded and the contributions developers will be expected to make?**

Local plans already do this. However, the weight given to such policies by developers/ land agents/ house builders when acquiring land and proposing “viable schemes” in many instances is highly questionable and often completely unsatisfactory.

### Question 13:

**In reviewing guidance on testing plans and policies for viability, what amendments could be made to improve current practice?**

The Borough Council has no proposed suggestions as it considers that current practice is appropriate.

### Question 14:

**Do you agree that where policy requirements have been tested for their viability, the issue should not usually need to be tested again at the planning application stage?**

Yes – the Borough Council strongly agrees with this statement

The emphasis should be on ensuring that once adopted policy that ‘viability’ is not re-tested at the planning application except for in instances of significant market change. For the purposes of clarity, we consider that changes to the market include both up and down turns in market conditions. Consequently improved market conditions may trigger viability testing that makes greater requirements of the house building industry.

### Question 15:

**How can Government ensure that infrastructure providers, including housing associations, are engaged throughout the process, including in circumstances where a viability assessment may be required?**

The Duty to Co-operate continues to fail in this regard. The Government should place a legal/ mandatory requirement upon providers to engage.

In the Borough’s experience, often the utility providers are the most difficult to engage; asset management planning periods often fail to align with local plan

periods and are significantly shorter. Providers can appear reluctant to identify potential capacity deficits due to commercial sensitivities.

### **Improving transparency**

#### **Question 16:**

**What factors should we take into account in updating guidance to encourage viability assessments to be simpler, quicker and more transparent, for example through a standardised report or summary format?**

The onus must remain upon the developers/ land agents to undertake the necessary due diligence including an appraisal of the policy requirements (which have been subject to viability testing) prior to purchasing the site. It is all too common that over payment for a site is the primary factor leading to a scheme's 'inability' to provide the necessary and much needed affordable housing contributions. In our experiences, Inspectors do not take account of this fact in their decision making. As a consequence, the development industry has taken Inspector's inaction on this matter as a signal to perpetuate this unsustainable practise.

In the Borough's considerable experience of applying viability assessments in respect of developer contributions, the current process (as recognised by the RICS) is deeply flawed. It is widely open to manipulation and overly favours the development industry. For example, it does not take into account a wide range of factors, including wider company performance. Indeed, challenging viability in itself has become its own industry. Many of these assessments are generated by biased consulting companies whose stated company aim is to 'get developers out of their s106 obligations', other consulting firms who represent both local authorities and developers are in the position that one day they might be acting for their opponent today, and it is often clear that this impacts on their decision making e.g. 'we can't give our future paymaster too hard a time or we might not get work from them'

The Borough Council would welcome a standardised report format. However, the process needs to allow for greater and flexible scrutiny of submissions supported by pre and post completion assurances.

The question of 'economic viability' is one that in business terms means something very different to how it has been interpreted in planning. At a basic level for developers to be economically viable they must generate enough cash both to pay for their operations and the cost of financing borrowing, either via debt or to shareholders, and shareholder dividends. This is a very different proposition for large homebuilder than it is a local builder set up as a sole trader.

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In the Borough Council's experience the intention and the reality of viability assessments is being abused by many developers who see this as an opportunity to save cost and income profit at the expense of the local community.

There are several reasons for this:

1. In large companies it is a subjective process to create development level management accounts leaving widely open to manipulation;
2. Many of these assessments are generated by biased consulting companies under no regulation who have simply been employed to minimise any liability;
3. Planning departments lack the skills and knowledge to effectively challenge these assessments and face undue pressure when confronted by lawyers and consultants acting on behalf of developers;

From our experience there are three clear actions that if undertaken would both dissuade dubious claims and ensure appropriate scrutiny is undertaken when depriving the public purse:

1. Transparency:
  - a. The basis of which assessments are made should be standardised in both format and content. Revenue, direct costs and allowable overheads, finance rates and charges should be clearly defined and aligned to industry norms;
  - b. These statements should be prepared both during the planning process and following the completion of any development to show forecast and then actual costs incurred and revenue generated;
  - c. This should be accompanied by both the latest 'group' accounts (of the ultimate parent company) along with prospective accounts demonstrating the impact of such unviable contributions;
2. Accountability:
  - a. To ensure that developers are accountable these statements should be signed by both the statutory managing director and statutory finance director with a statement making it clear that the information provided is free from manipulation and is a true and fair view of the situation along with an assertion that should contributions be paid then the company may be economically unviable;
3. Assurance:
  - a. This statement should also be signed by the company's auditors who should also agree that information provided is a true and fair view of the situation and agree with the statement made by developers.
  - b. This should be done both during the application and on completion of the development. Where profit has exceeded the provisions within the application viability assessment this would allow for the local authority to clawback contributions. This should be done both during the application and on completion of the development. Where profit has exceeded the provisions within the application viability assessment this would allow for the local authority to clawback contributions (\*see below). This fundamentally places the onus on the developer to clearly demonstrate economic unviability along

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with gaining assurance from regulated professionals that such a statement is true allowing the council to place reliance on such statements.

A standard summary assessment alongside, a signed statement of assurance from a regulated body and the latest 'group' accounts for the applying company should be made publicly available. The details behind the audited viability assessment, such as the evidence of the structure of finance could be commercial sensitive and treated as such.

\*Note: However, to date various Planning Inspectors have taken a hard line against local authorities seeking to implement a 'claw back clause' which seeks to recover an element of contribution towards affordable housing e.g. when expected sales values exceed those set out in a viability appraisal. Claw-back clauses are now only 'allowed' on large phased developments. However in a Borough the size of Epsom & Ewell large phased developments are rare to non-existent yet almost every development that is approved following a viability challenge sees eventual sales values dramatically outstrip those set out in the viability appraisal. If the developer was happy to sign up to (say) a 20% profit level (which is extremely high) in their viability appraisal which pass-ported them out of affordable housing delivery, why are they then permitted to make higher profit levels when sales values exceed their expectations (which appears to be on almost every development)? A claw-back clause applicable to smaller on-phased developments is a more equitable solution.

**Question 17:**

- a) Do you agree that local planning authorities should set out in plans how they will monitor and report on planning agreements to help ensure that communities can easily understand what infrastructure and affordable housing has been secured and delivered through developer contributions?**

The Borough Council already does this.

- b) What factors should we take into account in preparing guidance on a standard approach to monitoring and reporting planning obligations?**

The Borough Council has no comment to make.

- c) How can local planning authorities and applicants work together to better publicise infrastructure and affordable housing secured through new development once development has commenced, or at other stages of the process?**

The Borough Council has no comment to make.

## Planning fees

### Question 18:

- a) **Do you agree that a further 20 per cent fee increase should be applied to those local planning authorities who are delivering the homes their communities need? What should be the criteria to measure this?**

No – the Borough Council disagrees with this proposal. This proposal will not help those local planning authorities that are positively rising to the challenge of the housing crisis, but for whatever reason are unable to deliver the scale of housing indicated in the government's indicative figures. It is highlighted that this will equally disadvantage the development industry.

The government should consider a different approach to this matter that takes into account recent performance in meeting housing targets; including those that pre-date the government's calculation. This is a sound approach – as it will clearly identify those local planning authorities that are seeking to respond positively to the housing crisis – such as Epsom & Ewell.

- b) **Do you think there are more appropriate circumstances when a local planning authority should be able to charge the further 20 per cent? If so, do you have views on how these circumstances could work in practice?**

Yes there are more appropriate circumstances. Following the implementation of the current raft of proposals there will be some local planning authorities, such as Epsom & Ewell, who will find it extremely challenging to fully meet the indicative housing target identified by the government. Nevertheless, the Borough Council is committed to trying to meet as much of the locally identified housing need as is sustainably possible. It is in such a circumstance that planning authorities should be permitted to charge an additional 20%. This will aid the planning development management process and will also benefit the local development industry – particularly the SME builders who are also likely to find themselves challenged by the government's proposals.

- c) **Should any additional fee increase be applied nationally once all local planning authorities meet the required criteria, or only to individual authorities who meet them?**

Yes – the Borough Council supports the additional increase becoming a nationally standard.

**d) Are there any other issues we should consider in developing a framework for this additional fee increase?**

The Borough Council has no further comments to make on this proposal.

**Other issues**

**Build out**

**Question 19:**

**Having regard to the measures we have already identified in the housing White Paper, are there any other actions that could increase build out rates?**

The Borough Council has no specific comment to make but would be very interested hear industry's responses to this matter – in particularly whether they fully appreciate what the government is intending.