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Dear Ms Wood

Building more homes on brownfield land – consultation response from the Thames Gateway Kent Partnership

This consultation response has been prepared on behalf of the Thames Gateway Kent Partnership (TGKP) Board. TGKP is a public-private partnership whose role is to champion sustainable economic growth in North Kent. The partnership Board comprises the borough councils of Dartford, Gravesham and Swale, Medway Unitary Authority, Kent County Council, and senior representatives from the private sector (including the Chair). This response reflects the views of both public and private sector Board Members alike.

TGKP appreciates the urgent need to increase housing supply, particularly in the Greater South East, and supports in principle the overall objective of trying to accelerate delivery of new housing. However, TGKP has strong reservations about the Government's proposals in this consultation paper. It is the Partnership's view that these proposals would be counter-productive and weaken rather than support the over-arching goal of sustainable development.

In summary, the comments in this response focus on four main areas of concern:

1. **The premise for the consultation proposals, which run counter to the principle of localism.** These proposals could potentially undermine the role of Local Plans, and the principle of a plan-led approach. The choice of planning tools to foster sustainable development on particular sites and across their area should, we believe, be determined by local planning authorities and not prescribed by central Government. Local Development Orders may be appropriate in some cases but not in others: a regime of statutory obligations and accompanying sanctions to compel their introduction seems heavy-handed. Housing development needs to be balanced by other economic uses, as well as appropriate amenities and other local infrastructure, so as to help foster sustainable communities.
2. **The evidence base for the proposals.** The consultation paper is not accompanied by evidence to justify the suggested intervention. The Government appears to be relying on data that are now nearly five years old. These offer a less than robust foundation upon which to develop the present proposals. But even a cautious estimate of the number of sites that might be caught by these proposals would imply a scaling up of LDO preparation several orders of magnitude greater than either the activity over the past ten years, or than is likely to be supported through incentive

funding. Neither is evidence presented to the effect that development of brownfield sites is held back by a lack of permissions. The Partnership would contend that this is not the case: where development has been slow coming forward on brownfield sites, our experience in the Thames Gateway is that the most frequently cited reason is to do with issues around viability and market conditions. Finally, no evidence is presented as to whether housing LDOs have actually accelerated delivery on brownfield sites.

3. **Impact upon quality and other sustainable development objectives.** LDOs by their nature potentially weaken mechanisms by which quality and other objectives for development might be secured. These matter in respect of residential development no less than for any other form of development; and quality is crucial for overcoming adverse perceptions that may be associated with former uses of brownfield sites, and for helping build sustainable communities. We believe LDOs should therefore be used only selectively where these objectives can be secured, not least through a commonality of purpose between local planning authorities, landowners and developers. This is more likely to be achieved where there is an agreed masterplan, either for a specific site or for the wider area in which it is located. The Government seems to be proposing a one-size-fits-all approach which would not be responsive to different circumstances and would pay insufficient regard for the intentions or aspirations of landowners for their sites.
4. **Issues of proportionality, capacity and cost.** The prevalence of brownfield sites does not correlate with the size and capacity of local planning authorities. These measures could impact disproportionately on smaller authorities with a large number of brownfield sites suitable for housing. The cost of preparing LDOs represents a burden on local council tax payers, and for smaller sites could be disproportionate to any overall benefits derived from supposedly streamlining the planning process. If the proposals go ahead, as a new requirement on local government, we would suggest that the funding of all costs of implementing LDOs should be covered under the Government's New Burdens policy, and not through a competitive bidding process for funding.

More detailed comments, including responses to the specific questions in the consultation paper, are set out in the **Annex** to this submission.

In summary, TGKP would urge the Government fundamentally to reconsider these proposals, particularly the suggested sanctions. A far more constructive approach would be to focus support and resources on improving the quality and transparency of information held locally and nationally about the status of previously developed land that is no longer required for its original purpose, and on supporting local authorities in the preparation of Local Development Orders where they would be the most appropriate tool to encourage development in the circumstances of any particular site.

Yours sincerely



Rob Bennett
Chairman, Thames Gateway Kent Partnership

Annex: TGKP Response to Consultation on “Building more homes on brownfield land”

The premise for the proposals

1. The underlying premise for these proposals is that Local Development Orders (LDOs) are de facto the right tool to bring forward housing development on brownfield sites that are deemed suitable for new housing. TGKP would argue strongly, not least in accordance with principles of subsidiarity and localism, as well as good planning, that it should be for the local planning authority to decide – in consultation with relevant stakeholders – the appropriate combination of planning tools to use in the circumstances of any particular site in its area. This is not a matter that should be centrally prescribed. An LDO might be the right approach for certain sites and inappropriate for others. This should be decided in the circumstances of the case, and not by applying a one-size-fits-all approach.
2. Another fundamental problem with the Government’s proposal is its underlying assumption that brownfield land that is suitable for housing should therefore be used for housing. Land that is suitable for housing may also be suitable for other economic uses, or mixed uses; and even sites predominantly intended for housing may need to support ancillary development such as schools, health facilities, and other local amenities. The optimal use for a site, in terms of its contribution towards sustainable development, should be determined through the local planning process. As they stand, the Government’s proposals could potentially undermine the principle of the plan-led approach, and the role of Local Plans. The key mechanism for giving developers and local communities a measure of certainty is through site allocations which have been arrived at through a process of testing and sustainability appraisal. Bringing forward a residential LDO on a site simply because it satisfies the LDO criteria should not supersede the local plan. Nor should use for housing trump all other possible uses of a site that has multiple possibilities: wider considerations of sustainable development, including the need for commercial and other economic uses, should be taken into account. In North Kent, for instance, there is a shortage of high quality commercial premises in accessible locations. Communities need local access to jobs and amenities, not just housing.
3. The rationale for these proposals seems to be the perception that brownfield sites that are ready for development are being held back by a lack of planning permissions, or by a dilatory approach on the part of local planning authorities. The position no doubt varies across the country and from one authority’s area to another, but in relation to North Kent the facts do not support such a reading. Work undertaken under the auspices of the Thames Gateway Strategic Group, and presented in June 2013 to Brandon Lewis MP, the then Thames Gateway Minister, showed that the most frequently cited reason why permitted sites were stalled or progressing slowly was to do with viability and market conditions; but gaps in funding for infrastructure were generic issues in a significant number of cases. TGKP is concerned that the proposals for LDOs will do nothing to address the infrastructure challenges associated with many brownfield sites.

4. Over the ten years 2003/4 to 2012/13, 62,624 new homes were completed in Kent & Medway, 75.7% of them on previously developed land.¹ In North Kent, in the three years 2010/11 to 2012/13 (i.e. since NLUD 2010 was compiled) 5,100 homes were completed, 58% of them on brownfield land. These are strong indications that brownfield sites as a component of housing supply are not being held back by a lack of planning permissions.
5. The thrust of the consultation proposals is on action by local authorities. But the consultation paper makes little mention of the intentions or aspirations of landowners whose sites would be covered by the legislation. We suggest there would be little value in local authorities bringing forward LDOs on sites where the landowners' intentions are unclear or unsympathetic.
6. The consultation paper does not, we would argue, provide an adequate rationale to justify the proposed measures. TGKP would therefore urge the Government fundamentally to re-think its approach. A better approach would be first to support local authorities to get their local plans up to date; second, in respect of LDOs, to focus on Government's enabling role in supporting and streamlining their preparation, where authorities wish to adopt them; and third, to help improve publicly-available information about brownfield land on a more consistent and transparent basis to encourage developer interest. The proposed sanctions and target-driven aspects of the proposals seem likely to be counter-productive and we suggest they should not be pursued.

Evidence base

7. The consultation paper lacks an evidence base or cost benefit analysis explaining the case for the proposed measures. The invitation to bid for funds to develop LDOs, issued by DCLG on 7 August 2014, referred to analysis of the data on the National Land Use Database of Previously Developed Land (NLUD-PDL) 2010². Those data are nearly five years old. Even the most recent NLUD data (NLUD-PDL 2012), published in October 2014, represent only an incomplete and non-validated analysis of the position nearly three years ago³, based on returns from only 45% of local authorities. NLUD 2013 has not been commissioned. A comparison between NLUD 2010 and 2012 shows the following:

		NLUD 2010	NLUD 2012
1	Total records	Records 23,926	8,860
2	Indicative housing capacity	Units 1,011,428	466,670
3	Sites that would (a) support 5 or more units and are (b) proposed for, (c) suitable for, and (d) where the most suitable use is housing or mixed use with housing	Records 7,052	2,786
		Units 630,667	297,055
4	Sites in (3) with planning permission (detailed, outline or subject to further legal agreements)	Records 4,501	1,445
		Units 327,329	159,615
5	Sites in (3) Allocated in Local Plan or with Draft Allocation	Records 2,202	1,026
		Units 261,083	124,363
6	Sites in (3) with no planning status	Records 349	315
		Units 42,253	13,077

¹ KCC, Business Intelligence Statistical Bulletin, December 2014, Dwelling completions in Kent Local Authorities 2013/14

² Local development orders for housing development on brownfield land - Invitation to bid, January 2015, page 5.

³ Both NLUD 2010 and 2012 contain some degree of double-counting, e.g. where the same site is entered with different names or coordinates. The caveats attached to the 2012 data emphasise that no validation has been carried out.

8. The caveats attached to the data emphasise that inclusion in the database does not mean that a site is developable (e.g. available and free from constraints). On the basis of crude arithmetic, if the 'missing' returns were at a similar level to those submitted, one might expect perhaps 20,000 records (16% below the 2010 levels), of which about 6,200 (-12%) would meet the criteria (a) to (d) above. These calculations imply a fall in the proportion having planning permission (from 57% to 52%) – perhaps reflecting implementation of some permissions between the two datasets – and an increase (over 3%) in the proportion of sites allocated or with a draft allocation (perhaps nearly 2,300 sites). By the same calculation, around 700 sites (double the previous number) would have no planning status, but account for around 29,000 units (31% fewer than in 2010).
9. The proposals in this paper are presumably focused on sites that have either a confirmed or draft allocation in plans. A site with no planning status now is unlikely to be available for development now or in the near future; and sites that have a draft allocation are presumably going through a local plan process which will determine whether they are capable of development. In all cases, there may remain other policy, physical or environmental constraints. It can therefore safely be assumed that not all of these would meet the criteria proposed in the consultation paper.
10. Overall, it is therefore hard to assess the reasonableness of the Government's assumptions about either the quantum of LDO schemes or any additionality they might deliver (new housing development that would not come forward as quickly, or at all). On the one hand, the numbers could be so low that the introduction of national regime of statutory obligations and potential sanctions might be disproportionate. On the other hand, if the crude calculations above are anywhere near the mark, the 2,300 sites allocated or with a draft allocation would represent many times the number of LDO schemes that have been brought forward in the ten years since they were provided for in legislation.
11. We suggest that a more explicit quantification of likely numbers and evaluation of costs and benefits are required before any further steps are taken regarding these proposals.

Impact upon quality and other sustainable development objectives

12. Quality of design is of paramount importance to ensure that new residential developments contribute towards sustainable development. Planning authorities can exercise a degree of control over design quality through Reserved Matters. Under LDOs, that control mechanism is removed. There is scope to establish design quality standards and aspirations in LDOs, for instance through planning conditions and use of design codes, but the thrust of national guidance is to minimise conditions attached to LDOs. There is very real risk, therefore, that LDOs relating to residential development on brownfield sites could sacrifice quality for the sake of expediency. Yet it is on brownfield sites that attention to quality can be of the utmost importance to create new, liveable places that establish a reputation of desirability that overcomes what may be negative associations with the previous use of the land.
13. A crucial factor determining the sustainability of housing development is securing the necessary enabling and ancillary infrastructure. In relation to a normal planning application, this would usually be secured through s.106 obligations; but s.106

obligations cannot be required under LDOs. In some circumstances a s.106 agreement might be offered by a developer; but it cannot be assumed that such voluntary agreements would be forthcoming in all the situations where it would be appropriate.

14. Similarly, whilst in principle development carried out under an LDO might be liable to pay a Community Infrastructure Levy charge, it must be recognised that there are areas where viability assessments indicate that the CIL would have to be set at zero. Without either CIL or the ability to require planning obligations to meet infrastructure needs arising from the development, the means to ensure development carried out under LDOs is sustainable is limited. The proposals would therefore be unhelpful in those areas most in need of regeneration.
15. The Government's proposals compelling a shift towards LDOs on brownfield sites suitable for housing could therefore leave a substantial deficit in supporting infrastructure and amenities to contribute towards the developments' sustainability – for example, schools, community facilities and transport infrastructure. This reinforces our central argument that an LDO is a tool that should be used in appropriate circumstances, including both a willing landowner and developers who are prepared to offer agreements that will meet the additional infrastructure needs arising from the development of the site. We argue it should be up to local authorities to decide whether an LDO is appropriate for any particular site, and that this should be not be prescribed by Central Government.

Proportionality, capacity and cost

16. The Chancellor's Mansion House speech in June 2014 said:

“If we want to limit development on important green spaces, we have to remove all the obstacles that remain to development on brown field sites. Today we do that with these radical steps. Councils will be required to put local development orders on over 90% of brownfield sites that are suitable for housing. This urban planning revolution will mean that in effect development on these sites will be pre-approved – local authorities will be able to specify the type of housing, not whether there is housing. And it will mean planning permission for up to 200,000 new homes – while at the same time protecting our green spaces.”⁴

17. It is notable that the Chancellor referred to an urban planning revolution. Whilst brownfield land is by no means confined to urban areas, it is likely to predominate in urbanised areas as a source of potential development land. There is therefore a risk that the administrative burden associated with the consultation proposals could impact disproportionately on urban authorities. But in any event, there is no direct correlation between prevalence of brownfield sites and the size and capacity of the local planning authority. The proposed measures could therefore place a heavy burden on smaller authorities with significant tracts of brownfield land whilst presenting a much lesser burden on large authorities with limited brownfield sites.
18. The Thames Gateway (as a whole, not just Thames Gateway Kent) has been described as having “20% of the Greater South East's brownfield landin only 3% of the Greater

⁴ <https://www.gov.uk/government/speeches/mansion-house-2014-speech-by-the-chancellor-of-the-exchequer>

*South East Region*⁵. The local authorities in North Kent have taken a consistently proactive and indeed bold approach to bringing forward brownfield land for redevelopment, working in partnership with others including Central Government (via the various Thames Gateway programmes) and more recently with the Homes and Communities Agency. The overwhelming majority of existing brownfield sites that are suitable for housing have already been consented or allocated in plans; whilst these will be kept under regular review, it is unclear how placing a duty on local authorities to bring forward LDOs is going to add value to what proactive authorities are already doing.

19. TGKP appreciates the intended effect of LDOs is to simplify planning processes and speed up delivery. This is most likely to be advantageous in situations where the parameters are fairly straightforward. It is notable that only 70 LDOs of any type had been made up to March 2014, and the majority of these were for commercial development adopted by 42 councils⁶. There are 326 local planning authorities in England, not counting National Park Authorities. Experience of using LDOs is clearly not widespread and the invitation to bid for funds, which may support preparation of around 100 LDOs, indicates that a majority of authorities would face the challenge of preparing LDOs without either support or prior experience.
20. It may be hoped that knowledge transfer, guidance and templates etc. would bring down the costs of creating LDOs, but the bureaucratic burden could still be onerous, particularly for smaller sites. There will be some fixed costs which cannot be scaled in proportion to the number of units on the site; so the unit cost of preparing an LDO for a site of five homes, the threshold for the proposed legislation, will be greater than for a site of 100 homes, the threshold for the Local Development Order Incentive Fund. It should be noted that although the average size of sites suitable for housing in NLUD-PDL 2010 is 89 units, the median is only 23. In TGKP's view, the five unit threshold is excessively low.
21. A major concern for North Kent authorities is the cost implication, particularly at a time when local government funding is under continuous downward pressure. Preparation of LDOs represents an up-front cost to planning authorities that is not offset by application fees from developers. Brownfield sites often have a long and complex planning history, and this is why applications for outline planning permission typically require a range of supporting technical studies including flooding, contamination, ecology, etc. It is reasonable to assume that an LDO would require the same: this would be extremely costly for the local planning authority. Whilst this offers a saving to planning applicants, it becomes a broader cost to planning services as a whole and hence to local council tax payers – in other words, shifting the burden from the private to the public sector. Whereas the benefits might justify the administrative costs in some cases, we suggest more analysis would need to be done to establish whether that would be the case generally and particularly on smaller sites.
22. It would have been helpful if the consultation paper had included evidence about costs and time involved in the preparation of the 70 or so LDOs created to date, and in particular the housing LDOs, to help local authorities calibrate the likely costs relative to the scale or complexity of sites and development schemes.

⁵ Thames Gateway Core Vision, Farrells. This would be referring to the area accounted for rather than number of sites.

⁶ Source: Planning Magazine, 6th February 2015

23. TGKP welcomes the proposed Local Development Order Incentive Fund, but we suggest that this should be de-coupled entirely from the proposals for legislation and sanctions. A more positive approach would be for the Government to use its enabling role to focus on support measures to aid the preparation of LDOs, where these are the most appropriate tool to bring forward development on particular sites. Should the Government decide to proceed with any of the obligations suggested in this consultation paper, these should be recognised as a new burden on local planning authorities and so be subject to the Government's New Burdens policy on funding.

Responses to Detailed Questions

Q1: Definition of brownfield land

24. TGKP partners have misgivings about the interpretation of "suitable" land. The suitability of land for housing should normally be established through Local Plans, taking account of Strategic Housing Land Availability Assessments (SHLAAs).
25. The suggested criterion "free from constraint" is problematic. The more difficult sites are, the more intervention they will require, so that their legacy of dereliction or contamination is not perpetuated. There should not be a perverse incentive for local authorities to exclude difficult sites simply to make a 90% LDO target more deliverable. It may be that unlocking more difficult sites can make a greater long-term contribution to redevelopment and housing growth in an area than accelerating the delivery of less problematic sites.
26. The third bullet of paragraph 14 refers to the importance Government attaches to the Green Belt. We suggest this should reflect more explicitly the relevant provisions of the National Planning Policy Framework (NPPF, paragraphs 79-92), in particular that redevelopment of brownfield sites would only be exceptionally allowed where this "...would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development" (paragraph 89, sixth bullet).
27. Similarly, the consultation paper refers to "severe physical, environmental or policy constraints". We suggest that it should refer more explicitly to the principle in the NPPF that encourages "the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value" (paragraph 17, eighth bullet, our underlining).
28. The suggested criterion "capable of development" may be problematic, because this is determined by the state of the market rather than the intrinsic merits or otherwise of the site. Developers will seek to maintain their profit margins, which may render as non-viable sites that are otherwise deliverable, free from constraint and of suitable size.

Questions 2-4: monitoring and reporting

29. Local authorities will be collecting and updating information about potential development sites as an ongoing part of their monitoring activities. But authorities will not all start from a common position, given that different approaches and methodologies may be used in preparing SHLAAs which are then used as the basis for subsequent monitoring. In reality, creating a "small subset" of data on a consistent basis across local planning authorities may not be as straightforward as the consultation paper suggests.

30. TGKP strongly supports the principle of transparency and agrees that up-to-date information about brownfield sites should be publicly available. However, the monitoring requirements suggested may well entail administrative costs that amount to a new burden – one that is not offset by a reduction in other monitoring requirements. For instance:

- some issues, particularly “the number of homes the site would be likely to support”, could be contentious and perhaps better considered in the context of specific proposals; and
- establishing the “suitability” of sites (as per the suggested tests in paragraph 14 of the consultation paper), in order to decide whether and how they are listed, and mindful of the scope for challenge envisaged in paragraph 18, could involve local planning authorities in time-consuming and expensive work.

31. Any data requirements should therefore be kept to a minimum and focus on information that is readily available rather than involving special investigation. TGKP considers that the information sharing proposals currently outlined in the consultation paper should be recognised as a new burden and, if pursued, should be resourced appropriately or offset by reduction in other reporting requirements. At the same time, TGKP considers that these data should not be accorded higher priority than other monitoring data, either intrinsically or as a measure of performance.

32. More generally, the LDO process shifts the cost burden from planning applicants onto the local authority, which is not then recovered through planning fees. This represents a new burden on local council tax payers.

33. Whilst TGKP would not advocate an increase in centralised reporting requirements, one dimension missing from the monitoring proposals is any mechanism for Government to monitor the impact of these proposals. It may be that other data, e.g. housing starts and completions, would provide part of the picture, but only if these referenced where units were provided on previously developed land and under a local development order. If the Government were to take any aspect of these proposals further, we suggest that appropriate arrangements for monitoring and evaluation of new policies and procedures should be built into the scheme’s design.

Questions 5 to 9: designations

34. TGKP is not in favour of the Governments proposed measures to ‘encourage progress’, and does not therefore agree with any of questions 5 to 9. The proposals for designation of authorities that do not achieve the suggested targets seem heavy-handed and we would advocate an enabling approach as being more constructive.

Question 10: Policy-based incentive

35. It follows from the comments above that TGKP does not support the suggested option of amending the NPPF in relation to five year housing supply. This could undermine the plan-led system, and likewise carries the risk of undermining the five year housing supply in its entirety. This would open the way for speculative development proposals on not only brownfield but also greenfield sites, or others that are not allocated in the local plan.

The very fact that such sites are not already part of the five-year housing supply is an indication that their development may not be appropriate in the foreseeable future, if at all, for a range of reasons including (lack of) connectivity to existing infrastructure. We would strongly suggest that this proposal should not be pursued.

Question 11: dealing with data gaps

36. TGKP supports transparency of information about the status of land, as indicated above. However, we do not support either the proposals for designation or for policy-based incentives. It follows that we do not agree with the measures proposed on reporting progress in putting LDOs in place. It would appear that a majority of local authorities have struggled to provide information in 2011 and 2012 to inform the NLUD-PDL. We suggest that the focus in dealing with data gaps should be on supporting planning authorities to assemble basic information about sites, as this is more likely to be of interest to potential investors. This in turn may serve as a springboard for landowners and developers to work with authorities in such a way that LDOs might then become appropriate mechanisms to facilitate development of sites.

Question 12: Other approaches

37. To support wider adoption of LDOs in appropriate circumstances, we suggest the Government's focus should be facilitative, providing support through knowledge transfer, guidance, assistance through the Planning Advisory Service, and operation and monitoring the impact of the proposed Incentive Fund.

38. TGKP appreciates the urgent need to increase housing supply, particularly in the Greater South East. Where the right conditions exist, LDOs may provide a useful tool to stimulate developer interest. But in terms of how public intervention may unlock delivery and foster sustainable growth in the longer-term, TGKP remains of the view that gap-funding will be required to bring more problematic brownfield sites to the market. Where such sites lie at the heart of wider regeneration schemes, the knock-on benefits and multiplier effect of that investment can be transformational. We would be happy to discuss further with Government the kinds of national intervention that could help to unlock these sites.

39. Other incentives that the Government might wish to consider are introducing rewards, for instance through an element of the New Homes Bonus, for authorities that set and deliver appropriate targets for re-use of previously-developed land, have up to date Local Plans, and annually updated SHLAAs. These would go with the grain of running an efficient and accountable planning function whilst also maintaining an emphasis on delivery and redevelopment of brownfield land.