Report to the Parliamentary Select Committee on the NPPF.

Guildford Greenbelt Group

Additional submission by Susan Parker

25 September 2014

Introduction

I am writing on behalf of Guildford Greenbelt Group (GGG), an umbrella group formed of parish councils, community organisations, residents' associations and campaigning groups, together with a number of individual members, across and adjacent to the borough of Guildford. I am Susan Parker (Chair of GGG) and attended the parliamentary select committee discussion forum on 1 September 2014. Following the invitation to participants in that forum to summarise issues, concerns and examples that they did not get an opportunity to express at the meeting, this note is therefore responding via the portal with an additional summary of issues.

There are a number of problems within the NPPF. This document should not be concerned only with provision of housing but should seek to strike a balance between the competing needs of residents, other land users, environmental factors, and also, of course, the need for new homes based on local actual need. A planning system designed only to facilitate housebuilding, and to meet the requirements of developers, ignoring other needs, is unworkable, and there is a need to replicate the balance of priorities and needs within the older legislation that has now been replaced by the NPPF. **The NPPF needs to be much more precise and prescriptive.** The looseness of much of its wording tends to allow too much debate and legal wrangling. There is a need for legal certainty within the planning process; loose and fluffy principles are a poor basis for making specific decisions. Case law is beginning to have some impact but is disregarded by inspectors. This is unacceptable.

A number of problems have arisen with the process in the borough of Guildford to date, and these illustrate some of the fundamental concerns and problems generated by the NPPF. This is not merely a local set of issues, but they illustrate areas in which the NPPF does not function adequately. Reference to local issues should be taken as an illustration only, but can be relevant in appreciating the impact of the NPPF in practice.

The following document notes some problems and identifies some recommendations that need to be addressed as part of the redrafting of the NPPF. For the most part these are not drafting comments (except for the elimination of the word "demand" from the NPPF), but identify points of principle that need to be addressed. These are then summarised in "Recommendations" – the supporting arguments are then set out in the detailed sections following.

As background, the Local Plan in Guildford has almost completed consultation on the first draft local plan; the Council leader announced an extension to the consultation to Friday 26/9/14 due to confusion as to the closing time and date; and that the level of responses to the plan means that it is unlikely that the next stage (or, perhaps a revised first stage draft – his comments are unclear) will be reached until May 2015.

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Recommendations

- Ensure that SHMA and other models used for calculating housing projections are completely transparent, in order that calculations can be replicated on a like for like basis, without hidden assumptions.
- Ensure that inspectors are instructed clearly and unequivocally that unmet housing need does not constitute a justification for using Green Belt land and that this is not required if other land is insufficient to meet housing need
- Obligation only to meet NEED not DEMAND (eliminate term DEMAND)
- Distinguish clearly by definition within the new NPPF between housing **need** (which may be OAN per SHMA) AND housing **targets** (a lower number subject to actual capacity) (and define the difference)
- Require that councils determine an actual housing **target**, and its relationship to need, **before** they consult on a local plan (including addressing duty to cooperate, constraints etc.) ensuring that the calculation of housing need is not allowed to stand if flawed
- Eliminate corporate entities who have vested interests from policy making
- Commercial interests should not be allowed to dictate policy
- Ensure that Localism means that the requirement to consult with local people includes the obligation to **address** issues raised, not merely consult as tokenism
- Regional SHMAs as subdivision of desired total increase in national population, with allocation of district or borough maxima and minima subject to local issues and appeal by communities (not developers)

- Localism must not be tokenism. Local responses must count for more than commercial interests
- There must be an obligation on local authorities to recognise responses by the public
- No one with an interest in development should be allowed to influence planning policy or decisions and the Localism Act should be amended accordingly
- There should be equivalent rights of appeal for developers and communities, with developers bearing the community cost if they lose but not vice versa
- All major developments should be subject to local referenda

- Evidence base should be subject to genuine consultation resulting in amendment, not tokenism
- Scrutiny Committee requirements and full council votes should have a bearing on the local plan process, not be set aside by Executive decision
- Changes to the evidence base should be fully documented and identifiable

- Scoping discussions with developers should be discouraged unless essential (e.g. in relation to the remediation of brownfield land)
- Any scoping discussions with developers that are unavoidable and essential to the planning process must be in the public domain, fully minuted and in the presence of a planning officer, and subject to the understanding that there can be no commitment prior to an agreed local plan.

- the key components of the evidence base, including the sustainability appraisal, must be in place prior to publication of the first draft local plan and certainly prior to consultation

- 5 year land supply must automatically include all valid planning permissions
- Student homes MUST be taken into account (not permissive but prescriptive)
- Vacant homes and windfalls MUST be taken into account (not permissive but prescriptive)
- Audited summary of brownfield land published annually
- All of the above should be itemised, updated at least annually and made available to the public.

- As agreed by PINS, plans start when approved and the housing requirement starts then (NOT backdated).
- Prior plans should be in place de facto until a new local plan is approved

- Some kind of regional scoping or planning is necessary re housing numbers, the impact on infrastructure, education and health so that incentives for one tier of local government do not outweigh costs elsewhere

- The setting of lower CIL for brownfield is an incentive for developers, but a disincentive for councils to use brownfield. Maybe councils shouldn't keep CIL at all and this would change the perverse incentives.
- Ensure infrastructure costs are matched with incentives to build (CIL) so that there is not a mismatch between providers
- Draw a distinction between two forms of infrastructure and infrastructure limits: that which can be met by extra expenditure (e.g. additional sewage provision) and that which is an absolute constraint (no capacity for larger roads because of environmental issues, AONB etc).

- Commercial interests should not be allowed to dictate policy

- Emphasise that environmental sustainability is a fundamental element of the NPPF and that, if there is a clash, the environmental factors should predominate

- Have design standards which require use of solar panels, and thermal efficiency, porous surfaces for parking etc
- Changes to the tax regime to incentivise use of brownfield land and reduce use of green field sites
- Brownfield first. Have an 80% brownfield target as a minimum
- Presumption against building on green spaces
- Adjust 5 year requirement - if land available subject to clean up it should be included in that 5 year supply in full
- Discard offsetting and SANGS. Environmental protection cannot be offset.

- Planning permission to be contingent on actual resident occupancy
- High taxation of non-resident owners of empty homes

1. SHMA, housing numbers, housing targets including OAN v constraints

The GBC draft Strategic Housing Market Assessment was prepared in draft form and issued in January 2014. It is still in draft, with acknowledged errors not corrected, although the first consultation is due to close on Friday 26th September. It was not prepared prior to the preparation of the Issues and Options consultation, which was therefore uninformed in relation to potential house numbers. It was not subject to a formal consultation process with community groups, as it should have been, and this matter was formally raised with councillors by means of a letter, and was never addressed. The letter was attached as an appendix to the original submission, noting the failure to pre-consult with the community.

This January draft was the subject of a petition – see details:
http://petitions.guildford.gov.uk/SHMAevidence/
(The subsequent general meeting can be viewed on a webcast. The recommendations put forward by the community were disregarded by councillors at the time (including the need to consider Green Belt constraints and meet the Duty to Cooperate), although about 6 months later they informed a vote by the Scrutiny Committee rejecting the draft plan. Nonetheless, despite the Scrutiny Decision to revise the SHMA and the Local Plan, the Executive approved the local plan going to consultation without revision, at considerable cost for taxpayers.)

During the consultation process on the SHMA, a number of errors of calculation and logical flaws were drawn to the Council's attention:
These included using a demographic period that was inflated (5 years, distorted by exceptionally high student numbers, rather than 10 years, which produces lower demographic projections).
An independent report by Edge Analytics noted that these should be subject to a sensitivity analysis and that they could only give an "amber" approval to the report without such further work. That work has not yet been done, although the SHMA has supposedly been revised. The revision includes many of the errors and omissions, and logical flaws, of the original document.
GBC has been notified that the underlying data was based on a flawed projection by the Office of National Statistics, and that ONS has subsequently rectified its error. The ONS has formally notified GBC that the impact of the numbers would affect the objectively assessed housing need by some 100-200 homes per annum, but no consequential adjustment to the statistics has taken place.

The Duty to Cooperate on housing numbers is now being implemented by GBC undertaking a joint SHMA with two adjoining boroughs (a draft is under consideration). However, until informed by campaigners (SP), neither of the two boroughs' planning departments was aware that the Guildford statistics included flawed ONS data. That joint SHMA is still not published so the first draft local plan has gone to consultation with hypothetical – and inflated – housing numbers. The revised joint SHMA is expected to be published shortly before Christmas – i.e. only about a year after campaigners noted that it was required and suggested that the Council address the issue. This is discussed further in the

section on the Duty to cooperate, but it is indicative of flaws within the system. If there is not a return to some form of regional planning, there does need to be some mechanism for moderation rather than the ungoverned mess that currently predominates, which is the antithesis of planning, and which sets communities against councils, councils against each other, and neither provides additional homes nor communities that are content with the process. The huge amounts of funding that are poured into the planning process are used in incentives and legal costs but do not benefit local communities at all, nor are they subject to local community decision making. There needs to be an overarching mechanism for determining regional planning need (note re section on LEPs that this should not be influenced or decided by housebuilders, which is an incentive for corruption).

The calculation of housing numbers is subject to a high degree of manipulation as matters stand, and NPPG is less than helpful in terms of the process. Given that a SHMA is a prescriptive document, subsequently then subject to local constraints, it should be prepared on a uniform basis, not by consultants who are often ancillary to the development industry and motivated by the desire to inflate apparent demand. There is indeed real need; but there is also inflationary manipulation. For example, NPPG recommends that longer term population trends are used, but they are not always used where these generate a lower OAN. It should be a prescribed requirement that the population trends are on a minimum 10 year moving average (or whatever basis is deemed most accurate). If all SHMAs are prepared on a standard basis, then the local constraints become meaningful.

Perhaps there also should be a local (borough or district) SHMA, and a regional or area SHMA, with an overall recognition that planning, unlike most other activities, does benefit from some measure of central regulation. This could be determined, for example, by reviewing the expected national growth, allocation of maxima and minima to regions, and then within regions, allocation of maxima and minima to districts. Given that central planning can disregard local factors, this could be subject to appeal by local communities (but not by developers, who are, in most cases, de facto national bodies with little local knowledge). And of course the local SHMA would then be subject to local constraints in the current way. This would eliminate costly consultants wasting public money, and would also eliminate variation arising from any possible local corruption. Where communities had a wish to increase the population, that could be reflected in the targets, as could the wish to maintain current population levels.

Ministerial guidance that unmet housing need does not constitute an exceptional circumstance in the context of the Green Belt has been notified to the council both by the local MPs and by campaigning groups. Despite this, the local council has pursued an unsupported and aggressive housing number, which seems to be used in order to support the intention to build on Green Belt.

While there have been a number of well publicised letters from ministers in relation to the fact that exceptional need is not demonstrated by unmet housing need and that this has a bearing on local plans - as of course endorsed by the St

Albans Court of Appeal decision and the subsequent Gallagher Homes/Solihull Court of Appeal decision - this has been set aside by the planning department and the Executive member for planning on the basis that these instructions are always ignored by inspectors. **There is a need for clear and unequivocal guidance to inspectors ensuring that housing need is understood not to constitute an exceptional circumstance. There also needs to be enforcement of that guidance by calling in contrary decisions.**

One fundamental issue here is that the mechanisms and guidance for the SHMA are capable of distortion. This can be done by the local planning district with their own agenda (in the case of Guildford, an aggressive, pro-development agenda). The model used is not disclosed but manipulates core data to give the desired result, and there are no overriding controls on distortion or manipulation. Nor is it possible for Localism to be said to be a factor. Government washes its hands of the decision making on the grounds of Localism, but in the context of our borough that means an Executive of 8 (following the resignation of one executive member and the requested resignation of another after arrest on criminal charges). Of those 8 executive members, four including the Council Leader (with casting vote and right of appointment to the Executive) represent one district at the extreme edge of the borough. Local people's views are not regarded or taken into account. The process is opaque and the assumptions not made clear.

The distinction drawn in the Gallagher Homes case between OAN and the final housing target has not been comprehended or implemented here. The SHMA assessment of need has been met in full, with no recognition that this is likely to be reduced following the assessment of the proportion of Green Belt within the borough (approx. 89% of the total land area of the borough, and therefore most of the non-urban land).

It is not reasonable of the NPPF to create an obligation to meet OAN without regard to the capacity of the area. This is patently fatuous. An area has a physical capacity – this cannot be disregarded in the context of the housing calculations. Nor can projections extrapolate current population statistics without some adjustment to reflect the actual constraints of capacity. This needs to be recognised in the redrafted NPPF. The suggestion that ONS projections should be incorporated within the Duty to cooperate in order to offload unmet need onto adjacent authorities is clearly fraught with problems. Different authorities at different plan stages cannot be expected meet different calculations of need as adjacent authorities develop different plans. This is an area where there is a need for regional allocation of need, taking constraints into account in terms of that allocation and stripping out the economic incentives for development as part of that assessment.

(As an illustration, the M3 LEP has two construction companies sitting on the Land and Property Committee. Their projections of the required housing to meet their growth ambitions are for ~11800 homes per annum, but the DCLG projections are around 6300 homes per annum for the same area. The agenda of that body specifically seeks to influence national and local policy to promote

housebuilding (why, if it is in excess of regional need?) and to utilise Green Belt and to remove Green Belt as a constraint. This is a distortion of planning policy to facilitate corporate profitability and is unacceptable. So is the preferential treatment of vested commercial interests as opposed to the interests of the local population – who after all vote in both their local and national representatives. It should not be possible for vested interests to influence policy. There are questions about appointments to significant quangos (e.g. Natural England) and it is important that both government and the entities that are influential within the planning system are above suspicion in terms of influencing policy.

Travellers are subject to particular legislative protection and this is at times a controversial issue. It may be argued that to prioritise the group of "non-travelling" travellers is in itself discriminatory and distorts the planning process. There needs to be a distinction made in new legislation between actual pitches for genuine travellers (with a residence duration limit, perhaps) and non-travelling travellers who should be subject to the same planning rules as the rest of the community.

NPPF does not distinguish in its phrasing between demand and need (see paras 50, 159) and there are times when the two terms are used interchangeably. This suggests, in terms that would not pass GCSE economics, that need is the same as demand. This is also patently ridiculous. The economic relationship between supply and demand is managed by the price mechanism, which rations supply in order to meet demand. In no other context in human endeavour is *supply* expected to meet unconstrained and unrestricted *demand*. This phrasing, which is clearly unworkable, needs to change; the requirement should be to meet actual local *need* not –in any context – *demand*.

What are the recommendations re housing calculations?

- Ensure that SHMA and other models used for calculating housing projections are completely transparent, in order that calculations can be replicated on a like for like basis, without hidden assumptions.
- Ensure that inspectors are instructed clearly and unequivocally that unmet housing need does not constitute a justification for using Green Belt land and that this is not required if other land is insufficient to meet housing need
- Obligation only to meet NEED not DEMAND
- Distinguish clearly by definition within the new NPPF between housing **need** (which may be OAN per SHMA) AND housing **targets** (a lower number subject to actual capacity) (and define the difference)
- Require that councils determine an actual housing target, and its relationship to need, **before** they consult on a local plan (including addressing duty to cooperate, constraints etc.) ensuring that the calculation of housing need is not allowed to stand if flawed
- Eliminate corporate entities who have vested interests from policy making
- Ensure that Localism means that the requirement to consult with local people includes the obligation to address issues raised, not merely

consult as tokenism

- Regional SHMAs as subdivision of desired total increase in national population, with allocation of district or borough maxima and minima subject to local issues and appeal by communities (not developers)

2. Failures in Localism - failure to address consultation, impact of inspectorate, local referenda

As an illustration, Guildford received approximately 20500 responses to its Issues and options consultation; it is not clear how many responses have yet been received to the Local Plan first consultation (likely to be a lower number since there were fewer questions to the questionnaire; it appears that the number of respondents is comparable).

Even the council has accepted that approximately half the responses asked for greater protection for the Green Belt; our own analysis indicates a much higher proportion wishing for greater Green Belt protection. However, the responses (prior to issue of the actual draft Local Plan) indicate that the responses are being ignored and that the pre-determined pro-development agenda is being followed without regard to the actual views of the residents and stake holders within the community.

There is no format or requirement for summarising or analysing responses. There is no formal requirement to recognise the strength of public feeling, nor is there any obligation to adhere to this. The only point at which the strength of public feeling can be recognised is at the ballot box. This means accepting a package of measures. The process of consultation is largely tokenism. Genuine consultation seems to take place behind closed doors, usually involving vested interests.

If consultation means anything it must mean that local people must have their views taken into account in the planning process. It is not acceptable that developers can be treated as equivalent to – or preferred over – local members of the community. Stakeholding does not arise from a potential profit opportunity. Laws should also be revised so that it is not possible to apply for planning permission for land which you do not currently own. There should be a legal requirement to take local views into account. If consultation is tokenism only, what is the point of wasting public money on the process? Despite politician's clear belief that most people are fools, this is not in fact the case and people are aware when consultation is illusory.

There is another issue that requires urgent attention. In Mole Valley, a Local Development Plan was prepared by a local group (name withheld but known). This group admitted that two of its members had a pecuniary interest but did not provide details. Apparently, they have complied fully with the Localism Act. However, this is unacceptable, and shows that the way is clear for developers or their agents to hijack groups charged with producing Local Development Plans. No-one with a pecuniary interest in development should be allowed to serve in any capacity in a group developing a Local Development Plan and the Localism Act needs to be amended to this effect.

The Localism Act was presented to local communities as one that would enable them to have a greater say in the planning of their local communities but experience has dashed this hope completely. The Planning Inspectorate rides

roughshod over local communities. This unelected quango now has the greatest power in the land – it decides who, overnight, can become multi-millionaires and which existing houses will be stripped of value. It is unelected and answerable to no-one. This is not Localism in action, it is more akin to a terror group, and is a recruiting sergeant for UKIP. The Inspectorate trumps all attempts at Localism.

The Planning Inspectorate has to be subject to constraint and their remit needs to be changed. In addition, real power needs to be devolved to local communities. One way of doing this is to instigate a policy of local referenda.

The community should have the same right of appeal as developers, and developers the same right of appeal as communities. At present, communities are restricted in their ability to appeal, but developers can present sequential proposals. If communities have, once, rejected a proposal, that proposal should be rejected and the developer should not have the right of subsequent appeal. Developers should, under no circumstances, be able to claim costs against local communities, but should be liable for community costs if they lose.

There needs to be recognition that stakeholders in a community know and care more about it than a business entity with no local connection but with a strong profit motive. That motive needs to be constrained by the awareness that abuse of the community will come with considerable costs.

Major developments (e.g. >30 homes, industrial buildings of > 0.5 acre) should be subject to local referenda with no right of appeal.

When a majority vote is gained in a local area, say against a proposed development, the Planning Inspectorate should not be able to override the wishes of that community. Costs of organising the vote should be borne by the developer if lost, with no right of appeal possible by the developer against the outcome of the vote.

This will not prevent development if developers take time to persuade communities that their proposals are desirable; but it will prevent undesirable developments that are inappropriate for the area. This would be real localism.

Currently, developers simply launch appeal after appeal in the hope of exhausting local opposition and all too often this happens – although the fury is unabated people simply become exhausted and have to get on with their lives.

Recommendation

- Localism must not be tokenism. Local responses must count for more than commercial interests
- There must be an obligation on local authorities to recognise responses by the public
- No one with an interest in development should be allowed to influence planning policy or decisions and the Localism Act should be amended accordingly

- There should be equivalent rights of appeal for developers and communities, with developers bearing the community cost if they lose but not vice versa
- All major developments should be subject to local referenda

3. Evidence base and obligation to update

The community in Guildford is active and engaged, and is highly informed about the problems within the Local Plan and the underlying evidence base. Because the evidence base is so flawed, and the Council has shown a reluctance to listen to the arguments made, in addition to the petition aforementioned, and the other responses to the Issues and Options consultation, the community has raised a number of petitions. These can be seen on the GBC website and viewed on webcasts – see http://petitions.guildford.gov.uk/list/closed for links.
Petitions have been necessary to gain the attention of the councillors, some of whom have stated that they have been instructed by the council officers that they cannot discuss these matters.

At a Full Council meeting, the Councillors voted to involve the community fully in the scrutiny of the evidence base. This undertaking was then not implemented. This would seem to be a breach of council rules, in that a formal undertaking was not carried out.

This involvement was then reduced to a public forum at which attendance was restricted and where the ability to make constructive comments was very limited, with the various consultants employed by the council defending the work that they had produced, rather than listening to the public scrutiny of this work. It resulted in widespread public anger and outrage at the fact that GBC were ignoring or seeking to dismiss public concerns, which has been a feature of the entire process.

This forum included a repeated defence by the development consultants, Pegasus, who had conducted the Green Belt and Countryside Study, of the proposal that insetting of villages was acceptable if there were a tree belt some fields away, since a tree belt would give visual screening. Since Guildford is in the Surrey Hills AONB, and Surrey is the most wooded county in England, there are a number of tree belts. Pegasus confirmed that their remit, per verbal instruction, was to find ways of "rolling back the Green Belt". Similarly, the councillors in attendance seemed to feel that their responsibility was to defend a pre-determined plan, rather than to invite scrutiny of the errors of the evidence base, as had been agreed by the full council.

At the subsequent Scrutiny Committee, despite the motion for full public involvement, there was no public involvement. There was the routine right to speak for up to 10 members of the public for 3 minutes each, which is true of all local council meetings, but no additional involvement of the public. This can be viewed on a webcast.

The Guildford experience has demonstrated also that the evidence base is subject to erratic online change, and that changes are not itemised or identified. This makes commenting on the evidence base or appraising it extremely difficult. While it may seem de minimis, it should be a requirement that all planning documents include

- A Change Control section to summarise changes between versions.

- The use of revision marks so readers do not have to waste time in detailed comparisons between versions.
- All data in published documents to be available in publically-accessible open formats (word processing and spreadsheet). This would prevent the substantial waste of time that is imposed on ordinary members of the community who wish to scrutinise the data that is published in PDF formats.
- An online Erratum facility, so that any errors in documents can be notified to the public in a standard transparent way.

Recommendations:

- Evidence base should be subject to genuine consultation resulting in amendment, not tokenism
- Scrutiny Committee requirements and full council votes should have a bearing on the local plan process, not be set aside by Executive decision
- Changes to the evidence base should be fully documented and identifiable

4. Pre consultation with developers unacceptable

Local background: In response to public pressure, consultants Allies & Morrison have been commissioned to prepare a master vision for urban Guildford. This was subject to consultation with urban groups, but not any of the other users of Guildford, in particular not with the rural residents of the Borough. Since urban development at a suitable density, compared to building on greenfield sites, is critical to the future of those rural voters, this is a major failing. However, despite this failure, the consultants have identified major scope for urban regeneration at a major site in the town centre, currently occupied by low grade commercial units but capable of upgrading to a major residential area which would be sustainable, economically viable and which will represent major urban regeneration for one of the poorer areas within the town. The area is very substantial –depending on where the boundaries are drawn it has been estimated at between 45 and 60 hectares. At sensible urban density this area is capable of providing enough land to meet all of the borough's needs for the duration of the plan.

This is exciting, but is subject to delay due to transport infrastructure considerations.

In response to public criticism, a brownfield study was commissioned from consultants Scott Brownrigg. However, this was of its nature cursory, since the period from announcement of their appointment to inclusion of their report within the SHLAA was approximately 2-3 weeks. It appears that their remit was to justify the prior assertion by GBC that there was insufficient brownfield land to meet the borough's needs (a clear case of predetermination).

Neither study has included a detailed brownfield capacity study identifying available land.

Over the last few years, in the period since 2010, detailed consultations have taken place with potential developers involving numerous greenfield sites throughout the borough. Since there is no Local Plan yet in place, and since the brownfield land appraisal was at best cursory (taking ~ two weeks, and merely confirming that the Council assessment was that the supply was inadequate was valid) this would seem inappropriate. Such developers have been actively incentivised to contemplate development, and to engage in associated costs, by the actions of the Council. This is in direct contradiction to the mandate on which that council was elected. It has skewed the decision making process in order to encourage the potential development of greenfield sites rather than brownfield, despite the fact that the brownfield land is available (Previously developed land database showed 97 hectares not including the regeneration zone; 89% of the borough is Green Belt; 39% is AONB).

Such prior predetermination, influenced (per comments made in council meetings by the Lead Councillor for planning and demonstrable per webcast) that the desirability of greenfield development was associated with higher CIL, should not be permitted to influence planning and in particular the local plan

process.

Recommendation:

- Scoping discussions with developers should be discouraged unless essential (e.g. in relation to the remediation of brownfield land)
- Any scoping discussions with developers that are unavoidable and essential to the planning process must be in the public domain, fully minuted and in the presence of a planning officer, and subject to the understanding that there can be no commitment prior to an agreed local plan.

5. Prerequisites for local plan

As noted in the recent Solihull case, a sustainability appraisal is a key element of the process of preparing a Local Plan.

Following the issue of the prior version of this document which noted the absence of a sustainability appraisal, and its circulation to councillors (so perhaps as a result of the circulation of that document) a sustainability appraisal was prepared on an interim basis half way through the consultation (without notification to those who had already submitted responses that the evidence base had changed). This notes that the document itself is incomplete. This in itself would seem to be enough to invalidate the due process and the adequacy of the evidence base.

All the evidence should be in place prior to the publication of the local plan – and indeed should be there to support the suggestions and the draft proposals. It should not be possible to issue a consultation without a SHMA or without a SA. There should be a formal list of required elements which are a prerequisite for preparation of a local plan. It should not be possible to issue a local plan without these elements in place, and failure to do so should be evidence of predetermination and automatically invalidate any plan and any consultation. The list of required elements should be prescriptive and clear to avoid doubt. A secondary list of desired elements which may not be needed in all areas should be also provided.

Required elements should include:
SHMA
SA
Brownfield land capacity analysis
Remediation cost analysis and time frames
SHLAA using PDL and available land in settlement areas
Infrastructure analysis.

Some of these elements are supposedly prescribed now, but as a matter of information, Guildford has prepared its first draft local plan without any of these documents.

The evidence base should be in the public arena, have been subject to public consultation and subsequent correction, before any local plan is generated. There should be no possibility of preparing a local plan without adequate evidence.

Recommendation: the key components of the evidence base, including the sustainability appraisal, must be in place prior to publication of the first draft local plan and certainly prior to consultation

6. SHLAA, distortion of land supply statistics – "land-banking", student homes, windfalls

Land supply statistics have been distorted in order to indicate that there is not a 5 year supply although there is in fact more than 5 year's supply of housing. This should not be permissible.

In particular, all extant planning permissions must be included in the 5 year land supply, since the control as to whether these are achievable is outside the Council control, but is subject to "landbanking" by developers.

In Guildford, it is acknowledged that there are existing planning permissions in place for 1298 homes.

Some of these (177) have been excluded because the developer now wishes to redevelop on a commercial rather than residential basis. A large number of these are now being assumed to arise in years 6-16 rather than in years 1-5. This is manipulation of data; it is unlikely that most of these developers will wait for this length of time, and it is socially undesirable. It is within the remit of this committee to consider legislation to enforce rapid utilisation of existing planning permissions.

In addition to the 1298 existing permissions, there are approximately 3000 existing permissions for student dwellings. In his letter to Anne Milton MP, as a follow up to their meeting on 15 January 2014 (letter itself undated) Nick Boles MP, Parliamentary Under Secretary of State for Planning, has indicated that these should be taken into account, but this has not been done by GBC. The factor for adjustment of student homes should not be fluid (is it 4:1? 5:1? 3:1? – what do the local authority want to do to massage numbers??) – but must be prescriptive.

If student housing and existing permissions, together with vacant homes (996 subject to a freedom of information request), and historic windfalls (see note re the period 2011-14) are taken into account, then there is no shortfall. In fact, GL Hearn, the consultants that produced the flawed SHMA, have noted that there is no shortfall- but the Council's Head of Planning has repeated the comment that there is in order to justify higher housing numbers.

It would be much easier to manage land supply statistics if there were required registers in all local authorities. These could and should include a register of current planning permissions, updated perhaps on an end of month basis (this data is not currently available in easily manipulated statistical form). Similarly, student homes and planning permission in relation to this cohort should be listed on a district basis. There should be a comparison with local student populations so that if there is undersupply, local universities can be restricted as to student numbers until the accommodation problem is resolved.

There should be a register of brownfield land. CPRE are currently attempting to compile this on a voluntary basis but from local knowledge it is not by any means a comprehensive or even adequate list. It should not be the responsibility of a

charity to request volunteers to provide this information, it should be the responsibility of government and the local planning authorities, who should have a register, maintained constantly and published subject to audit on an annual basis.

Recommendations:

- 5 year land supply must automatically include all valid planning permissions
- Student homes MUST be taken into account (not permissive but prescriptive)
- Vacant homes and windfalls MUST be taken into account (not permissive but prescriptive)
- Audited summary of brownfield land published annually
- All of the above should be itemised, updated at least annually and made available to the public.

7. Start date of plan

We have a local plan which, in 2014, has almost completed its first consultation. It is unlikely to be finally approved prior to 2016. This generates logical inconsistencies in the calculation of the housing number.

Although the plan is being backdated to 2011, and so the annual housing requirement also being backdated to that date, no account has been taken of housing completions from 2011 to date.

Either the housing numbers start at 2011 – in which case we include houses built 2011-14 in the total of "planning permissions" because they were permissions in 2011

- or they start in 2014 – in which case the number of houses to be built on that annual requirement is lower (16 years x annual requirement, not 20 years x annual requirement). The current approach is to maximise housing numbers by effectively excluding houses/permissions given. Guildford Borough Council can't have it both ways.

The only logical way to administer this process is for plans to start when approved, and for the housing number – that drives the 5 year supply requirement – **not** to be backdated.

This may seem to give rise to a "gap" which is causing concern nationally. This is easily resolved. It could easily be determined that all prior plans stay in place or are automatically reinstated until the new plan, drafted under the NPPF, is finally approved. Prior plans will have gone through a local approval process so should not have been eliminated. Anything else penalises communities who had not started the local plan at the time the NPPF was approved, and is practically unworkable, and will have to give rise to repeated appeals with consequent turmoil among planning departments, communities and local authorities.

Recommendation:

- As agreed by PINS, plans start when approved and the housing requirement starts then (NOT backdated).
- Prior plans should be reinstated de facto until a new local plan is approved

8. Duty to cooperate in practice is unworkable

The Council was arguably in breach of its duty to cooperate with neighbouring authorities at present, since, like Waverley (neighbouring authority) the current SHMA is updated on a standalone basis. The inspector for Waverley noted that it had not met its duty to cooperate by this similar process. This has been drawn to the council's attention by the community, repeatedly.

The council is now cooperating with these authorities in a new SHMA. It is not clear if this is the correct HMA, as noted by the SHMA consultants.

The unworkable nature of the duty to cooperate in terms of housing numbers is well demonstrated by our local example. Prior to this current draft SHMA (unpublished), GBC previously cooperated on the SW Surrey combined SHMA with Woking and Waverley. Woking prepared its local plan and it is now approved, with a housing target of 292.
Waverley revised its SHMA, was subject to an inspectors' review, and has a housing number of 472 subject to inspectors' revision.
Guildford, which has a higher proportion of AONB and Green Belt land than either neighbouring borough, (89%) and which is mid-way in size compared to the other two boroughs, is contemplating a housing target in the region of 650 based on flawed demographics (acknowledged even by the Council Leader).
There is no current cooperation, since all local authorities are at different stages. This is because of the time lag since Guildford has not yet prepared its local plan. Effectively, the duty to cooperate has become unworkable. There is no mechanism for tying the varying authorities together in a coherent plan, because there is no regional overview. Nor does this allow a proper recognition of the areas of national importance such as the Metropolitan Green Belt. To devolve planning to local authorities is to avoid responsibility while creating an obligation to build. This is both undemocratic, and arguably in breach of the spirit of Localism. If the Duty to cooperate remains in place in its current form, then the Duty to Cooperate statement should be on the list of required documents before a local plan is produced.

It is not equitable that Guildford (as an illustration) should be forced to take a higher number, on the basis of a higher proportion of some notional local regional target, because Woking managed to get its plan done more quickly.

As noted in the St Albans v. Hunston case (para 31),

> There seemed to be some suggestion by Hunston in the course of argument that a local planning authority, which did not produce a local plan as rapidly as it should, would only have itself to blame if the objectively-assessed housing need figures produced a shortfall and led to permission being granted on protected land, such as Green Belt, when that would not have happened if there had been a new-style local plan in existence. That is not a proper approach. Planning decisions are ones to be arrived at in the public interest, balancing all the relevant factors and are not to be used as some form of sanction on local councils. It is the community which may suffer from a bad decision, not just the local council or its officers.

The failure of the Council to prepare a Local Plan cannot – or should not- be used as leverage by developers. Our Council may be incompetent, but, as confirmed by the Court of Appeal, that should not be a reason to develop Green Belt which is not in the wider public interest.

As noted in its submission to the Guildford Local Plan, Surrey was not consulted in relation to the impact of the additional population on the schooling requirement. GBC has an incentive to maximise housing due to CIL, New Homes Bonus and increased council tax. Surrey will have incremental costs arising due to additional educational requirements and highway provision, inter alia. It has had no input into the consultation (not even in relation to specific school proposals).

If the duty to cooperate does not work, then the rules enforcing this should be amended.

Recommendation:
Some kind of regional scoping or planning is necessary re housing numbers, the impact on infrastructure, education and health so that incentives for one tier of local government do not outweigh costs elsewhere.

9. CIL and infrastructure

There has been no consultation on the setting of a draft CIL, as required by the guidelines. Without this consultation, it is impossible to set a CIL. However, the council officers have predetermined that the CIL for brownfield will be lower, and therefore it is economically undesirable (as far as the council is concerned) to build on brownfield rather than greenfield.

This is not a decision for them alone, it is a decision for the community, who are responsible for the council taxes paid to this council, and who should have the right to be consulted (and therefore listened to) in relation to the impact of a lower CIL or an incentive for brownfield development.

The principle MUST be established that any housing target is conditional on additional infrastructure being created to cope with additional population.

There is a need for infrastructure reviews to determine local infrastructure capacity before any development can be considered. Infrastructure overload can trump any other consideration.

There should be a fundamental distinction drawn between infrastructure needs that can be met through increased expenditure (e.gl additional school provision, better sewage management) and infrastructure that cannot be resolved because of geographical or other constraints (lack of roads that cannot be built because of rivers, presence of AONB or Green Belt etc.). There should be two categories of assessment.

Plans do not (certainly the current Guildford plan does not) contain a thorough analysis of the problems of infrastructure capacity that exists already. While this is a supposed requirement, this, like so many requirements, is "fuzzy"; it is not prescriptive but allows enormous leeway in local interpretation and the inspector's discretion. Nor does it analyse the impact on the infrastructure of the proposed increase in population including neighbouring boroughs.

Any further infrastructure has to be paid for by the CIL, but the CIL after taking account of the affordable homes that are required will in no way provide enough money for any substantial additions to the existing infrastructure. As noted in the reference to the problems with the Duty to Cooperate above, this presents a clash of incentives and a failure of joined up government.

Residents of council owned property have the right to buy after a statutory period: the impetus for affordable homes therefore becomes an ongoing pressure. This should perhaps be addressed by giving councils the right to build homes for subsidised rent which are retained in a rent category in perpetuity.

Recommendation:

- the setting of lower CIL for brownfield is an incentive for developers, but a disincentive for councils to use brownfield. This must be addressed. Maybe councils shouldn't keep CIL at all and this would change the

perverse incentives.

- Ensure infrastructure costs are matched with incentives to build (CIL) so that there is not a mismatch between providers
- Draw a distinction between two forms of infrastructure and infrastructure limits: that which can be met by extra expenditure (e.g. additional sewage provision) and that which is an absolute constraint (no capacity for larger roads because of environmental issues, AONB etc.).

10. Conflicts of interest especially LEPs/commercial interests

Our Local Plan and our Corporate Plan are substantially influenced by the strategic views of our regional LEP (Local Enterprise Partnership). Our LEP is the Enterprise M3 LEP covering all of Surrey and Hampshire – Basingstoke to Gatwick. There is no democratic accountability at all.

The board of this quango includes council members, representatives of the University of Surrey, and local company representatives. It has enormous influence. We have come to know that Surrey University is very involved in planning - advised on the SHMA, sits on the LEP board and was the author of the Guildford Economic Strategy 2009- and is now proposing to develop 3000 homes in its capacity as a property developer. It is clear why Crest Nicholson would want to be involved (a house builder, who has permission to build a large number of houses in Cranleigh - http://www.crestnicholson.com) or Wilky Group (property investment - see http://www.wilky.co.uk) Crest Nicholson is on the main LEP board and both Crest Nicholson and Wilky Group representatives sit on the Land and Property Committee, together with other developers and builders, and are involved in influencing local and national strategic policy decisions.

These are commercial companies answerable only to their shareholders, but they are helping to determine national policy without reference to the electorate. The target strategy of the LEP (stated) is to "*seek support for housebuilding*" and "*to influence planning and economic policy at both the strategic level and through the local delivery process*". No self-interest there, then. Minutes in January 2014 propose that "*a relaxation on the use of Green Belt land could be included in the Government asks*".

Is this Committee prepared to allow commercial companies to distort the planning process of this country, in order to support the narrow commercial interests of shareholders in those commercial companies, irrespective of any wider national interest?

Recommendation:

- Commercial interests should not be allowed to dictate policy

11. Sustainability

The words "presumption in favour of sustainable development' used in the NPPF have been interpreted as a mantra for unrestrained growth and set the tone of the NPPF. It is important that this phrase is modified or preferably deleted.

It has clearly not done anything to increase the supply of affordable homes in the UK; so it has clearly proved ineffective. Housing need is as great as ever; but housebuilder profits are soaring. If it were ever necessary to pump-prime the building sector in the UK, this is clearly no longer the case, given the aggressive profit margins of all major housebuilders. There should be some presumption of providing adequate homes to meet actual local needs, and perhaps a permission for local authorities to build homes which are intended to stay in the rental sector in order to ensure ongoing profitability. There is **no** requirement to have any presumption in favour of development.

The NPPF is open to mis-interpretation, as it is loosely written and is inconsistent. It is being interpreted that the economic aspect of sustainable development over-rides the other two factors of sustainable development, ie. it is being interpreted as growth at any cost. This is a fundamental issue with the NPPF, and the quotation of the UN definition of sustainability is broadly disregarded.

Para.19 in particular can be interpreted as promoting this imbalance. Para.17; 3rd bullet point, for example, is muddled. The phrase "sustainable economic development" is unclear. There is no need for the word 'economic' to be included. Sustainable development embraces economic, environmental and social factors, with a clear emphasis on the environmental.

Different inspectors have interpreted the NPPF in different ways. Consequently local authorities in some cases are interpreting the NPPF to mean that any amount of Green Belt can be built upon through boundary changes.

A clear definition of sustainability is required, and it needs to be enforceable.

In terms of environmental requirements, there should be recognition of the need to increase housing density in cities so that urban transport systems become more economic, how to increase density whilst maintaining a liveable environment, consider food security and land for farming, and come up with a sensible policy with a land use strategy. That would recognise the importance of the Green belt. It might be possible to implement this by means of a Royal commission on land use efficiency.

There should be an increased recognition of the climate change problems facing the world. The nod in the context of the UN sustainability definition is inadequate. There should be a requirement to implement planning controls which have a direct impact on carbon dioxide emission etc.

Default planning regulations should include solar photovoltaic panels and water heating on all residential buildings, and on large commercial roofs and large residences (e.g. university student accommodation). Double glazing and thermal efficiency should be required for all buildings. Water use should be intelligent with rainwater capture for grey water uses (e.g, toilet flushing). Green roofs & walls should be used where appropriate in a design context and be encouraged, perhaps by local taxation structures. Other environmental design standards should also be applied as appropriate, perhaps K-glass on buildings with substantial window areas, high thermal requirements for building standards etc.

Certain aspects here should be a requirement (ie not subject to any viability criterion), and be built into the planning system, but in areas where design is important (eg villages, traditional and historic towns) there should be much higher design standards so that low visual impact forms of these structures are used (eg high quality photovoltaic slates as used by the National Trust without visible wiring elements), no requirement for water heating, etc, but hidden features to be integrated to achieve a zero or negative carbon requirement. Since there will be a higher cost to such higher design standards, there will be an disincentive to build in such areas which will facilitate preservation of the historic environment.

Green fields have a greater value than the price of land and to level the cost of building on brownfield land and green field, there should be changes to the tax regime. There should be no exemption from Stamp Duty Land Tax for any buildings on green field sites and especially in the Green Belt. Consider that, for example in Surrey, agricultural land will generally sell for less than about £15,000 per acre. There should be no exemption from VAT for any housing development, but perhaps the rate should be lower on brownfield land.

To negate the impact of higher carbon footprint of developments in the Green Belt and countryside, all buildings in the Green Belt and countryside should be immediately subject to the Zero Carbon building standards, with no viability considerations.

Recommendation:

- Emphasise that environmental sustainability is a fundamental element of the NPPF and that, if there is a clash, the environmental factors should predominate
- Have design standards which require use of solar panels, and thermal efficiency etc.
- Changes to the tax regime to incentivise use of brownfield land and reduce use of green field sites

12. Green Belt and countryside

Pious words have been expressed but the safeguards for the countryside in the NPPF are inadequate. As a result, communities across the country are engaged in long, stressful and painful battles with developers – sometimes in conjunction with and sometimes opposed to local councils. This is a futile waste of time, money and energy.

Our countryside matters to the whole country. Land which is not built on is not "empty" or "unused" and in most cases is the most highly valued land in any community – the green spaces, the forests, the parks, the school playing fields, the open land, etc. Agricultural land too is vitally important.

Countryside and open land matters as a carbon sink to reduce the impact of climate change; to provide food; to give us clean air; to absorb floodwater and avoid urban floods; to provide recreation. Few of these uses are reflected in the NPPF, which is a housebuilders' charter. All of them should be recognised.

Some land is valuable for tourism or filming; some is good for camping; much is essential for wildlife.

The concept that offsetting is feasible is ludicrous (the cartoon showing a sign that "this ancient woodland has been moved" is relevant). A tree that has grown up over 500 years cannot be replaced as an environmental habitat by a sapling. A SSSI which is a key breeding site for nightingales, like Lodge Hill, cannot be replaced by a field elsewhere, which nightingales did not choose to breed in. SANGs are a little understood and badly comprehended concept, even among some planning professionals. It is important to recognise that SANGs are environmentally damaging and not to use a greenwashing publicity to suggest that they have any environmental desirability. The impact on special protection areas, SSSIs etc. is disastrous. "Offsetting" as a concept must be discarded.

This is a small island, one of the most densely populated in Europe. The South East is the most densely populated region. Yet we use land as if we were in Canada, with a small Canadian population. Our countryside is popular and important (look at the popularity of Countryfile or Springwatch); and urban design can be reconfigured to revitalise the city.

There should be a presumption against the use of greenfield land and any countryside. This should be an overriding presumption, only to be overruled in genuinely exceptional circumstances. No green belt should be suitable for development as a general presumption. There should be no development in AONBs or National Parks. This should not apply in the context of settlements, where limited development would be reasonable subject to design constraints.

Where then are new homes to be built? There is a remarkable amount of brownfield land available, and if sensibly and reasonably used, with proper incentives for local remediation, then this could be used fast. This would improve

derelict areas of cities – and even in affluent Guildford there are an estimated 60hectares of brownfield land that we think will meet all our housing needs. The council is only objecting on the grounds that they can't achieve it in time, but with proper direction this would be possible, or an adjustment to the 5 year supply requirement. Richard Rogers has confirmed that brownfield land can supply most of our interim housing needs, revitalising the cities in the process. Urban living has a lower carbon footprint.

It is not reasonable to object to the possibility of cleaning brownfield land as a cost of development – in any reasonable society, that land needs to be cleaned anyway. The best principle of course is the polluter pays principle; but where this is not feasible then it must be the obligation of government (local or national) to clean the land. We cannot have sites of chemical dumps, industrial spills or just derelict factories encouraging rats, dumping and disease within our society – so the clean-up should be a given anyway. Those sites then become available for use – commercial use if not suitable for health reasons for domestic or residential use. Most brownfield sites are eminently suitable for residential development and this is in the interest of both new residents, and those in adjacent areas.

Recommendation

- Brownfield first. Have an 80% brownfield target as a minimum
- Presumption against building on green spaces
- Adjust 5 year requirement - if land available subject to clean up it should be included in that 5 year supply in full
- Discard offsetting and SANGS. Environmental protection cannot be offset.

13. Empty properties –overseas non-resident investors

A problem that has started in Central London but that is rapidly spreading across the country is the problem of non-resident overseas investors. As Savills have noted, approximately 80% (eighty per cent.) of new properties in Central London are sold to overseas investors. For the most part these are not bought as homes nor as holiday homes but as investments. This is not a problem only for the exclusive enclaves of Kensington and Chelsea but is becoming widespread. The previous head of planning for the City of London has referred to the problem repeatedly. Empty homes in London are a fundamental problem, causing an outward spiral of demand, affecting affordability, availability, and causing the housing crisis.

A large number of new flats were bought by Chinese investors on the Olympic park in Stratford. At a recent planning forum I spoke to a commercial property buyer who was at a flat auction in Leeds, where 200 new flats were being sold. 90 flats were bought by one Chinese investor – in Leeds. Homeowners in Guildford have been subject to mailshots by Chinese investors offering to buy their homes. This is not a problem that just affects central London; it is a national issue.

These prospective owners are likely to be investors who will not let them out but will keep them as a long term investment bought on a margin product funded by the exchange rate and the capital appreciation, also of course representing a safe haven for money. The total cost to the far eastern investor is only around 10% of the market price, hence the scale of the problem. The only impact on the UK economy is that flats are built, but since in most cases they remain empty, the only groups that benefit are developers. The fact that they remain empty is clearly desirable to developers, since this has the impact of inflating real need and demand. But as far as the country as a whole is concerned, the impact on our countryside, our population, and our housing crisis is utterly negative. This situation should not be ignored in the interest of protecting housebuilders and their profit projections; it must be addressed and it must be changed completely. Government in this country is for the people, and policy must be made in their interests, not in the interest of corporate donors.

The Conservative party does not seem to recognise the strength of feeling in this matter, but they should be under no illusions. The borough of Guildford covers four safe Conservative seats, and all four seats are furious about the local plan and about the impact of property development on our local environment.

English or British land is being developed to provide bank accounts for the Chinese middle classes. These flats- and, increasingly, houses - will never be lived in, but have an enormous impact on the property market in terms of removing capacity and available homes, and increasing demand for land.

If this matter were resolved, with **no** future homes built for non-occupation, and existing empty homes that are owned by non-resident overseas investors

released into the housing stock, the housing supply and crisis would be transformed overnight. Any politician that really wishes to address the housing crisis will deal with this first, because this affects existing buildings and those currently under construction, not buildings that may or may not be built in the next 15 or 20 years.

This matter can only be addressed by Government. It is two-pronged. Part of the problem must be addressed as part of the planning process; permission must be conditional on the developer seeking residents, or buy to let owners that will let properties to residents, and any indication that properties will be bought on an empty investment basis should be addressed with the same severity as money-laundering – perhaps we could call it property-laundering? Offenders could lose the right to develop anywhere unless full occupancy by residents is obtained.

The second part is of course addressing the existing frozen part of the property market, to liberate those homes currently bought in this way, and punitive taxation for non-resident overseas investors would seem appropriate – perhaps 20% of capital value per annum with no threshold. Suddenly there would be enough homes for many new tenants or owners. Only the property developers and housebuilders would be concerned; the nation as a whole would benefit and it would seem politically extremely popular. Selling off the family silver in this context is unacceptable – politicians might like to note that historically at any rate an Englishman's home is his castle, that the Green Belt is precious to all of us- as the National Trust notes, the countryside is for ever, for everyone.

Recommendation:

- Planning permission must be contingent on actual resident occupancy
- High taxation of non-resident owners of empty homes