

**Response to Consultation**

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**Changes to the Current Planning System**

by

Bailey Venning Associates Limited on behalf of

Stradbroke Parish Council

Stradbroke Community Land Trust

Debenham Parish Council

Thurston Parish Council

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## 1.0 Introduction and General Remarks

### Instruction

- 1.1 These comments in this representation have been drawn up by Bailey Venning Associates on behalf of three parish Councils in Suffolk - Stradbroke Parish Council, Debenham Parish Council and Thurston Parish Council. The parish Councils are commenting primarily in their role as catalysts for the high quality Neighbourhood Plans in those areas.
- 1.2 The Stradbroke and Debenham Neighbourhood Plans have both been highly commended by the RTPi and are active documents, guiding the development in these areas. In Stradbroke, the Plan has led to the creation of a Community Land Trust which is dedicated to the delivery of the affordable housing in the settlement.
- 1.3 Stradbroke has led the development of these representations and the examples contained herein are drawn from their specific experience although it is the view of the co-signatories that their own experiences are comparable and that they would be likewise affected.
- 1.4 Bailey Venning Associates is a specialist affordable housing consultancy which has undertaken work for Stradbroke Parish Council and for the CLT in the past. We have also undertaken viability assessments on behalf of both developers and planning authorities for schemes with capacities between 10 and 40 units. This represents both an interest in the outcome of the consultation but also the basis of our detailed knowledge of the system and the likely effects of raising the affordable housing threshold in the manner proposed

### Context

- 1.5 The Government is currently consulting on a range of reforms to the planning system. These include the short term changes set out in the document Changes to the Current Planning System and a far reaching overhaul of the entire planning system, set out in the White Paper, Planning for the Future. This document is a response to questions 17-22 of the latter document and it relates to a proposal to increase the threshold for seeking affordable housing from 10 homes to 40-50 homes.
- 1.6 The justification for this increase in threshold is that it will provide support for the SME developer sector and, encourage smaller developers to bring sites forward swiftly in order to take advantage of what is, in essence, a time limited offer.

- 1.7 The Government acknowledges that this is not a cost-free proposal – its own figures suggest that increasing the thresholds to the levels proposed will reduce the output of affordable homes by between 7% and 20% but, the Government believes that “raising the threshold would make more sites viable for SME developers and would increase the pace of their delivery as the need for negotiation would be removed.”
- 1.8 On balance, it believes that the benefit is worth the cost.
- 1.9 We recognise the importance of the SME sector and we are conscious of the increase in insolvencies among such firms – which are unarguably in need of support. However, the Government cites no evidence at all that the insolvencies are caused by the need to engage in viability negotiations. Moreover, we believe that the form of support proposed is poorly targeted because a huge amount of the benefit would be captured not by developers but by landowners in the form of increased land costs. For any developer who does not already own the sites they wish to develop, the measure will simply increase the price of the sites in which they are interested.
- 1.10 Moreover, the government provides no evidence to support its assertion that the measure will encourage developers to bring forward sites quickly. In fact, the reverse is likely to be true - small developers active in the market will, in fact, be incentivised to *delay* development in order to take advantage of the reform. This is directly counter-productive.
- 1.11 Moreover, whilst the Government clearly believes that the need to include affordable housing leads to delay and uncertainty, and there is a kernel of truth to this, such effects are, in fact, limited because negotiations actually take place in parallel with the rest of the application process. Moreover, the Government’s own data suggests that the issue is not nearly as bad as it was even a few years ago<sup>1</sup>. Meanwhile, there are off-setting effects which should not be overlooked. Notably, the inclusion of an element of affordable housing guarantees a known purchaser for some of the units at a known price – which helps with risk. It is also true that the negotiation process itself can be used to manage planning risk and without it, negotiations on the price of land carry greater risks.
- 1.12 Finally, on the issue of uncertainty, the time limited nature of the proposals also introduces its own element of uncertainty because it is far from clear how (and when) the scheme will be wound up. The consultation states only that the approach will be reviewed after 18 months. Whilst that may be the case, the effects of the policy could last until the early part of 2026. If the Government wishes to terminate the effect sooner,

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<sup>1</sup> The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19

there would be a clear risk that developers will acquire land on the basis of no affordable housing but will then face the reintroduction of affordable housing (or potentially IL) after they have acquired the site. Such a situation could be calamitous for a small organisation.

- 1.13 The consultation also invites submissions on alternative thresholds. We suggest that, if the Government is determined to adjust the threshold, it might wish to take its cue from the longer term reforms in Planning for the Future, and substitute a threshold based not on the number of units but on the value of the completed development. This would not only allow the Government to use the measure to pilot the change to a value-based approach but it would transform many of the externalities arising from the reform into positive ones. Notably, it would soften threshold effects on sites just above and below the threshold and it would *bear down* on land values rather than inflating them.
- 1.14 These general points on the likely efficacy of the measure consider only the likely cost in terms of affordable housing and the effect on the SME developers themselves. However, there are indirect effects well beyond that sector. The respondents who have commissioned this report are not developers, they are community organisations, and they are particularly concerned with where the burden of the affordable housing losses will fall.
- 1.15 The Government has, time and again, expressed its impatience with the forms that the public's engagement with the planning system typically takes – essentially, the overwhelming resistance to new development. But the organisations represented here are the exceptions to that general rule.
- 1.16 The organisations represented here are made up of local people who have recognised the need for development in their areas and done something positive about it – by creating Neighbourhood Plans that, in their view, support the development of the area whilst simultaneously respecting its character. Such plans are frequently characterised by numerous smaller sites, which are presently large enough to support affordable housing but which might not be if these reforms come to pass.
- 1.17 If that happens, one of the chief benefits that those local people sought to support the vibrancy of their local areas, will be lost.
- 1.18 This would be a small tragedy in itself. But it would also undermine the good faith in which these groups worked to support what they considered to be appropriate forms of development for their areas and the results of the local referendums that were held in support of those Neighbourhood Plans. The Government will need no reminding that Neighbourhood Plans have by far the most robust and direct democratic mandate of any element of the current planning system. For the Government to remove by fiat, one of the

most important benefits that spurred the positive engagement with those plans, would be a scornful repudiation of that work. It would be difficult to see how the Government could reasonably expect the support of these highly engaged and civic-minded people and groups for the reforms it proposes in future.

- 1.19 We will show examples of what these reforms would mean for the Stradbroke Neighbourhood Plan and, by extension for the similar plans in Debenham and Thurston. Those consequences are, in short, devastating. But, whilst the issues that arise in rural areas are especially acute, they are not different in kind from what will happen in other areas.
- 1.20 For that reason, and irrespective of what adjustments are made to the affordable housing threshold, in the country as a whole, we strongly support its retention at the 5 unit level (or, better yet, its equivalent in value terms) in rural areas.

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## 2.0 Question 17: Do you agree with the proposed approach to raise the small sites threshold for a time-limited period?

2.1 **We do not. The costs of the proposal are certain and very large but, whilst the problems faced by SMEs are very real, it is not at all clear that the requirement to provide affordable housing is a major factor in the increased insolvencies. Moreover, the benefits of this proposal will flow overwhelmingly towards landowners and to developers at the lowest risk of insolvency.**

### In General

2.2 We recognise the issue that the Government is seeking to address through these reforms and we would also wish to support the hard-hit SME developer sector. However, in our view, the costs of this measure (both direct and indirect) are large. For the measure to be worthwhile then, the benefits that arise from it must be *at least* as large. We therefore start by seeking to quantify those costs.

2.3 The consultation submits that “On balance, the proposed approach would allow more small sites to come forward and help minimise the economic pressure that SMEs are under.” But it provides no evidence (qualitative or quantitative) in support of that assertion.

2.4 We will show that the stated benefit is based upon a misunderstanding of how development happens and that the likeliest effect is that the majority of the value of the benefit will simply be captured by landowners.

2.5 Whilst we do not dispute that *some* smaller developers will obtain a benefit from these measures. However, that benefit will arise from the increase in the value of the sites they currently have under their control. In other words, the benefit accrues from their role as landowners rather than as developers *per se*. Those developers who are in a position to take the greatest advantage are those who already have valuable assets on hand. These are precisely the set of developers who would have been at the lowest risk of insolvency. The rest will face higher land costs – which increase both their need for finance and their risk.

2.6 We will argue that the notion that affordable housing requirements increase delay and risk is, at best, overstated and that there are important ways in which such requirements can be part of the process of managing risk.

2.7 We will also argue that, far from encouraging developers to bring forward their sites now, the proposed measures will, in fact, incentivise significant delay on sites that could

have come forward immediately. Because this delay is large relative to the proposed window of time during which developers are to take advantage, the net effect may not be positive.

- 2.8 Furthermore, as we will explain in our response to Q20, the uncertainty regarding the termination of the incentive both blunts the effectiveness of the measure itself and introduces entirely new risks for developers who acquire land on the basis of zero affordable housing but who may be affected by its subsequent re-introduction.

### The Cost

- 2.9 In order to evaluate the merits of a proposal, it is necessary to compare the cost of action against the benefits that will arise from that action.
- 2.10 The consultation states that the proposed threshold will have a significant impact on the number of affordable homes delivered, stating that moving the threshold to 40 units would reduce output by between 7 and 14% and moving it to 50 units would result in a loss of 10-20%.
- 2.11 There are some uncertainties, about the relationship between planning permissions secured and the output of homes arising from them, and the research itself contains a number of minor arithmetical errors but the overall assumption that the value capture associated with the average affordable home was £105,000 seems broadly correct in our experience<sup>2</sup>.
- 2.12 We therefore have a reasonable degree of confidence that the output of affordable homes delivered through the operation of planning obligations each year is around 40,000 and the value captured per affordable dwelling is around £105,000.
- 2.13 We can therefore estimate the total cost of the proposal over 18 months, in affordable homes and in value foregone.

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<sup>2</sup> Intriguingly, whilst the “Value and Incidence” document does state the number of planning permissions with which those affordable homes were associated, it does not state the total number of homes covered those permissions. We therefore had to cross reference with other data scraped from LPAs by Glenigan to discover that the number of homes granted detailed planning consent in 2018/9 was almost 360,000. So the planning consents reviewed by the Governmental study contained around 11% affordable housing. However, the number of net additions to the housing stock in the same year was 241,000. Of those, around 59,000 were affordable and, we believe, around 40,000 of those were delivered via planning obligations. This suggests that the rate at which affordable homes are delivered via S106 might be around one sixth of output rather than one tenth. This is a large area of uncertainty and it should be addressed.

	Reduction	40 Units	Reduction	50 Units
Low Estimate (£)		£441m		6,000
	7%		10%	
Low Estimate (Homes)		4,200		£630m
High Estimate (£)		£882m		12,000
	14%		20%	
High Estimate (Homes)		8,400		£1.26bn

- 2.14 Taking the central point in the range, we can see that the move to a 40 unit threshold represents a loss of around 6,300 affordable homes and £660m whilst the move to a 50 unit threshold entails the loss of 9,000 homes and almost £1bn in cash terms over 18 months.
- 2.15 This is a huge measure. For comparison, the Government’s Shared Ownership and Affordable Homes Programme, 2016-2021 allocated £2.074bn in the three and a half year period to the end of Sept 2019.
- 2.16 In cash terms then, moving the threshold to 50 units would entirely off-set the value pumped into affordable housing by the SOAHP over an 18 month period. Moving the threshold to 40 units would be the equivalent of three quarters of the SOAHP.
- 2.17 Moreover, as we shall see in our answer to Question 20, the impact of the changes are unlikely to cease after the elapse of 18 months. In all probability, the effects will still be felt as late as 2026, even if the Government does not extend the programme. Thus, the true cost of this minor adjustment to the threshold is likely to run into the billions.

### Capture by Land Owners

- 2.18 If all of the value that the government foregoes by adjusting the threshold were to go towards supporting the SME sector then it would unquestionably be a huge boost to the sector. Reasonable people might still disagree as to whether it was worth foregoing such a large number of affordable homes to maintain a viable SME development sector but the trade-off would at least be a direct one.
- 2.19 The problem is that this is a poorly targeted measure because the value of land is assessed residually – that is, in relation to the value that will arise from a completed development and the cost of delivering it.

- 2.20 The direct consequence of removing affordable housing requirements from all small sites is that the land value rises – immediately and, crucially, *commensurately*. On any site where negotiations remain underway between developer and landowner all, or some of the benefit of the measure can be captured by the landowner – rather than the developer who was the intended target of the measure.
- 2.21 As a result, this stimulus measure is enormously inefficient.
- 2.22 We do not deny that some of the value, upon which the state is relinquishing its claim, will end up in the pockets of SME developers but it does so only to the extent that those developers are also landowners.
- 2.23 SME developers who are in unfettered control of sites that they bought unconditionally, on the basis that they would have to provide affordable housing will now find that they do not have to provide affordable housing and will be able to book the difference as profit.
- 2.24 By contrast, developers who are currently in negotiation with landowners about the acquisition or assembly of land will find that the landowner will ask for 100% of the uplift in value. And developers who own and are progressing sites which are subject to overage clauses will find that the developer is now entitled to at least an enhanced land value.
- 2.25 Whilst the acquisition of small sites at risk is relatively common for developers of the very smallest sites, it becomes increasingly rare as the scale of development increases. For sites with capacities in excess of 20 units it is, very much the exception rather than the rule.
- 2.26 Thus we would estimate that a substantial majority of all the value associated with this measure will find its way to landowners rather than to the developers who were its intended target. Moreover, we would note that, to the extent that SME developers do benefit, those with unfettered control of valuable land with the benefit of planning permission are, by definition, not the ones at immediate risk of insolvency.
- 2.27 Finally, we would point out that, private developers are not the only ones who acquire small sites – RPs are also active in this market where they typically acquire a site whose value has been discounted by the amount of affordable housing it is obliged to provide. They then use public subsidy (including Recycled Capital Grant Funding) to increase the level of affordable housing and provide “additionality”. If the affordable housing requirement is removed, then these RPs will need to pay more to acquire sites with less affordable housing secured and they will then need to use more public subsidy to deliver the same or fewer number of affordable homes.

### Affordable Housing and Risk

- 2.28 If the majority of the money that the Government is considering giving away flows to landowners instead of to developers then it is an extremely inefficient stimulus.
- 2.29 But the transfer of cash is not the only benefit claimed. The other is that it will reduce uncertainty. Once again, we would argue that this benefit is extremely dubious.
- 2.30 A development of 30 homes, of which 30% are required by policy to be affordable, does not increase uncertainty. Nine of the homes will need to be affordable, and an RP partner will need to be found to acquire them. That does require some work but, once the work is complete, the developer has the benefit of a known buyer at a known price. It is for this reason that viability assessments which include an element of affordable housing insist upon a much reduced profit margin (typically 6% of cost) for the affordable element of the scheme.
- 2.31 Since profit is an allowance for the developer's risk and uncertainty it is therefore clear that the inclusion of affordable housing actually *reduces* uncertainty. This reduced risk profile is actually set out in the Government's own PPG on development viability.
- 2.32 The Government cannot therefore argue that the inclusion of affordable housing, in itself increases risk or, conversely, that the removal of affordable housing reduces it.
- 2.33 The issue here is not, therefore, one of *risk* but of *uncertainty*. These are distinct.
- 2.34 Of course, the inclusion of an element of affordable housing will depress the Gross Development Value and this, in turn, may depress the land Value below the Benchmark Land Value.
- 2.35 At this point the scheme has become economically unviable and it will be necessary for the developer to make a case for reducing the level of affordable housing to a level that is economically deliverable. Such negotiations do entail a degree of *uncertainty* but it is the uncertainty inherent in any negotiation. Moreover, it does not necessarily increase the developer's *risk* because developers of sites above 10 units would typically acquire their sites using an option agreement rather than outright.
- 2.36 Under such an arrangement, the developer might agree a minimum price with the landowner, subject to an overage clause in the event that he is able to achieve a better consent than expected. Such overage clauses need not be limited to the matter of affordable housing – they might also relate to the height or bulk of the building, etc.
- 2.37 The planning application is then submitted and a viability negotiation commences *in parallel* to the determination of all the other elements.

- 2.38 It is quite true that the viability negotiations are often concluded towards the end of the determination period but that is inevitable – because the viability needs to reflect what the Council is actually consenting and the nature of the development itself may change during the course of determination. This is a feature rather than a bug in the system and, again, it does not, of itself, increase either risk or uncertainty.
- 2.39 Once the viability work is concluded, the site will receive consent on the basis of a clear package of obligations and *only then* is the purchase price for the land finalised.
- 2.40 In this way, the viability process provides developers with a reason to insist on a structure for the land acquisition which does not require them to transact until the full scale of obligations is known. Thus viability negotiations do create uncertainty but, used correctly, they actually *reduce* risk.
- 2.41 The only way that the planning obligations could be said to create risk would be if the developer had set a minimum acquisition price too high on the assumption that more of the obligations could be avoided than, in fact, could be. This is a matter of basic risk management and it is no more a matter for the Government than shielding developers from overpayments on the basis of assuming too much density or height.
- 2.42 We should note that, whilst viability negotiations do not increase risk or uncertainty, they *do* entail work and costs. Moreover, the nature of the work entailed does not vary in a linear way relative to the scale and value of the development. To undertake and negotiate a viability assessment of a small, five unit scheme in a rural area might therefore cost, say £3,500 and the Council will then charge the fees for its own third party advisor back to the applicant. These would be lower but might still be almost £2,000. Fees for a larger, ten unit scheme might be much the same. A larger development of, say, 30 units would might face slightly larger fees again, but not by much. So the cost of viability negotiations looms much larger for the smallest schemes than it does for larger ones. This is a genuine issue but it is already effectively managed by the existing 10 unit threshold.
- 2.43 The table overleaf shows the relationship assuming developments of different sizes with an average new build unit value for England in 2019/20 (£305,000) and typical fee rates.

	5 units	10 Units	20 units	40 units
GDV (unfettered)	£1.525m	£3.05	£6.1m	£12.2m
Viability Fees	£3,000	£3,500	£4,000	£4,500
Council's fees	£2,000	£2,000	£2,000	£2,500
Total Viability Cost	£5,000	£5,500	£6,000	£7,000
% of GDV	0.3%	0.18%	0.09%	0.06%

2.44 Thus, whilst the cost of viability negotiations represents a small but appreciable share of the value arising from a five unit development (which must be paid for in advance) the cost of a viability appraisal and negotiation relative to the value arising from a typical development of 40 units is nugatory – just 6 basis points. It is simply not credible to suggest that such costs, in themselves, have any meaningful impact on the economics of developments at the Government's proposed threshold.

2.45 It should also be said that the cost of these negotiations is very small compared to the value the Government is proposing to forgo by abolishing them. By means of a very simple calculation<sup>3</sup>, we estimate that the total cost of all the negotiations associated with developments of between 10 and 40 units is likely to be around £10.4m.

2.46 For the Government to forgo £660m in value to secure a cost saving of £10.4m for the SME developer sector would be completely absurd.

2.47 If this were actually the problem that the Government was seeking to solve then we submit that it could provide far more cost-effective relief simply by providing funding to cover the cost of the planning authority's third party advisors.

### Delay

2.48 One of the complaints that developers often make about the viability process is the delay it engenders. The complaint is an understandable one but remember; the majority of the

<sup>3</sup> If 6,000 affordable homes are to be lost (see table at 2.14), the average size of the sites providing them is 25 homes and the affordable housing target represents 30% of the total then that is 800 sites. Double that to allow for sites that negotiate their liability down below compliance and we have 1,600 negotiations avoided. If the total cost of negotiations on such sites is £6,500 then the cost saving to developers associated with the abolition of viability assessments is £10.4m over 18 months.

negotiation should be undertaken in parallel with the remainder of the planning application so the delays arising from negotiating on viability are actually small. The proposed remedy of abolishing the viability process altogether for sites below 40 units is therefore entirely disproportionate to the problem. We will return to the question of how delays in the current system might be reduced in the next section.

- 2.49 The focus of *this* section is on the obvious potential for delay arising from the proposed lifting of the threshold to 40 (or 50) units.
- 2.50 The adjustment to the threshold is clearly conceived as a short term boost to support SME developers with shaky finances and to encourage them to bring forward sites faster than they otherwise would have. It is also seen as the primary mechanism for avoiding the land value problem alluded to above.
- 2.51 In reality, the proposals are already having the opposite effect.
- 2.52 Developers who are in control of land with the benefit of a current consent and who could be progressing as quickly as possible now have a powerful incentive to delay implementation pending the outcome of the consultation. Those who do not control land, but are still in negotiations with landowners will also find it hard to conclude those negotiations because, once again, they do not know whether they will be required to provide affordable housing or not.
- 2.53 The consultation has already run for six weeks. If the Government decides to move forward, it is already aware that it will need to enshrine the change in new legislation. This is because the courts have found that there can be exceptions to the presumptions set out in the NPPF and many Local Planning authorities will be willing to exempt themselves - just as the Surrey Authorities did when the Government reintroduced the 10 unit threshold after a period in which there was no guidance.
- 2.54 Primary legislation and the wrangles associated with it might take three months. And then, developers who currently have the benefit of a planning consent which includes affordable housing, will want to go back to the LPA and seek a new planning consent which does *not* require affordable housing.
- 2.55 That is a total of seven months delay in order to introduce a temporary measure designed to speed up delivery. It makes little sense.

### Reducing Delays in the Current System

- 2.56 It is certainly true that the viability issue is frequently the last matter to be concluded and that many schemes miss the 13 week deadline for determination solely because negotiations regarding viability are deadlocked.

- 2.57 The first of these problems is unavoidable because the viability assessment must incorporate the all that is known about the development at the point of determination. Thus, where schemes are amended in the course of the determination period, the appraisal must be updated and new issues may arise which require further rounds of negotiation. In our experience, few developers actually object to viability on this basis provided that negotiations take place expeditiously once information is available.
- 2.58 The more significant problem is where negotiations are not progressed expeditiously. Here, there are concrete steps that could be taken to improve the status quo enormously at almost no cost.
- 2.59 For example, developers are required to submit viability assessments that they wish to rely upon *as a condition of validation*. Frequently, they are also required to provide a written agreement to meet the cost of the Council's appointed advisor – also as a condition of validation.
- 2.60 However, it is not uncommon for delays to occur in the appointment of the Council's advisor so that the first time the applicant hears back from the Council's advisor is seven or eight weeks into the determination period. Moreover, some LPAs insist that correspondence between their own advisors and those of the applicant should first be submitted to them for internal review before it is passed on. It is not uncommon for weeks to pass while developers wait for the Council to pass on reports that have been completed in a timely way.
- 2.61 The lion's share of the *unacceptable* delays could therefore be avoided simply by the introduction of practice guidance, which committed the LPA to appoint their consultants speedily, to make their initial response within four weeks and to make it clear that professional advisors may reasonably be permitted to communicate directly (albeit with clients copied in) in order to make speedy process.
- 2.62 Finally, as practitioners in this field, we note how frequently negotiations are delayed by the necessity to seek confirmation of the Council's requirements in respect of CIL and other planning obligations. In two of the schemes in our current workload, CIL and S106 contributions have been among the last issues to be confirmed and incorporated despite the fact that these are matters entirely within the control of the LPA. This is unnecessary and fixing the problem could be incorporated into guidance within weeks.

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### 3.0 Question 18: What is the appropriate level of small sites threshold?

- 3.1 **We do not support either of the proposed thresholds. Either gives rise to a significant loss of affordable housing as well as a number of deleterious secondary effects. Instead, we propose a change to the basis of the threshold – from the number of units proposed to the final value of the development.**
- 3.2 As the economy heads into a period of uncertainty, the risk associated with development increases as the momentum in the housing market falters.
- 3.3 One way in which previous Governments have sought to counteract this problem is by building *more* affordable housing – not less. Non-market housing providers such as RPs can, when backed by appropriate Governmental investment, provide certainty for developers that the homes they build will find a buyer at a known price. This enables them to keep building. Getting rid of the affordable housing requirement therefore *increases* risk because more of the homes on any given site will need to be sold in an unstable housing market.
- 3.4 We cannot therefore support any measure that simultaneously reduces the output of affordable homes, whilst increasing both land values and risk. Such a measure would be counter-productive.
- 3.5 What we propose instead is a change to the basis of the threshold – from the *number* of units to the final *value* of development.
- 3.6 As we have seen, an increase in the threshold from 10 homes to 40 homes is an inefficient subsidy to developers because landowners will capture the majority of the benefit through increase land prices leaving developers to fund and finance higher acquisition costs and with increased sales risk. Any increase in the target also creates unfortunate “edge” effects because affordable housing is applied as a slab requirement instead of being imposed at the margin.
- 3.7 Under the proposals, in an area with a 30% affordable housing requirement, a development of 39 homes faces no liability whilst a development of 41 homes would need to provide 11 affordable homes. Since affordable homes generally generate little or no land value and only a modest developer profit, the larger scheme, which contains only 30 market homes is considerably less valuable to both developer and landowner. It will not come forward on that basis.
- 3.8 This creates sets up two, related problems.

- 3.9 First, where a developer thinks that his site might have the capacity for between 41 and around 55 homes, he now has an incentive to bring it forward as a development of 39 units.
- 3.10 Whilst the reduction in terms of overall unit numbers is trifling, the Local Authority may be expected to resist this fiercely because what they are interested in is the 12 affordable units that would have arisen from the 42 unit scheme. They might then seek to refuse permission on the basis of under-development.
- 3.11 Whilst it can be quite difficult to demonstrate under-development with figures so close to the margin, the ambiguity can create problems in its own right. A developer whose site has the capacity for, 48 units might go ahead at 48 units but he would then submit a viability appraisal pointing out that he might reasonably have got permission for 39, slightly larger, homes with no affordable housing. The potential 39 unit proposal provides a basis for an Alternative Use Value, which can then be used as a Benchmark Land Value in the submission of a viability proposal by which the 48 unit scheme is able to reduce its affordable housing to almost nothing.
- 3.12 This is not a theoretical risk. Such an approach to viability assessment was common in the early years of the century, when the threshold still stood at 25 units.
- 3.13 The higher the threshold (and therefore the larger the number of affordable homes associated with the marginal case) the more of these problems you create. At the current threshold of 10 units, the marginal quantity of affordable housing is so small that few RPs would actually be very interested in taking the handful of units arising from the marginal case. This means that the current threshold is relatively uncontentious. It is already set at the right level.
- 3.14 The upshot of the effects described is that a 40 unit threshold becomes a de-facto 50 unit threshold anyway and that the marginal effects affect all developments with capacities between 35 and 50 homes. Once again, this is totally counter-productive.
- 3.15 What we therefore propose as an alternative is a threshold based upon the completed sale value of the average open market home at the current threshold.
- 3.16 The current threshold is 10 units, and, according to the Land Registry, the average price paid for the average new build home in England in 2019/20 was around £305,000. We therefore propose that the threshold for the provision of affordable housing should be amended to a sales value of £3m.
- 3.17 There are several advantages to this approach.
- First, it need not forego the provision of any affordable housing at all;

- Second, it is restrictive where values are higher and permissive where they are low;
- Third, it encourages the development of smaller homes at the expense of larger ones; and
- Fourth, it represents an opportunity to trial an important aspect of the forthcoming IL regime set out in the White Paper – i.e. obligations based on the final sale price rather than determined in advance;
- Finally, it creates positive rather than negative effects at the margin.

- 3.18 The first three advantages should be self-explanatory, the latter two may require further elucidation.
- 3.19 In respect of an opportunity to trial the levy of planning obligations based on final transaction value, the Government is, of course, consulting on a large number of potential reforms thought its recent White Paper. One of those reforms is the introduction of an IL, which will be levied as a share of the final sale price of homes. Whilst we are generally supportive of that aspect of the reforms, they represent a huge change from current practice and the new system will require significant adjustments in the way people approach these issues. The White Paper makes no mention of any intention to pilot the new regime in order to iron out any issues of process. Switching the small sites over first provides an opportunity to stress test the new approach and design effective arrangements for the collection of revenues.
- 3.20 However, the main advantage from our point of view is that the problems that we described at the margin of a 40 unit threshold would be inverted under a value based system. Imagine a developer who proposes a small development of 12 apartments. The Open Market Value of each apartment might be £275,000 and the GDV of the whole scheme would be £3,300,000.
- 3.21 Under the present arrangement, his scheme would exceed the threshold and he would likely seek to reduce or remove the requirement by reference to viability. Whether he could do so would turn on the current use value of the land and any alternative forms that development might take. He might succeed in achieving a discount or he might not but he would spend some time in a negotiation on two fronts between the land owner and the local planning authority.
- 3.22 Under the Governments proposed system, he would not face all that uncertainty but he would have to pay a higher value for the site and the community would lose out on any affordable housing at all.

- 3.23 Under the system we propose, he would have two options – if the Existing Use Value is high and it would be genuinely difficult to deliver any affordable housing, the developer has little room for manoeuvre on the price of land and he can opt to go down the viability route. With a robust estimate of EUV, negotiations should be straightforward and quick. However, if the Existing or Alternative Use Values are low or unclear, he could take another tack. He *could* simply avoid the affordable housing requirements altogether by agreeing with the local authority that he will sell all of the units on the site at a 10% discount.
- 3.24 The homes would not be *affordable* housing – they would not be targeted at those in need and the discount would not be secured in perpetuity but they would be cheaper than they otherwise would have been. The developer can sell the homes more easily because he knows that they are conservatively priced. Moreover, the presence of cheaper homes in the market puts downward pressure on everyone else and the cost of this approach is easily passed to the landowner. Take the hit now or the risk/delay associated with the submission of viability evidence. Some sites will take advantage, others will stick with traditional arrangements but, either way, the line between sites which attract affordable housing and those which don't is blurred. Land Value Capture can function without uncertainty both above and below the threshold.
- 3.25 Note, of course, that a value based threshold would vary dramatically from place to place. In parts of the East Midlands, where even new build homes are often priced below £180,000, developers could plan for as many as 17 homes before they needed to consider affordable housing. In parts of Surrey, development consisting of a pair of large semi-detached houses could be asked to contribute – much as they do now.

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#### 4.0 Question 19: Do you agree with the proposed approach to the site size threshold?

##### 4.1 **We do not. Please refer to our responses in respect of Questions 17 and 18**

4.2 In our extensive responses to Questions 17 and 18, we have shown that the policy is extraordinarily expensive. The Government's own figures suggest that it will effectively forgo the delivery of 6,000 homes over 18 months (40 unit threshold) at a cost of around £660m of land value capture.

4.3 Whilst SME developers would certainly welcome such a large package of support, the reality is that the affordable housing regime is not the issue that is forcing so many into insolvency. A far larger issue is the capital requirements necessary to acquire land. These proposals will not assist them with this problem. In fact, since the benefit will likely flow *through* SME developers to land owners, it may actually increase the amount of money they need to find.

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- 5.0 **Question 20: Do you agree with linking the time-limited period to economic recovery and raising the threshold for an initial period of 18 months?**
- 5.1 **We do not. The stated purpose of an 18 month period is to encourage developers to bring forward sites more quickly than they might otherwise have done. We have already suggested, in our comments on Question 17 (paras 2.44 et seq) how this proposal will, in fact lead to delay. In this section, we will show that the impact of the policy will still be felt as late as 2026. Alternatively, if the Government attempts to limit the impact to a duration of 18 months the effect will be to introduce large new uncertainties for small developers which will be very difficult to price in risk terms.**
- 5.2 We have already argued that, far from speeding up development, these proposals will lead to delay. Developers who now have or are considering planning applications on sites below the 40/50 unit threshold are, at this moment delaying those applications in the expectation that it may shortly be possible to obtain planning consent with no affordable housing liability. This is irrespective of their own assessment of whether this is beneficial to them – promotion agreements typically require developers to obtain the “best” possible consent.
- 5.3 As we have noted, they will first await the outcome of the consultation. Then, if the Government decides to proceed, they will need to await the changes to the NPPF and, potentially, the primary legislation that makes this a binding requirement. Finally, it would appear that they will need to submit revised applications – which the local authority could still refuse if it deems that there are other negative aspects of the scheme that cannot be outweighed in the affordable housing is lost.
- 5.4 This could result in a seven month delay to schemes that could otherwise come forward now.
- 5.5 However, the potential (but not certain) termination of the scheme after 18 months creates further confusion. Not only is it unclear *when* the scheme will be wound up, it is also unclear *how* it will be wound up. There is a direct trade-off here between the desire to bring the incentive to an end and the reduction in risk that is one of the schemes purported benefits.
- 5.6 To see why, consider a group of smaller developments which, together, make up the allocations of the Neighbourhood Plan in a place like Stradbroke.

- 5.7 Say, for example, that the plan contains ten years' worth of supply for the area and that this is spread across four sites. The normal way for this to happen is that the schemes would come forward sequentially and feed supply into the market to match demand. Under these proposals however, the first schemes to deliver will benefit from the removal of the affordable housing requirement whilst the others will not. Each of the four land owners would like to benefit and each is entitled to submit a planning application to that effect.
- 5.8 However, if they *all* race to get on site, they are at risk of flooding the local market for new homes. (New homes are, typically, more expensive than second hand homes). If there is too much supply relative to demand then the only way to motivate sales is to reduce prices. That isn't necessarily a bad thing but, it is if the developers have already paid a price which reflects the prices they would *normally* have received in a market that was *not* artificially over-supplied. Where a developer acquires land based on a certain level of house prices and is then unable to achieve those prices he may very quickly become insolvent.
- 5.9 The best case scenario then is that all the promoters race to acquire and implement a permission with affordable housing and race to be the first one on site. The winners of that race then benefit from the changed affordable housing provisions and the rest, recognising that not all the developments can proceed simultaneously, will do the minimum necessary to implement the consents and then mothball their sites until there is an opportunity to bring them forward. By that time, the threshold may (or may not) have reverted to 10 units or, alternatively, the Government may have introduced its new Infrastructure Levy.
- 5.10 Far from being a way to reduce risk, the effect of introducing a relief for a short period is to introduce new and multi-dimensional risks for developers.
- 5.11 We recognise that this is an extreme example, where a small settlement is getting all of its supply from sites that could benefit from the measure. We further recognise that the Government is considering the possibility of maintaining the 5 unit threshold in rural areas. Nonetheless, the problems that arise in the extreme case would also arise in other areas too. It is simply that they are more obvious in the case of a village.
- 5.12 We would also stress that it is more difficult to explore the effect of the Government's proposed policy because the measures are not set out in detail. However, there are several potential ways to deliver the measure and they all have different advantages and disadvantages. For the purposes of these representations, we have generally assumed that the policy will apply to new consents granted over the 18 month period and that, all

the homes associated with those consents will be exempt from the affordable housing requirement.

- 5.13 The advantage of this approach is that it is simple and it minimises the level of additional risk (although the dynamic described above would still apply). The disadvantages are that it is slow to implement and even slower to curtail. We have already noted that, if the policy is introduced in this way, it will delay many developments that could have gone forward immediately, while they await the outcome of the consultation, the legislation and a new consent. However, on this model, the curtailment of the scheme is slower still. If developers may seek planning permissions with no affordable housing for a period of 18 months post introduction, then the loss of affordable housing will last not for 18 months but for several years.
- 5.14 If we assume that the enabling legislation comes forward in January 2021, then promoters have 18 months to take advantage. The last zero affordable housing permissions would then be granted in June 2022. From there, developers would have the usual three years to implement. It might then take nine months to bring forward the first homes for sale and a further six to 12 months to sell them. It is therefore possible that the effects of the temporary raising of the threshold would still be around in the market in late 2026. And this assumes that the developers are not artificially delaying development following implementation. We have seen nothing in the proposals which is aimed at preventing this approach.
- 5.15 On this basis our estimates of the cost of the policy (which were based on 18 months' worth of effects) would need to be increased to as much as five years.
- 5.16 Since this scenario is slow and produces lasting effects that the Government does not appear to intend, we tried to envisage how else it might proceed. The only way that we could see for the Government to avoid the necessity for developers to seek revised planning permissions would be for it to suspend, with immediate effect, those portions of S106 agreements already entered into, that secure the affordable housing. The suspension would last for 18 months and any homes actually delivered and sold within the period would be exempt from affordable housing whilst those unsold at the end of it would see the affordable housing requirements re-introduced. We are not competent to comment on the legal ramifications of the Government seeking to void or suspend legal agreements entered into by others. We anticipate, however, that the practical effects of the suspension would be significant - with contractual arrangements entered into between developers and RPs thrown into disarray.
- 5.17 Chaotic as that might be, the re-introduction of affordable housing requirements at the end of the 18 month period would be far worse as developers who had made investment

decisions on the basis of zero affordable housing suddenly found themselves required to deliver affordable homes for which they had not budgeted.

In short, we find the idea of a limited 18 month period in which the threshold might be lifted, to be lacking in credibility. As with the Help to Buy regime, which has turned out to be far harder to end than it was to introduce, we think it likely that the consequence of ending the scheme once introduced, would be so severe that it would be impossible to lower the threshold back to its current level without triggering a wave of insolvencies. Since this is precisely what the scheme was designed to prevent, this would seem counter-productive.

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## 6.0 Question 21: Do you agree with the proposed approach to minimising threshold effects?

6.1 **No approach to the minimisation of threshold effects is set out in the consultation.**

6.2 The only reference to the minimisation of threshold effects that we are able to find in the consultation text is this one:

“There could be adverse threshold effects whereby developers attempt to bring forward larger sites in phasings of up to 40 or 50 homes (depending on which threshold is taken forward in legislation) to avoid contributions. To minimise the impact of this potential threshold effect, we propose to set out in planning guidance how local planning authorities can secure contributions for affordable housing where it is apparent that a larger site is being brought forward.”

6.3 The approach appears to bring forward guidance, on how to prevent the artificial subdivision of sites in such a way as to avoid the obligation to provide homes that should have been delivered.

6.4 Since the guidance is not available it is hard to comment on how effective this might be.

6.5 What we would say is that it would appear to be at odds with previous statements from the Government, especially in its previous White Paper that it would support the subdivision of larger sites into smaller ones as a way to support the embattled SME sector.

**7.0 Question 22: Do you agree with the Government’s proposed approach to setting thresholds in rural areas?**

**7.1 We do. The signatories to this representation all represent rural areas and, as such the proposal suggests that they will be exempted from the approach adopted in the rest of the country – as they are at present. We support that. Nonetheless, the fact that the Government has raised this matter though its consultation has brought into question whether the five unit threshold will be preserved in rural areas and necessitated this fuller response in the even that it is not.**

7.2 The foregoing has been drafted on the basis of the general principle. We are, of course, aware that the Government’s central proposal appears to involve leaving the 5 unit threshold in designated rural areas in place. If that is the case then the organisations on whose behalf this consultation response was prepared *could* be largely unaffected.

7.3 However, whilst the retention of the threshold in rural areas is *currently* the Government’s proposal, the point of consultation is precisely that the Government could take a different view as a result of the responses received.

7.4 In our view, as we have suggested, the decision to increase the affordable housing threshold from 10 units to 40 (or 50) is a poorly targeted measure which will sacrifice much needed affordable housing and raise land prices without achieving any real benefit to the SME sector it was intended to help. However, at the level of small rural settlements it would be disastrous. To take Stradbroke as an example, the Neighbourhood Plan considered 14 sites but adopted five as follows:

JLP Ref	Capacity	Affordable Capacity
West of Queens Street	80	0
North of Laxfield Road	28	10
South of New Street	60	21
East of Farriers Close	35	12
Grove Farm	44	16
Total	247	59

- 7.5 As the table shows, the allocations are heavily focussed on sites at or near the proposed threshold. Of these, the largest, Land West of Queen Street is already encumbered by the need to provide other benefits and mitigation. It is generally accepted that, as a result, the site will deliver little or no affordable housing. None of the remainder have any constraints on them that would prevent the delivery of affordable housing and policy compliant provision is anticipated – which would result in the delivery of 59 affordable homes.
- 7.6 However, if the new measures were applied to in the village, two of the neighbourhood plan sites have capacities below the new threshold and a third, Grove Farm has a capacity of just 44. Moreover, that site currently has poor access and 44 homes has been acknowledged by the local authority as the absolute *maximum* number of homes that could be accommodated with the present access arrangements. It would be difficult to see how the Council could refuse an application for a reduction to 39 homes on grounds of under-development.
- 7.7 To Stradbroke then, this ineffective, short-term incentive to get developers building risks the loss of 38 out of the 59 affordable homes the Neighbourhood Plan was intended to deliver – 64% of the total.
- 7.8 Such a measure would be an affront to the local people who gave up so much of their time and put in so much work to devise and adopt a local plan.
- 7.9 Moreover, the loss is, in fact, greater. We have already noted the Grove Farm site and the poor access it currently has onto the road network. It was for this reason that people in Stradbroke formed a Community Land Trust to take control of a small strip of land formerly owned by the Council which gave them a “ransom” over a potential improved access arrangement. The intention of the CLT was to use the ransom to persuade the owner of the main Grove Farm site to provide up to 50% affordable housing on an adjoining area of land.
- 7.10 Once again, increasing the affordable housing threshold to 40 units in this location would not only lead to the loss of the 16 affordable homes currently proposed on the site but also the eight additional affordable homes that might have been secured by the CLT.
- 7.11 The owner of the Grove Farm site is not at risk of insolvency – he bought the site speculatively as an investment based on its value as allocated. The removal of the affordable housing allocation would therefore benefit him directly *but only in his capacity as a speculator in land* rather than as a builder of homes.

- 7.12 Meanwhile, the detailed and highly site specific work undertaken by the community would be completely lost in order to provide assistance to an individual who was not in need of immediate support.
- 7.13 Once again, we recognise that the Government does not currently intend to change the threshold in rural locations and so, the measures *currently proposed* by the Government may not apply.
- 7.14 However, we are compelled to make this representation first because of the uncertainty created by the consultation (the Government may well receive responses to the consultation arguing that the measure should indeed be applied to rural settlements) and second because small rural settlements are simply the starkest example of how the principles behind the measure will apply elsewhere.
- 7.15 In other places, the effect may not be as dramatic as to remove 64% of all the proposed affordable housing but it will reduce it by some lesser amount and to no greater overall benefit.
- 7.16 Finally, we recognise the Government's intention that the measure will last only 18 months and that, as a result, not all of the developments would be able to bring forward and sell through within this timeframe, lessening the loss of affordable homes involved. However, as we pointed out in our response to Question 20, this is not true. The most obvious way of implementing the proposed measures would be for any planning consent granted with the 18 months following the introduction of the measure to enjoy the relief it affords. This being the case, the effects of the measure would run until at least 2026 and it would be entirely possible for all of the sites identified in the Stradbroke Local plan to bring forward planning applications within the 18 month timeframe, and implement them to preserve them. In this way, the application of the increased affordable housing threshold could last the entire duration of the Neighbourhood Plan.
- 7.17 This would be a catastrophe for Stradbroke, for Debenham, for Thurston and many other communities like them up and down the country.