

BPF Response to the Labour Planning Commission Call for Evidence



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The British Property Federation

1. The BPF represents the commercial real estate sector. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.
2. The UK's commercial real estate sector contributes about 5.4% of GDP, and directly employs 1 million people, or 6.8% of the labour force. It provides the nation's built environment and is diversifying from its core investment in the nation's offices, shops, leisure facilities and factories, to support the new economy through investments in logistics, healthcare, student accommodation, infrastructure, residential and increasingly through Build to Rent investment in new housing.
3. We welcome the opportunity to respond to the Labour Planning Commission's Call for Evidence in addition to our contributions through the Planning Commission meetings.

Plan making

The current approach to plan making

4. The BPF supported a number of the government's reforms through the 2018 NPPF to compel local authorities to work together to deliver more homes. Specially, the steps taken relating to the duty to cooperate (DTC) through the new requirement for LAs to prepare and maintain Statements of Common Ground (SOCG) and the central role afforded to this process in determining the soundness of a plan were welcome.
5. However, the major limitation of the government's approach in the new reforms relating to SOCGs is that they are not required in law, meaning that it is questionable how their preparation can be enforced. The lack of enforceability in a legal sense means that uncooperative local authorities still have a mechanism to avoid taking on more housing growth.
6. One proposal that a future labour government could consider to address some of the outstanding issues relating to the new SOCGs would be to add an extra procedural step into the plan making progress. When a local plan is submitted The Planning Inspectorate could then come to a judgement as to whether the DTC/SOCGs have been undertaken in an appropriate manner, and should this not be the case, the plan cannot move forward for adoption. This would have the effect of establishing the DTC/SOCG as a more significant aspect of appropriate plan making.

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The need for greater alignment between the agencies of English Planning

7. The BPF are of the view that there is a clear need for greater coordination between the various government departments and agencies operating within the planning, development, property, infrastructure, health and heritage sectors. However, rather than returning to a national-regional structure, we would argue that the emphasis of a future labour government should be placed on striving towards more horizontal alignment between government and its agencies, with a second tier based on more coordinated activities of e.g. the combined authorities and local economic partnerships that are already established – and then the local level.
8. Moreover, we would also argue that for more successful local level coordination on infrastructure provision, there needs to be a focus on incorporating the needs, aspirations, and requirements of other local bodies, such as local education authorities, whose knowledge and requirements need to be better built into the planning system. There is certainly a need for local planning authorities' development plan policies and development management decisions to better align e.g. with Clinical Commission Groups, relevant NHS Trusts and estate transformation partnerships. In the context of an aging population with increasing healthcare needs, their inputs to seeking to ensure proper provision of such facilities are crucial to good, sustainable planning.

Planning gain and capturing uplift in land values and Infrastructure

9. The BPF have responded to section 2 and 5 together given their interrelated nature. Our perspectives on the current system of developer contributions, how the system of capturing the uplift in land values can be improved through planning and how the planning system can support infrastructure delivery are set out below.

Improving the current system of developer contributions: Section 106 and CIL

CIL Indexation Rates

10. Reforming the current system of developer contributions has been an active area for MHCLG of late with a consultation on supporting housing delivery through developer contributions released at the same time of the revised National Planning Policy Framework in March 2018 and more recently, a technical MHCLG consultation in December 2018 which focused on the impact of the revisions made to the legal text associated with the developer contributions regime (the CIL regs).
11. The BPF are of the view that the overarching failure of the current government's changes to CIL through both these consultations is that they simply add further complexity to the system. We were pleased to see that, in the short term at least, CIL rates will remain linked to the BCIS data however MHCLG's response document also notes that the ministry is committed to further reform in this area in the future.
12. The BPF would maintain that CIL rates should remain linked to the cost of infrastructure delivery i.e. the cost of construction.

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Unspent CIL monies & strengthening the link between infrastructure, funding and delivery

13. A further weakness of the government's current approach to developer contributions relating to CIL, is that, in many areas, CIL monies remain unspent. A [report](#) by the Association for Consultancy and Engineering found that despite CIL raising more than £1.1 billion over the period from the beginning of 2014 to July 2018, £443 million of this remains unspent and is still sitting in council bank accounts.
14. We would therefore urge a future government to give consideration to how to address this longstanding fundamental issue with CIL, by bringing forward reforms that strengthen the relationship between infrastructure, planning, funding and delivery.

Removal of the 'pooling restriction'

15. The BPF raised concerns in the latest round of consultation that the latest amendment regulations would enable local authorities to levy CIL, negotiate item specific S106 Planning Obligations and seek pooled section 106 financial contributions in relation to the same development.

More long-term reform of S106 and CIL

16. The system of developer contributions has evolved sporadically since 2010 and whilst this has allowed the system to respond to the challenges that have emerged, it has also created a highly complex web of planning regulation. For example, the CIL regulations have been amended seven times since original creation in 2010.
17. As such, the BPF continues to advocate for more long term and fundamental reform to the current system of developer contributions through the recommendations of the [CIL Review Report](#) in 2016. We would hope that a future government would look again at the central recommendation from the review – to introduce a new local infrastructure tariff, coupled with a wider remit for S106 for larger sites, in addition to the introduction of the new strategic infrastructure tariff.

Capturing uplift in land values

18. With central and local government facing strains on their budgets in recent years, there has been much debate over how authorities can share more effectively in capturing the uplift in land values associated with planning (LVC).
19. The BPF's broad position in summary is as follows:
 - Local authorities capture value in the development process through existing taxes and planning policies. Having a local plan in place, with clear policy requirements on design, affordable housing requirements and infrastructure needs, will all get reflected in land values. This approach of capturing land value through clear local planning policy requirements is we believe best, because it reflects differing local circumstances, and avoids unintended consequences.
 - Value to help fund local infrastructure is also captured through s106 and CIL. They are able to take account of a wide variety of different development circumstances. The BPF has long supported

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reform, for example the recommendations of the CIL Review, and more recently the Government's consultation on developer contributions. Recent revisions to the National Planning Policy Framework (NPPF) and associated guidance have also tried to ensure that national policy encourages local authorities to be clearer about their policy requirements.

- The sector is likewise a willing contributor to infrastructure investment where additional development value is created through significant public investment, for example on Crossrail.
- The value that is captured for public spending on an agricultural site that is allocated for housing is already roughly 50% of the development value – a high level of tax. It is a fallacy that all of the notional land price is returned to the farmer.
- We are concerned that additional forms of land value capture, either through a national land tax and/or CPO reform, could stop landowners selling land, and therefore limit the opportunities for more homes and communities to be built.
- Land values vary dramatically across the country. Whilst a greenfield site may see a rise in land values when allocated in a local plan, in some parts of the UK, for example northern regeneration sites, land values can sometimes be negative. A new national tax – a land development tax - would have to take account of such variability, or it would stifle development on already difficult to develop sites.

Proposed reform to CPO

20. A further suggestion that has been put forward of late is that a future government should reform the 1961 Land Compensation Act to remove 'hope value' as a factor in market valuation in the CPO process. We have a number of concerns with such a proposal, including:

- Compulsory purchase arrangements already base compensation on the value of land with its current use or any prospect of a planning permission being granted that meets policy requirements including good design, affordable housing and infrastructure:

'Compensation for compulsory purchase is based on the value of land with its current use or any prospect of a planning permission being granted which meets policy requirements including good design, affordable housing and infrastructure. That is, what would be acceptable on the land in the public interest. A compensation claim based on 'the least social housing possible, skimping on size standards, quality and investment in transport and other infrastructure' would be expected to fail. Market value is assessed under the Land Compensation Act 1961 on the basis of the potential to develop in the public interest. There is therefore no need to amend the legislation.'

Richard Harwood OBE QC, CPO expert

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Improving land supply

21. The most effective mechanism for ensuring there is a steady stream of land coming into the market for development is for local authorities to have up to date local plans with enough sites allocated to meet the local need.

The use of CPO relating to land assembly

22. The BPF have already provided our view on CPO in relation to LVC however on land assembly, we are of the view that the power should be used sparingly. If land is in the possession of a willing developer CPO would not be appropriate, and in fact would represent inefficient use of public funds. Intervention in respect of such willing developers should be through planning policy and negotiation. Where CPO can be effective, is in relation to smaller land holdings which may be preventing the realisation of a larger site.

New towns and garden villages

23. As noted previously, the forced sale of land is a power that governments should only be looking to use sparingly. However, we can see the justification with New Towns, given the significant infrastructure spending that they require and opportunities they create, but only support this method of LVC within the defined circumstances of the New Towns Acts.

Improving the quality of the built environment

24. The issue of climate change and the associated resilience and sustainability of the built environment is a critical one in considering the long term social and economic prosperity of the UK. At the BPF we have supported and been involved in the development of a number of industry initiatives in the pursuit of more sustainable buildings. This includes a voluntary net zero carbon buildings standard and exploring the importance of the operational performance of commercial buildings. In addition, the BPF in 2017, produced a guide to help the designers, developers, operators, and managers of buildings to ensure that the principles of good design are followed through into the aftercare of any given project.
25. A Net Zero Carbon Buildings Standard was launched in April 2019 by the UK Green Building Council (UKGBC), following several months of work led by an industry task group comprising built environment practitioners and trade associations/industry bodies, including the BPF. The [net zero carbon buildings framework](#) is a voluntary standard that can be used by developers, designers, owners, occupiers, and policy makers to achieve net zero carbon buildings in construction and in operation, whilst laying the foundations for addressing whole life carbon in the future. The framework and its definitions are ambitious, developed with industry buy-in, and aligned with the government's target for net zero emissions by 2050.
26. The BPF has supported the Better Building Partnership's (BBP) [Design for Performance](#) initiative for a number of years. This initiative looks to address the identified performance gap between commercial buildings that are ostensibly (through building regulations and other standards) designed to be energy and carbon efficient, but often fall short of being as efficient in practice or operation. BBP are exploring the possibility of introducing a rating and verification system in the UK based on a similar, successful, scheme in Australia,

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known as NABERS. The notable benefit of such a scheme, is that buildings are subsequently designed and built with ultimate operational performance/efficiency in mind, with this performance measured and validated at and beyond practical completion. If we are to meet the aspiration of becoming a net zero emitter by 2050, we must at the very minimum ensure that buildings being designed today, are meeting the respective standards of the future.

27. The BPF produced a resource entitled [Aftercare Guide: Developing efficient buildings for any occupier](#) in 2017, as an accessible resource to help clients, architects, contractors, property managers, facility managers, lettings agents, and occupiers to plan for the continued sustainable operation and management of efficient buildings. Buildings are not passive entities, rather they require continued monitoring, assessment, and aftercare to ensure they perform as efficiently as possible within the parameters of their design. In the future it will not be enough to develop new buildings to high efficiency and sustainability standards, they will need to be subject to a culture of continuous aftercare in order to realise their potential.

Promoting innovation in construction methods

28. For this section, we have focused on the synergies between modern methods of construction (MMC) and built to rent (BTR) development.

Why MMC and BtR are a good fit

29. For BTR, the following factors are strong in the decision to use MMC:
 - a. Speed of construction is valuable, as it allows earlier occupation of the building and commencement of the rental income stream.
 - b. As BTR buildings are under single-ownership with a single point of responsibility for management and maintenance, consistency of quality is important – both in initial finishes and fittings, but also in ongoing maintenance.
 - c. BTR units are generally built to a fixed design and specification, i.e. there is no scope for customisation for incoming residents. This enables the delivery of identical units to be an advantage – once the design is finalised, there is no requirement for late changes.
30. Contrast that with 'for sale' housebuilding, where different incentives apply, which is why take-up of MMC remains weak:
 - a. A faster speed of construction is not usually critical, as sales / absorption rates are generally slower.
 - b. Individual purchasers are largely responsible for ongoing maintenance, so the costs of that are not so crucial to the developer.
 - c. The ability to accommodate design changes or purchaser choices late in the construction process is of value.

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31. The 'predictability' of BtR is also beneficial to MMC providers. The pipeline is relatively transparent and volumes can therefore be better planned. Design templates can be used across a number of different sites. Partnerships can be struck between providers and developers that can deliver significant volume.

Benefits of MMC to BtR

32. Expanding on some of these benefits:

Speed of delivery

- There are programme savings using MMC. This is particularly the case in London and the South East, where the cost of traditional construction techniques is high.
- BtR is driven by institutional investors investing for income (to fund pensions). Faster handover enables an earlier income stream.

Enhanced quality

- A factory-controlled environment brings precision and consistent high quality.
- It also delivers fewer defects and better long-term maintenance.

Efficient logistics & better site conditions

- BtR is very much an 'urban' housing product, with sites being developed in the hearts of our towns and cities. Construction traffic can be reduced by up to 80% using MMC, minimising local inconvenience.
- MMC can also lead to less dust, noise & air pollution.
- Offsite manufacture reduces high-risk onsite activities, with better conditions for construction staff.
- BtR developments can often be awkwardly configured sites in tight locations that would be challenging and costly to develop without MMC solutions.

Sustainability

- MMC delivers improved thermal & acoustic standards.
- Construction waste can be halved.
- Thousands of tonnes of CO2 savings can be delivered on a large development.

Challenges

Knowing what's out there

33. Different MMC suppliers will suit different developers. Some developers will want a full MMC solution, others a hybrid of MMC and traditional techniques. Both sectors are evolving rapidly, and developers don't want to get caught out by using yesterday's technology. Buildoffsite are doing some excellent work to showcase the MMC sector to BtR developers and that is welcome.

Supply chain risk

34. A primary risk is around the reliability and capacity of the supply chain – it is hard to switch to another supplier halfway through the process if an MMC organisation fails. As a result, this is encouraging strategic partnerships, developers working with suppliers to ensure a steady flow of work for their factories to mitigate this risk.

Capacity

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35. If an MMC provider reaches capacity it is a significant investment to build a new production line or factory, particularly for a sector like BtR, which is still in its infancy.

Funders' nervousness

36. BtR developers will rely on an element of debt finance, and because of the sector's infancy and lack of track record lenders will often judge BtR as high risk. MMC also suffers from a lack of track record, and perceived risk. Therefore, the sectors in combination are challenging for lenders to appraise and because of slotting rules the capacity in the lending markets is constrained.

Training and support for planners

37. Improving the training and support for local planners is a significant issue if the sustainability of the profession is to be secured for the long term. The Federation has been an active supporter of the GLA initiative – Public Practice – which is certainly injecting fresh energy and imagination into the system in a London context.
38. Much like any other sector, incentives and pay are also critical to attracting and retaining talented staff which ultimately comes back to the issue of resource. City areas can also represent a more attractive prospect for new entrants into the profession, due to a more diverse and engaging range of projects. Further, for the more senior positions, we would argue that restoring the role of Chief Planning Officer to the top tier of the local authority structure could have an impact in terms of communicating the prestige and importance of the profession within the wider context of the services local authorities deliver.

The quality of expertise and decision making by elected members

39. We also take the view that a future planning system under Labour should focus its efforts on promoting a greater level of skills and imagination among elected councillors at the local authority level. Training is already available to councillors who sit on planning committees through the LGA/ The Planning Advisory Service however it is not compulsory. We would therefore argue that a future government should look at making training compulsory for all councillors. Such an approach would lead to a higher level of relevant skills and experience among council members and hopefully higher quality decision making and more efficient outcomes for all parties involved in the planning process.
40. Further, the quality of elected member decision making has been analysed by a [Lichfields research report – Refused for good reason?](#) The report looked at all 309 appeals for residential proposals of over 50 residential units that were decided in the 2017 calendar year across England, Wales and Scotland to identify those that had a planning officer recommendation for approval before they were refused by elected councillors.
41. Their research demonstrated that there are factors in schemes refused against officer recommendation which make them more likely to be allowed on appeal. The report found that the reasons related to highly technical matters (such as highways impact) and the percentage of allowed appeals is generally higher than where reasons for refusal are more subjective.
42. The report therefore puts forward a series of recommendations to improve this aspect of the planning process:

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- Councils should seek independent advice where there is disagreement between the planning officers and members on a technical issue.
- Allow for a 'cooling off' period whereby impartial advice can be sought about appeal prospects before the refusal is confirmed
- Offering more bespoke training to planning committee members, particularly where more appeals are overturned than the authority average when determined against officer recommendation;
- Extending the Secretary of State's powers to designate authorities that "are not adequately performing their function of determining applications", to include a measure on appeals being overturned when refused against officer recommendation.

Planning and retail

43. Given the pace of change in the retail sector in recent years, this has been an area of planning which has been challenging for local authority planners to react to, especially given the sparse resource that planning departments have, and the strong focus on housing. We are of the view that it is not realist for individual planners to be experts in consumer and their implications. We would therefore advocate a future labour planning system to look at introducing:
 - i. A central independent resource that local planners could use, which details retail trends and their implications for local planning. To make a success of this, it would need to be supported by the retail and retail property sectors.

Resourcing planning departments

44. Ensuring local planning departments have the appropriate resource to function is one of the critical issues for the profession and is a topic the ministry is looking at currently through their forthcoming Accelerated Planning Green Paper, expected this Autumn.
45. One of the clear contradictions in government policy since 2010 is that spending on the English planning system has been cut by 55% (inflation adjusted per head) – the greatest fall across all council activities – meanwhile housing targets over the same period have increased by 50% to 300,000.
46. The BPF have therefore long called for greater resources to be put into local planning services. We have supported the recent rise in fees in January 2018, and in principle, the proposal for a further performance-based increase.
47. Further, on the issue of Planning Inspectorate resource and specifically the lack of availability of inspectors, the BPF have made the case previously that the introduction of an appeal fee would be acceptable in principle as a means to supplement and strengthen resource with this section of the planning system.
48. However, we would also emphasise that the introduction of an appeal fee would only be acceptable if the respective receipts are channelled directly back into the Planning Inspectorate, and that associated fees are linked to guaranteed performance in terms of timescales for the appeals process.

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Quality of engagement prior to committee

49. An issue within the system which clearly has links with the overall level of resource is the quality of engagement for applicants prior to committee. BPF members often share their experiences at our meetings with different levels and quality of engagement cited depending on the area. For instance, it has been noted in certain authorities, such as Leeds, there are strong processes in place where it is common practice for 2 weeks before committee, parties will meet to discuss the key points of contention.
50. Further, it was noted that other authorities have pre-committee briefings for elected members which can be effective in fleshing out what the key points of difference are ahead of the formal committee meeting. However, the perceived success of these meetings is also linked to the strength of the local authority officer presenting the applicant's case.
51. In terms of a potential remedy to this issue, a future government could strengthen existing guidance in this area so that the lead-in to committee is more structured and consistent across authorities. For example, one approach would be to have some form of chair's review 2 weeks prior to committee where the chair can convey the elected members' key concerns to the applicant. This would, in turn, allow the applicant a chance to work on these points ahead of the formal committee meeting.