Consultation: Reforms to Statutory Consultees[1]

Community Planning Alliance Response

Questions

1. Are there other key areas we should be considering in relation to improving the performance of statutory consultees?

Your focus on "*Ensuring the statutory consultation system supports economic growth*" is much too narrow, the process should also ensure there is sufficient progress with climate mitigation and nature's recovery. Your concerns about risk-aversion are misplaced. If they were not, over 6 million (and rising) properties in England would not be at risk of flooding today[2].

Your approach does not appear to consider the wider strategic implications of the decision to deregulate the planning system. Whilst you mention that there is an intention to ensure appropriate mitigation is in place where statutory consultees are removed from the planning process, we do not believe the risks have been adequately identified, considered and addressed.

As an example, harmful deregulation will impact the public purse. These proposals could increase the costs of both mental and physical health services provided by the NHS, for example (see our response to the removal of Sport England below).

If rationalising the planning system is a key government goal, there should be more focus on a very clear definition of what actually constitutes sustainable development (it is not sustainable to build on irreplaceable habitats, for example, or to continue to build car/HGV dependent developments, but there is no mandate preventing either of these scenarios prevailing within the planning system).

We note the intention to enhance the role of statutory consultees in plan making but we do not believe that this should be considered a replacement for their involvement in decision-taking. Regulations have typically been put in place to ensure development is appropriate, safe and sustainable.

Reviewing key policy and guidance is no substitute for the specialist skills and knowledge contributed by these organisations. The entrapment of planning departments with the expectation of proceeding to a decision in the absence of advice could have significant consequences for communities including, for example, in relation to flooding.

[1] https://www.gov.uk/government/consultations/reforms-to-the-statutory-consultee-system/reforms-to-the-statutory-consultee-system

[2] https://publications.parliament.uk/pa/cm5901/cmselect/cmenvaud/550/report.html

2. In exploring reforms to the system, we have so far focussed more on key national statutory consultees. Is there more that government should do in relation to smaller scale and local statutory consultees?

Any review of smaller scale and local statutory consultees should be carried out by local planning authorities, in consultation with their communities, not driven by a government's single-minded objective to build at any cost to communities and nature.

3. In light of the proposed mitigations, do you support the removal of Sport England as a statutory consultee?

- support
- oppose
- neutral

We oppose the removal of Sport England as a statutory consultee

4. In relation to notification requirements, should substantial loss of an existing playing field be defined as:

- 20%
- a figure below 20%
- a figure above 20%
- an alternative approach

Please explain your answer/reasoning if possible.

An alternative approach is needed. If this is to be introduced, what is a substantial loss should be determined locally. A random figure of, say, 20% is inappropriate. What would it be 20% of? The sports provision in the district, the Ward, the Parish, the neighbourhood? Would the figure be based on area (ie measured in hectares) or on usage (ie measured on the loss of amenity for a number of sports clubs or individuals)?

The level of loss to be considered substantial should be set out in a local plan following consultation with local residents and should be based on the loss of amenity in the communities concerned.

5. Are there impacts of the removal of Sport England as a statutory consultee, or the proposed mitigations, that you think the government should take into account in making a final decision?

We agree with Sport England that its role "*acts as a deterrent against speculative applications for housing or commercial development on viable playing fields without the provision of appropriate mitigations".* This is confirmed in your own data which states that two thirds of Sport England objections *"were removed after amended submissions".* This is exactly how the process should work. If developers put forward inappropriate applications, they are given the opportunity to amend them in accordance with statutory consultee feedback, driving benefits for the public purse and local communities.

We also agree with the sentiments set out in the Fields in Trust open letter[3], which has been signed by 87 sports stars and governing bodies, asserting that the need for development must not be at the expense of the spaces "*that make communities liveable, healthy and cohesive*".

As mentioned above, reducing protections for playing fields could also result in additional costs to the NHS as a consequence of increased mental health service requirements and the higher costs of treating those who are overweight or obese. For information, the government has an Obesity Healthcare Goals programme[4] which highlights that it costs the NHS substantially more to treat people who are obese due to the high prevalence of associated long-term conditions. Obesity is a leading cause of conditions such as Type 2 diabetes, cardiovascular disease, stroke, and certain cancers, all of which require significant medical resources. Obesity is estimated to cost the NHS over £11.4 billion every year, with wider societal costs estimated at £74.3 billion annually due to ill health.

Whilst you suggest that "*Government policy for the protection of playing fields is clearly set out in the NPPF",* the government's introduction of policies, such as Grey Belt status, has removed protections, weakened safeguards and increased speculative development. In any event, both planning departments and developers cherry-pick which NPPF policies are complied with on the basis that the framework should be considered 'as a whole'. This distorts policy requirements to benefit developers, rather than communities (who do not have the right of appeal, even when policy has clearly not been applied) and weakens government policy to the point that it is irrelevant.

6. In light of the proposed mitigations, do you support the proposals to remove The Gardens Trust as a statutory consultee?

- support
- oppose
- neutral

We oppose the removal of The Gardens Trust as a statutory consultee.

7. Are there impacts of the removal of The Gardens Trust as a statutory consultee, or the proposed mitigations, that you think the government should take into account in making a final decision?

We disagree that there is a duplication in roles between Historic England and The Gardens Trust. The removal of The Gardens Trust as a statutory consultee will be highly damaging and their expertise cannot be replicated locally. The government does not appear to be in step with communities, who significantly value their local parks and green spaces.

[3] https://fieldsintrust.org/about-us/news/leading-sports-figures-and-organisations-sign-our-open-letter-to-save-uks-playing-fields

[4] https://www.gov.uk/government/publications/life-sciences-healthcare-goals/obesity-healthcare-goals#:~:text=obesity%2Dhealthcare%2Dgoals-,What%20we%20do,cost%2Deffective%20models%20of%20care.

8. In light of the proposed mitigations, do you support the removal of Theatres Trust as a statutory consultee?

- support
- oppose
- neutral

Neutral

9. Are there impacts of the removal of Theatres Trust as a statutory consultee, or the proposed mitigations, that you think the government should take into account in making a final decision?

Given the very low volume of planning applications currently considered by Theatres Trust, and the limited impact on housebuilding, we do not believe that their removal as a statutory consultee will support the rationalisation of the planning system. In fact, it will add to the administrative burden associated with change and the introduction of new guidance and procedures.

10. Are there other statutory consultees for which we should consider removal? What evidence would support this approach?

We do not believe there are any other statutory consultees that should be considered for removal but, if the government is persuaded by other respondents, there should be a full and detailed risk assessment, including the risks for government bodies associated with minimising their contribution to the planning system.

11. Do you support the proposed changes to National Highways' referral criteria?

Yes.

12. Is there anything else we should consider in relation to National Highways as a statutory consultee?

We understand National Highways is proposing a triage service, which we assume will utilise online forms. We believe appraisal of the impact on the strategic road network would be suitable for online assessment and such an approach would also make increased (standardised) data available for other purposes. Anticipated HGV traffic should be clearly separated from cars and vans in the online system. Where a planning application anticipates the transportation of hazardous gases and other materials these figures should be separated from those relating to the transportation of non-hazardous products.

13. Do you support the changes to Active Travel England's proposed referral criteria?

No. If the government is investing[5] £300m of public money to boost walking, wheeling and cycling in England, we must make sure these routes are well connected and are promoted at every opportunity. Raising the threshold for consultation from 150 to 250 units for housing developments does not support the achievement of modal shift.

14. Is there anything else we should consider in relation to the role of Active Travel England as a statutory consultee?

Active Travel England should be a statutory consultee (along with Great British Railways and DfT Bus Service Improvement representatives) for all spatial and local plan development to ensure the focus is on sustainable modes of travel rather than widening existing roads or proposing new road schemes.

15. Are there other actions that the government and/or Natural England should be taking, to support their role as a statutory consultee?

To support the rationalisation of the planning system and reduce the workload of Natural England, the government should mandate that Councils identify and map their Natural Capital resources, making the resulting information available for review by local communities. Residents should be able to recommend changes (such as the addition of sites not identified by Council staff, who invariably do not live in the local area).

To ensure there is balance in the consideration of economic, social and environmental objectives, the level of benefit Natural Capital resources bring to the district and local communities should be determined (including financial benefits where appropriate, such as the income from productive best and most versatile agricultural land, the flood prevention benefits from wetlands, the carbon benefits from woodland, for example).

This exercise should include mapping all sites of biological importance, sites of special scientific interest and other conservation areas, including irreplaceable habitats.

Local authorities should then use clear Natural England guidance to determine whether sites considered either for allocation in local plans, or in specific planning applications, are of low, medium or high Natural Capital Value.

Sites of 'low' or 'medium' Natural Capital Value should be assessed against clear Natural England guidance to determine their suitability for development.

Development should normally not be approved on sites of 'high' Natural Capital value. If a planning application is submitted for such a site, the government should mandate that approval will only be given by exception (ie that the Planning Inspectorate should be required to examine the application in advance of approval, this should include Natural England input). Natural England should be able to object to such a planning application.

Given the exceptional circumstances for approval, this approach would focus Natural England's role on sites with 'high' Natural Capital Value. They would also be required to maintain the guidelines for 'low'/'medium' Natural Capital Value sites.

[5] https://www.gov.uk/government/news/almost-300-million-to-gear-up-new-walking-wheeling-and-cycling-schemes

16. Are there other actions that the government and/or the Environment Agency should be taking in relation to the Environment Agency's role as a statutory consultee?

The Environment Agency plays an essential role in ensuring that new developments do not increase flood risk or environmental harm. As highlighted above, government data shows that there are already over 6 million properties in England that are at risk of flooding today[6].

We are very concerned about the proposal to remove the Environment Agency's right to object on the basis of flood risk. We do not believe there is sufficient evidence of the assessment of risk, not only to buildings and other infrastructure but also to human and wildlife health and wellbeing. This approach could lead to increased costs to the NHS and other public sector bodies.

Flooding is an issue that significantly impacts many communities already and the government's own data[7] states that it "*is one of the most important climate change challenges facing the UK, and people affected by flooding are more likely to experience adverse health outcomes including long-term impacts on mental health and wellbeing*", once again impacting costs to the NHS.

17. Do you support the changes to Historic England's proposed notification criteria?

We do not agree with the increase in the threshold for consultation in relation to conservation areas as this could cause significant harm. If this is to go ahead, will there be a proportionate increase in local planning authority resources to cover the increased responsibilities and skills that may be required?

It is much more cost effective to maintain such skills and experience in one specialist organisation than to try and provide 'fractions' of full time equivalent experts at a local level.

18. Do you support changes to align the listed building consent process in London with the process that applies elsewhere?

Only if the threshold for consultation remains at 1,000m^2.

19. Is there anything else we should consider in relation to the role of Historic England as a statutory consultee?

There may be scope for some automation of guidance and decisions based on existing standards for listed building consents.

[6] https://publications.parliament.uk/pa/cm5901/cmselect/cmenvaud/550/report.html
[7] https://assets.publishing.service.gov.uk/media/657086ad746930000d488919/HECC-report-2023-chapter-3-flooding.pdf

20. Do you support the changes to the Mining Remediation Authority's proposed referral criteria?

Whilst we understand the desire to minimise consultation requirements, we are concerned about the proposal to remove consultation for low-risk development in high-risk areas. We are conscious of the apparent rise in the number of sinkholes (discussed below), which is not being recorded. If increasing incidents of heavy rainfall are weakening old industrial sites, such as disused mines, vibrations from any additional development could increase the likelihood of ground collapses.

21. Do you support the proposed changes in relation to the Mining Remediation Authority commenting on the discharge of conditions?

As this work lies outside of the MRA's statutory remit and appears to be limited to a tick-box exercise, the MRA is unlikely to be adding any value. The government must consider whether the risks related to such an approach have been sufficiently assessed.

22. Is there anything else we should consider in relation to the MRA as a statutory consultee?

Whilst we recognise that the NPPF puts the onus on developers to demonstrate that sites are safe and suitable for development and that there is guidance for dealing with abandoned mine workings, for example, we believe the government should commence monitoring of the appearance of sinkholes, the associated causes and the remedies.

The causes of sinkholes can be attributed to organisations other than the MRA and are often triggered by construction, human activity, heavy rain, flooding and water leaks.

23. Are there other statutory consultee referral criteria we should consider amending? What evidence supports this?

Whilst we fully support automation and digitisation, the government should assess the implications of the use of the Health and Safety Executive's (HSE) land use webapp system and whether the risks associated with some developments are being appropriately assessed.

This webapp was used, for example, for a Battery Energy Storage System (BESS) planning application on very deep peat that is adjacent to a number of COMAH zones, including one for which the HSE had previously raised an alert for potential BLEVE (Boiling Liquid Expanding Vapour Explosion) incidents.

As the government will be aware, BESS are extremely susceptible to combustion and fire in peat soils can burn underground and spread rapidly. The local community is very concerned about the use of a webapp approach in these circumstances and believe there should be more rigour in the process.

24. Is there anything further government should consider in relation to voluntary pre-application engagement and for any statutory consultees in particular? What evidence supports this?

There should be a statutory requirement for a minimum 30% of local residents engaging with a local plan or a planning application. This would not be difficult to achieve if more honesty and transparency became a requirement in the planning system and if as much effort was made to connect with communities as is made to engage with developers.

25. Is there anything further government should consider in relation to statutory consultee engagement in post-approval processes, such as agreeing that planning conditions have been fulfilled? What evidence supports this?

Post approval actions should be assessed based on the risk to communities. The HSE should, for example, be required to ensure all their recommended planning conditions have been fulfilled.

26. Do you have suggestions for how government can effectively incorporate appropriate developer and local authority feedback into consideration of statutory consultee performance?

Developers should be requested to summarise pre and post application submission engagement with statutory consultees, including, for example, whether their application was amended following consultee feedback.

Local planning authorities should be required to manage a risk register that is linked to the issues addressed by statutory consultees and to report any risks that materialise, the severity of those risks and the impact (if a sink hole occurs, for example, whether this resulted in any injuries or property damage, if an irreplaceable habitat was harmed, whether that resulted in its complete destruction or whether it is recoverable).

27. Do you agree with this approach?

Whilst we agree that both statutory consultees and local planning authorities should be correctly funded, we are very concerned about the government's intention to weaken the input of statutory consultees from objection to advice. We do not believe staff in local planning authorities will have the skills or experience to be able to appropriately weigh advice from what could be several statutory consultees against other material considerations. We are unclear about 'who' (organisations or individuals) would be able to refer a decision to the Secretary of State if a local planning authority intends to approve an application against the 'advice' of a statutory consultee).

28. Is there anything else the government should be doing to support local planning authorities in their engagement with statutory consultees?

The government should mandate that local planning authorities implement the Natural Capital mapping exercise we set out in our response to question 15 and that they manage a risk register related to statutory consultee issues as proposed in our response to question 26.

29. Are there best practice examples from local authorities that help support statutory consultees and developers, for example, checklists/proformas for environmental issues?

Others will be better placed to respond to this question.

30. How might best practice be expanded to support statutory consultees, including through reducing the volume of material which developers have to produce?

More automation and digitisation will streamline the system of statutory consultee assessments, and the resulting data should be transparently available to communities.

31. How best can government and statutory consultees support the increase in capacity and expertise of local and strategic authorities?

Others will be better placed to respond to this question.

32. Do you agree that these criteria clearly set a framework for decisions on future statutory consultees?

Yes, these criteria set a framework for decisions on future statutory consultees, but they introduce yet more bias into the planning system. The government suggests that unnecessary regulation creates a burden on industry but there is no mention of the very heavy burden inappropriate development is placing on communities, including the impact on their mental and physical health (from pollution and flooding, for example).

Proposed statutory consultees must be totally independent – not pro-development. Their role must not be constrained by an expectation that development must be approved whatever the risk.

33. Should the government maintain the moratorium, subject to periodic review, or adopt criteria for consideration of new statutory consultees?

Specific criteria that demonstrate an independent approach to assessing the risk of development should be published for consultation.

34. Is there anything else the government should consider in relation to the criteria?

The government must ensure the criteria are balanced to minimise the impacts on public safety and wellbeing, and to maximise the potential to mitigate climate change and support nature's recovery.

35. Are there any equality impacts in relation to the proposals in this consultation that the government should consider?

Others will be better placed to respond to this question.

36. The government considers that these measures would have a deregulatory impact. Do you have evidence from engagement with statutory consultees under the current system of the impact this may have?

Whilst we welcome a culture of continuous improvement, this must be balanced between the economic, social and environmental objectives of sustainable development. As we mention above, over 6 million (and rising) properties in England are already at risk of flooding and this could increase if there is further deregulation**.**

We also note above that harmful deregulation will impact the public purse. These proposals could increase the costs of both mental and physical health services provided by the NHS, for example.

Independent expert advice is essential to ensuring sustainable, safe development and reliance on generic guidance could result in more risks materialising more frequently.

Both local planning authorities and statutory consultees must be resourced appropriately and fully trained to deal with their new responsibilities.

We have real concerns that local planning authorities will be entrapped by these proposals. If risk aversion is an issue that currently leads to over-referral, the concerns that lead to that behaviour will not be averted by these changes.

Given the government's other proposed changes to the planning system, planning officers will no longer be able to take applications to their planning committees, and there will be fear that refusal will be overturned on appeal. This could lead to high risk inappropriate development being approved that will significantly impact local communities.

37. Based on the proposed changes to referral criteria, would statutory consultees expect to see performance improvements? Please explain your reasoning.

- strongly agree
- agree
- neutral
- disagree
- strongly disagree

Disagree. We anticipate there will be more informal engagement with statutory consultees to compensate for their reduced formal role.

Kind regards

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Vice Chair

Community Planning Alliance

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About the Community Planning Alliance

The Community Planning Alliance is a national umbrella group for over 700 communities, all are campaigning against inappropriate development in their areas, and all disagree that decisions are being made in the 'public interest'. We have extensive knowledge and experience of the planning system, and our aims include seeking increased community participation, better environmental protections and the right homes and infrastructure in the right places.